

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.24158 of 2016

and

Crl.M.P.Nos.11501 & 11502 of 2016

1.A.Anthony Joseph (A1)
2.A.Cicily (A2)
3.A.Augustine (A3)
4.A.Henry Marcus (A4)
5.A.Dominic Johnson (A5)
6.R.Savarimuthu (A6)

.. Petitioners

Vs.

1.State, Rep by its
The Inspector of Police,
W-18, All Women Police Station,
M.K.B. Nagar,
Chennai – 600 039.
Crime No.4 of 2013

2.Arokia Irudhaya Kalaiarasi

.. Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records pertaining to the charge sheet in S.C.No.310 of 2015 on the file of Mahila Court, Chennai and to quash the same.

For Petitioners	: Mr. M.Duraiswamy for Mr.M.Senthilkumar
For Respondents	: Mr. C.Emalias [for R1] Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed praying to quash the charge sheet in S.C.No.310 of 2015 on the file of Mahila Court, Chennai

2. On the complaint lodged by Arokia Irudhaya Kalaiarasi, the respondent police registered a case in Crime No.4 of 2013 and after completing the investigation, have filed final report in PRC.No.83 of 2014 and the case has now been committed to the Sessions Court and made over to the Mahila Court, Chennai in SC.No.310 of 2015 against the petitioners herein, challenging which, the petitioners are before this Court.

3. Heard Mr.Duraiswamy, the learned counsel appearing for the accused/petitioners and Mr.C.Emalias, the learned Additional Public Prosecutor appearing for the respondent police.

4. Mr.Duraiswamy, the learned counsel submitted that the allegations made by the *de facto* complainant against all the family members of the first accused, on the face of it looks very frail and that the Hon'ble Supreme Court in ***Preethi Gupta & Another Vs. State of Jharkhand & Another*** reported ***in 2010 (6) SCC 312***, has noticed the

growing tendency in matrimonial matter wherein wives make reckless allegations against all the family members of the husband and therefore, the Supreme Court has issued a caution to the police not to be hasty in taking action on the ipse-dixit of the *de facto* complainant. This Court cannot have any quarrel with the observations made by the Supreme Court. However, in this case, it appears that the *de facto* complainant is a dalit and that Anthony Joseph (A1) had sexually abused her and thereafter, refused to marry her.

5. On the complaint given by the *de facto* complainant to the police, an enquiry was pending and Anthony Joseph (A1) represented to her that he is willing to marry her and on such representation, she appeared before this Court and consented for quashing the prosecution under Section 482 Cr.P.C. After the prosecution was quashed, A1 underwent a form of marriage with the *de facto* complainant and took her to various places and started harassing her.

6. In the final report, there are specific allegations of harassment by the family members of A1, inasmuch as it is alleged by the *de facto* complainant that they would call her by her caste name. She has also alleged that the accused poured phenyl into her mouth to cause her death. When there are such serious allegations in the charge

sheet, this Court is of the view that this is not a fit case to interfere for quashing the prosecution. Accordingly, the petition is dismissed. Consequently, connected miscellaneous petitions are closed.

7. At this juncture, the learned counsel for the petitioners seek permission for dispensing with the personal appearance of A.Cicily (A2) and R.Savarimuthu (A6) in the trial Court. Recording his submission, this Court is of the view that the presence of (A2) and R.Savarimuthu (A6) before the trial Court may be dispensed with on condition that the said petitioners shall file an affidavit of undertaking before the trial Court that they will not dispute their identity and that the counsel named by them in the affidavit 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 second and sixth petitioner (A2 & A6). If the said petitioners adopt any dilatory tactics, the trial Court can insist on their presence. However, this Court directs the second and sixth petitioner (A2 & A6) to appear before the trial Court, for receiving the complaint, for answering the charge, at the time of questioning under Section 313 Cr.P.C., and at the time of passing judgment.

07.11.2016

ds

P.N.PRAKASH,J

ds

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