

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.OP.No.13245 of 2016  
and  
CRL.MP.Nos.6806 & 6807 of 2016

1.A.Abdul Jameel  
2.V.A.Anwar  
3.A.Tahira  
4.A.Shamim Banu  
5.A.Zubaida  
6.Kareem Nisha ...Petitioners

Vs

1.The State  
Rep. by its Inspector of Police,  
W-18, All Women Police Station,  
M.K.B.Nagar,  
Chennai - 600 039. ...1st Respondent/Complainant  
2.Salma ...2nd Respondent/defacto Complainant

Prayer:- Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records in connection with the C.C.No.900/2015 on the file of the Learned X-Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners:Mr.P.Vijendran

For Respondent :Mr.C.Emalias  
No.1 Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records in connection with the C.C.No.900/2015 on the file of the Learned X-Metropolitan Magistrate, Egmore, Chennai and quash the same.

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

3. On a complaint lodged by the second respondent, the first respondent police registered a case in Crime No.9 of 2014 and after completing the investigation, they have filed a final report in C.C.No.900 of 2015 for offences under Sections 498(A), 406, 506(i) IPC & r/w 109 IPC against the petitioners herein, challenging which, the petitioners are before this Court.

4. Mr.P.Vijendran, learned counsel for the petitioners would submit that this is the third complaint and that, earlier complaints were enquired into and the same were closed. He further submitted that the second respondent has not revealed all the facts in the earlier complaints. Therefore, from the reading of the final report, it is seen that the second respondent got married to A.Abdul Jameel (A1) on 09.06.2013 and at the time of marriage, she was given 30 1/2 sovereigns of Gold and Rs.2,00,000/- (Rupees Two lakhs only) cash and other articles as dowry. Thereafter, their matrimonial life ran into rough weather and the defacto complainant, second respondent, lodged a complaint before the Avadi Police Station, based on which, petition enquiry in CSR No.520 of 2014 was conducted and both the parties were sent for counselling. After counselling, they lived together for sometime and once again, the second respondent was suffering cruelty at the hands of the petitioners herein.

5. It is specifically alleged by the second respondent that the petitioners called a witch for performing witchcraft with the help of A6, who is said to be a practitioner of witchcraft and on her advice, the petitioners have been mixing holy ash and other substances in the food and served to the second respondent. That apart, they had given some medicine, on account of which, she suffered abortion.

6. The second respondent had lodged another complaint with MKB Nagar Police station, in which, petition enquiry was conducted in CSR No.546 of 2014 and at that time, the petitioners agreed to return all the Sridhana Articles to the defacto complainant, second respondent, based on which undertaking, the petition enquiry was closed. When the second respondent went to collect the Sridhana Articles, the petitioners had vacated the premises and were not available. Under such circumstances, the present FIR has been filed.

7.The contention of the learned Counsel for the petitioners is that there are contradiction in the earlier complaints or question of fact, which cannot be decided by this Court in a petition under Section 482 Cr.P.C, inasmuch as the second respondent should be confronted with those statement, whilst she is in the witness box.

8. Prima facie, this Court finds that that there are sufficient materials against the petitioners to proceed with the trial. The final Report has not concealed the factum of

the earlier enquiries conducted by the Avadi Police Station in CSR No.520 of 2014 and MKB Nagar Police Station in CSR No.546 of 2014. Under such circumstances, it is not a fit case to interfere at this stage.

9. At this juncture, the learned counsel for the petitioners seeks permission for dispensing with the personal appearance of the petitioners 4, 5 & 6 in the Trial Court as the petitioners 4 & 5 are recently married persons and 6th petitioner is bedridden.

10. Recording his submission, this Court directs the petitioners 4, 5 & 6 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 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 witnesses 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 4, 5 & 6. If the petitioners adopts any dilatory tactics, the trial Court can insist on their presence.

In view of the above, this Criminal Original Petition is dismissed with liberty to raise all the points before the Trial Court. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

sms

To

1. Inspector of Police,  
W-18, All Women Police Station,  
M.K.B.Nagar, Chennai - 600 039.
2. The Learned X-Metropolitan Magistrate,  
Egmore, Chennai.(now function at Allikulam,  
Commercial Complex, Park Town, Chennai).
3. The Chief Metropolitan Magistrate, Egmore, Chennai.
- 4.The Public Prosecutor, High Court, Madras.

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RV(CO)

En 18.7.16