

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.12556 of 2016
and
CrI.MPs.6483 & 6484 of 2016

1.K.S.Nayeemudeen
2.Kulsar Fathima
3.Shamsuniha

... Petitioners/Accused
Vs

1.State, rep.by
The Inspector of Police,
W 35, All women Police Station,
Thambaram, Chennai 600 045.

2.Aaliya Banu ... Respondents/Complainant &
Defacto Complainant

PRAYER:Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in CC.No.875 of 2014 on the file of the Judicial Magistrate Court, at Thambaram and quash the charge as illegal against the petitioners.

For Petitioners : Mr.Ilayaraja Kandasamy
For Respondents : Mr.C.Emalias,
No.1 Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records in CC.No.875 of 2014 on the file of the Judicial Magistrate Court, at Thambaram and quash the charge as illegal against the petitioners.

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

3. On the complaint lodged by Alaya Banu, the respondent police have registered a case in Crime No.63 of 2014 and after completing investigation, has filed final report against K.S.Naimudeen (A1) husband, Gulzafathima (A2) Mother-in-law and Shamshunissa (A3) Sister-in-Law for offences under Sections 498 (A) & 506(1) IPC.

4. It is the case of the defacto complainant that she got married to K.S.Naimudeen (A1) on 12.01.2014 and after the marriage, she was subjected to cruelty and demand of dowry. It is her further allegation that on 10.05.2014, all the petitioners had assaulted and locked her in the room throughout the night and illegally detained her.

5. Mr.Ilayaraja Kandasamy, learned counsel appearing for the petitioners submitted that on 10.05.2014, second accused, Gulzafathima (A2) was not in India and that, she was in Riyadh and in support of his contention, he has produced Air Ticket.

6. A plea of alibi under Section 11 of the Evidence Act is a question of fact, which requires evidence and the same cannot be decided in a quash application. Since there are prima facie material for the trial to proceed, this is not a fit case to quash the prosecution. Hence, the criminal original petition is dismissed with liberty to the petitioners to raise all the points before the trial Court. Consequently, connected miscellaneous petitions are closed.

7. At this juncture, the learned counsel for the petitioners seeks permission for dispensing with the personal appearance of the petitioners 2 & 3 in the Trial Court.

8. Recording the submission of the learned counsel for the petitioners, this Court directs the petitioners 2 & 3 to appear before the trial Court, for receiving the charge sheet, for answering the charge, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment. The petitioners 2 & 3 shall file an affidavit of undertaking before the trial Court that they will not dispute their identity and that their counsel will cross-examine the prosecution witness on the day, they are examined in-chief and that they will not adopt dilatory tactics. On such undertaking, the trial Court shall dispense with the personal appearance of the petitioners 2 & 3. If the petitioners adopts any dilatory tactics, the trial Court can insist on their presence.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Tambaram.

2.The Inspector of Police,
No.35, All Women Police Station,
Tambaram, Chennai-600 045.

3.The Public Prosecutor,
High Court, Madras-104.

+ 1 cc to Mr.Ilayaraja Kandasamy, Advocate SR NO 9541[13/07/16]

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