

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.14130 of 2016
and Crl.MP.Nos.7201 & 7202 of 2016

1.Feroz
2.Abdulwahab
3.Arifawahab
4.Afroz Banu
5.Syed Rafick
6.Rafiq
7.Mubark John
8.Nazira Shaikah ...Petitioners

Vs

State Rep. by
Inspector of Police,
W-35, All Women Police Station,
Tambaram
(Crime No.85 of 2014) ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records in C.C.No.277 of 2015, now pending on the file of the Judicial Magistrate Court at Tambaram and quash the same as not maintainable both on facts and in law.

For Petitioners : Mr.R.Balaji Singh
For Respondent : Mr.C.Emalias
Additional Public
Prosecutor

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.277 of 2015 on the file of the learned Judicial Magistrate, Tambaram.

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

3. It is seen that the first petitioner got married to Asmakhan, the defacto complainant on 17.10.2008 and thereafter they were in London and U.S.A for sometime and ultimately, they came back and settled in Chennai. While so, it is alleged by the defacto-complainant that the petitioners ill-

treated her on various occasions and that the first petitioner got married for the second time to one Nazira Sheik.

4. On the complaint lodged by the defacto-complainant, the respondent Police registered a case in Crime No.85 of 2015 and after completing the investigation, has filed a final report in C.C.No.277 of 2015 before the learned Judicial Magistrate, Tambaram, against the petitioners for the offences under Sections 498(A), 406, 494, 506(i) IPC, challenging which, the petitioners are before this Court. On a reading of the statement of the defacto complainant, there are several materials for the trial to proceed against the petitioners herein. Therefore, the prosecution cannot be quashed, as disputed questions of facts cannot be gone into in a quash proceedings. That apart, even according to the first petitioner, he has pronounced triple "Talaq" by giving Rs.15,000/- to the de facto complainant as Iddah expenses.

5. All these facts would prima facie go to show that the de facto complainant is subjected to cruelty. Hence, the quash proceedings cannot be quashed and the petition is dismissed. Consequently, connected miscellaneous petitions are closed.

6. At this juncture, the learned counsel for the petitioners seeks permission for dispensing with the personal appearance of the petitioners in the Trial Court. Recording his submission, the presence of the petitioners 2,3,7 & 8 alone before the trial Court is dispensed with. However, the aforesaid petitioners are directed to be present 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. Those 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 2,3,7 and 8. If those petitioners adopt any dilatory tactics, the trial Court can insist on their presence.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

ds

To

1.The Inspector of Police,
W-35, All Women Police Station,
Tambaram

2.The Public Prosecutor,
High Court, Madras.

3.The Judicial Magistrate,
Tambaram.

AK(co)
cp 23/07/2016

Cr1.OP.No.14130 of 2016



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