

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2016

Coram:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.11934 of 2016

and

Crl.MP.No.6135 of 2016

1. Mahesh

2.Sujatha

... Petitioners

Vs.

1.State, represented by the
Inspector of Police,
W27, all women Police Station,
Vadapalani, Chennai - 83.

2.N.Rajeshwari

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.6405 of 2008 pending on the file of the IX Metropolitan magistrate Court at Saidapet and quash the same.

For Petitioners : Mr.D.Muthukuar

For Respondent : Mr.C.Emalias

No.1 Additional Public Prosecutor

ORDER

This petition has been filed to call for the records in C.C.No.6405 of 2008 pending on the file of the IX Metropolitan magistrate Court at Saidapet and quash the same.

2. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

3. It is seen that the first petitioner got married to the defacto complainant on 19.04.2000 and thereafter, he took her to U.S.A, where, she stayed for six months and thereafter, he sent her back to India. It is alleged by the defacto complainant that the first petitioner's father was working in the Railways and was dismissed from service, pursuant to which, he filed a

petition before the Central Administrative Tribunal and had also filed a petition before the President of India for reinstatement.

4. In view of these developments, the first petitioner has been torturing his wife and family members to make monetary payment to his family. The first petitioner, sitting in America, issued a divorce notice to the defacto complainant and left it at that. Pushed to the corner, the defacto complainant lodged a complaint, based on which, a case in Crime No. 15/03 for offence under Sections 420, 498 (A), 406, 342 & 323 IPC was registered on 24.10.2003 against Mahesh (A1), Viswanathan (A2), Kalavathi (A3) and Sujatha (A4) and after completing the investigation, the respondent police filed a final report in C.C.No.6405 of 2008, for the aforesaid offences before the learned IX Metropolitan Magistrate, Saidapet. Since Mahesh and Sujatha, the petitioners herein, were in the United States, the Court was not able to serve summons on them and they also did not submit themselves to the jurisdiction of the Court. Therefore, the case against them was split up and the trial court proceeded as against Viswanathan and Kalavathi in C.C.No.1699 of 2004 and they were acquitted on 21.02.2014. Thereafter, Mahesh and Sujatha have filed the present petition to quash the prosecution on the ground that the co-accused have been acquitted.

5. This petition deserves to be dismissed at the threshold on the ground that an absconder cannot claim any privilege under law as observed by the Hon'ble Supreme Court in Niranjana Singh Vs. Prabhakar Rajaram reported in AIR 1980 SC 785 followed by this Court in Gladys Lily Vs. Superintendent of NCB, 1999 (4) Crimes 185 HC. However, this Court, after perusing the trial Court judgment and the final report filed in this case, is of the view that the prosecution against Sujatha appears to be an abuse of process of law and there are no serious allegations as against her. The Hon'ble Supreme Court in the judgment reported in Arunesh Kumar Vs. State of Bihar (2014) 8 SCC 273 has noted that in matrimonial offence, family members of the husband are easily roped in. The case of Sujatha falls within the parameters of the aforesaid dictum of the Hon'ble Supreme Court and therefore, the prosecution as against Sujatha in C.C.No.6405 of 2008 is quashed.

6. However, there are sufficient materials for the trial Court to proceed against Mahesh. Hence, the prosecution against Mahesh cannot be quashed. The respondent police is directed to issue a Look Out Notice for securing the first petitioner Mahesh, so that he shall face trial in the case.

With the above direction, this criminal original petition is partly allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

sms

To

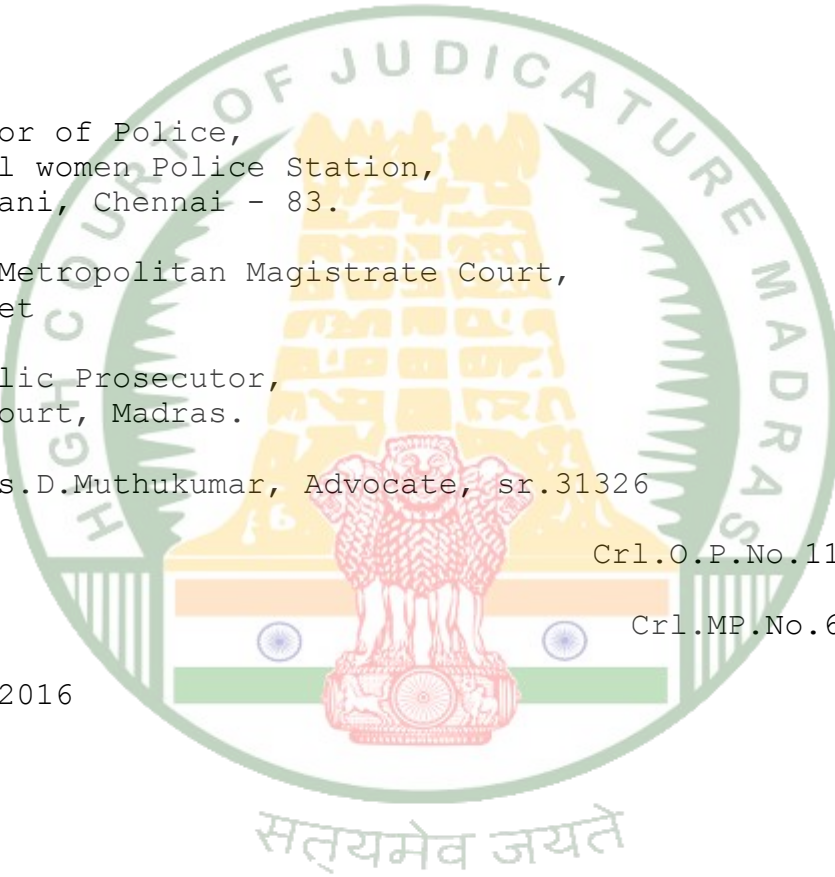
1. Inspector of Police,
W27, all women Police Station,
Vadapalani, Chennai - 83.
2. The IX Metropolitan Magistrate Court,
Saidapet
3. The Public Prosecutor,
High Court, Madras.

1 cc to M/s.D.Muthukumar, Advocate, sr.31326

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