



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Cr1.O.P.(MD) No.13120 of 2016

WEB COPY

1. Habibullah
2. Haji Khan Mohammed
3. Rameeza
4. Sirajudeen
5. Barakath

... Petitioners/A1 to A5

-vs-

1. State Rep. by
The Inspector of Police,
All Women Police Station,
Thirumayam, Pudukkottai District.
(Crime No.5/2014) ... 1st Respondent/Complainant
2. Roja Banu @ Roja ... 2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records in C.C.No.117 of 2014 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukkottai District and quash the same.

For Petitioners : Mr.P.Gunasekaran

For R1 : Mr.K.V.Rajarajan
Govt. Advocate (Cr1.Side)

For R2 : Mr.A.Prasanna Rajadurai

ORDER

Section 482 Cr.P.C., saves inherent power of the Court. Such inherent power can be exercised either to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. Invoking such inherent power, this petition has been filed to quash the proceedings on the ground that the continuance would amount to abuse of the process of the Court.

2. A case in Crime No.5 of 2014 has been registered under Sections 498(A) and 406 IPC by the 1st respondent against the petitioners. After completion of investigation, the respondent police filed a charge sheet before the learned District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukkottai District, which was taken cognizance by the said Magistrate [in C.C.No.117 of 2014].



3. When the matter is taken up for hearing, the petitioners and the second respondent, appeared in persons and their identifications were verified by this Court, in addition to the confirmation of the identity of the parties by the learned Government Advocate (Crl.Side) through the respondent police.

4. Learned counsel appearing for the parties filed a joint memo of compromise, duly stating that the parties have arrived at an amicable settlement, under which the second respondent has agreed to withdraw the case in C.C.No.117 of 2014 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukkottai District.

4.1. Even in respect of matrimonial disputes, there are two kinds of cases, a) one kind relates to existing and continuing relationship between the parties; in this type of case; having regard to the preservation of family tie and in the interest of welfare of children, the Court might have to consider the claim of settlement between the parties, b) yet another kind of case is, where there is dowry death and abetment to commit suicide, where the implication is felt more seriously by the society, the permission to compound cannot be considered at all.

4.2. So far as this case is concerned, the defacto complainant / 2nd respondent has stated that the 1st petitioner has already pronounced Talaq on 10.02.2012 and the same has been intimated to her by letter dated 14.04.2012 issued by one Khazi Mohamed Kaleemullah, thereby the relationship between the 1st petitioner and the defacto complainant has been brought to an end and there is no husband and wife relationship existing between them. She also stated that she had received Rs.2,00,000/- from the petitioners towards her permanent alimony and she does not want to proceed with the present case.

4.3. From the above, this Court can safely infer that the chances of the defacto complainant deposing against the petitioners is less and therefore, the chances of conviction of the accused is bleak. Therefore, the proceedings must be quashed.

5. When such a situation arose in similarly placed matters in **Crl.O.P. (MD) Nos.406, 530 and 864 of 2016 (Prabu and others vs. State Rep. By The Inspector of Police and others), decided on 28.01.2016**, this Court considered the various decisions rendered by the Hon'ble Supreme Court in this regard in several cases, namely, **Gian Singh vs. State of Punjab and another [(2012) 10 SCC 303]**, **B.S.Joshi vs. State of Haryana [(2003) 4 SCC 675]**, **Nikhil Merchant vs. CBI [(2008) 9 SCC 677]**, **Narinder Singh and others vs. State of Punjab and another [(2014) 6 SCC 466]** and **State of Madhya Pradesh vs. Manish and others [(2015) 8 SCC 307]** and



observed as under:

"11.....As held by the Apex Court, insofar the offences arising out of matrimonial dispute, relating to dowry or the family disputes where the wrong is basically private or personal in nature, are concerned, **the possibility of conviction is remote and bleak**, in case the parties resolve their entire disputes amicably among themselves....."

6. Therefore, considering, a) the nature of relationship between the parties, b) nature of offences alleged c) the settlement arrived at and d) the ultimate result of the prosecution, this Court is of the view that quashing of the **Calendar Case** will be in the ends of justice and accordingly, the same is ordered to be quashed.

7. In the result, this Criminal Original Petition is allowed and the entire proceedings in C.C.No.117 of 2014 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukkottai District in respect of the petitioners are hereby quashed.

Sd/
Assistant Registrar(CS-I)

/TRUE COPY/

Sub Assistant Registrar

To:

1. The District Munsif-cum-Judicial Magistrate,
Thirumayam,
Pudukkottai District.
2. The Inspector of Police,
All Women Police Station,
Thirumayam, Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.P.Gunasekaran, Advocate in SR.No.40789

+1cc to M/S.A.Prasanna Rajadurai, Advocate in SR.No.40272

CrI.O.P.(MD) No.13120 of 2016
28.07.2016

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