

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP No.13793 of 2016
and Crl.M.P.No.7052 of 2016

1.Abinaya @ Abirami
2.Muthulakshmi
3.Saravanan

..Petitioners/A5 to A7

Vs

1.State rep by the Inspector of Police
All Women Police Station
Palladam

2.S.Banupriya ... Respondents/Defacto Complainant

Prayer:- Criminal Original Petition filed under Section 482
Cr.P.C., to call for the records and quash the charge sheet in
C.C.No.138 of 2012 on the file of Judicial Magistrate, Palladam.

For Petitioners : Mr.J.Franklin

For R1 : Mr.C.Emalias,
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the records and
quash the charge sheet in C.C.No.138 of 2012 on the file of
Judicial Magistrate, Palladam.

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

3. Though notice was served on Banupriya/de facto
complainant and name printed in the cause list, there is no
appearance.

3. On the complaint lodged by Banupriya, the respondent
police registered a case in Cr.No.23 of 2012 and after
completing the investigation, has filed a Final Report in
C.C.No.138 of 2012 before the Judicial Magistrate, Palladam for
offences u/s 498-A, 294(b), 506(i), 494 and 109 IPC against

seven accused, challenging which accused Nos.5 to 7 are before this Court.

4. It is the case of the prosecution that Selvakumar [A1] got married to Banupriya [de facto complainant] on 13.12.2007 and thereafter, she was subjected to cruelty by Selvakumar [husband/A1], Lakshmi [mother-in-law/A2], Ramlakshmi [sister-in-law/A3] and Saravanan [brother-in-law/A4]. As regards A5 to A7, the allegation in the Final Report is that Selvakumar married Abinaya [A5], and Muthulakshmi [A6] and Saravanan [A7] attended the marriage. Therefore, the charge against them is one u/s 494 r/w 109 IPC.

5. Mr.J.Franklin, learned counsel for the accused submitted that there is no iota of material to show that Abinaya [A5] has married Selvakumar. Abinaya is present before this Court and she has also filed an affidavit, wherein, she has stated as follows:

"4. I state that I am only a neighbour of the 1st accused and the defacto complainant and at any point of time, I have no intention at all to marry the 1st accused.

5. I state that I never married the 1st accused at any point of time much less the date as alleged in the complaint.

6. I state that I am going to marry the bridegroom as per the advice of my family members and nothing else."

6. Of course an affidavit by an accused cannot by itself be a reason for quashing the prosecution. Therefore, this Court carefully perused the Final Report and the statements of witnesses. Even in the Final Report it is not stated as to when and where the alleged second marriage had taken place. The witnesses who have been examined by the police merely stated that they have heard that Selvakumar got married to Abinaya and a few witnesses have stated that Selvakumar and Abinaya are living together.

7. In the considered opinion of this Court, if these witnesses depose as stated in the 161 Cr.P.C. statement before the Court, a charge under Section 494 r/w 109 IPC cannot be maintained against A5 to A7. At the most, one can draw inference that Selvakumar was having illicit intimacy with Abinaya [A5] and nothing beyond.

In the result, this petition is allowed and the proceedings in C.C.No.138 of 2012 on the file of the Judicial Magistrate, Palladam, as against these petitioners alone is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

To

- 1.The Inspector of Police
All Women Police Station
Palladam.
- 2.Judicial Magistrate,
Palladam.
- 3.-Do- Thro' The Chief Judicial Magistrate,
Tiruppur.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J.Franklin, Advocate Sr.41995

सत्यमेव जयते

Cr1.OP No.13793 of 2016

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srg 16/08/2016

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