

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :02.03.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.20484 of 2010

and

M.P.No.1 of 2010

Dr.S.Arivoli

... Petitioner/Accused

Vs.

State by

Inspector of Police,

W.32, All Women Police Station,

Madipakkam,

Chennai-600 091.

... Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings as against the petitioner in C.C.No.865 of 2009 pending on the file of the Judicial Magistrate, Alandur, Chennai-16.

For Petitioner : Mr.A.Kumana Raja

For Respondent : Mr.Madan

Govt.Advocate (Crl.Side)

O R D E R

Invoking the provisions of Section 482 of Cr.P.C., this petition is filed by the petitioner to quash the criminal proceedings of the case in C.C.No.865 of 2009, pending on the file of the learned Judicial Magistrate, Alandur.

2. Heard Mr.A.Kumana Raja, the learned counsel for the petitioner and Mr.Madhan, learned Government Advocate (Crl.Side).

3. It appears from the records that the defacto complainant in this case is none other than the wife of the petitioner. The defacto complainant had lodged a complaint before the Commissioner of Police on 12.06.2008 as against the petitioner and his mother and brother alleging that she was harassed and treated with cruelty with regard to demanding of dowry. Based on her complaint, the respondent/Police had registered a case in Crime No.5 of 2008 under Sections 498 A, 406 and 506(i) of I.P.C., and after the completion of investigation, the

Investigating Officer had filed a charge sheet against the petitioner alone, after deleting the names of his mother and brother before the learned Judicial Magistrate, Alandur. The charge sheet filed by the respondent/Police was taken on file by the learned Judicial Magistrate, Alandur in C.C.No.865 of 2009.

4. It is also revealed from the records that the investigating officer had also deleted the Section of law under Section 406 of I.P.C., at the time of filing the charge sheet.

5. Now, it is brought to the notice of this Court that the defacto complainant Deepa had died due to cancer on 02.07.2008. In order to substantiate this fact, the learned counsel for the petitioner has produced the xerox copy of the death certificate, which is not disputed by the respondent/police. When the defacto complainant herself had come forward with the complaint alleging that she was harassed and ill treated under the hands of the petitioner, his mother and brother, and thereafter passed away on account of cancer, the entire allegations are deemed to be wiped out and therefore, no adequate grounds or no issues are in existence to proceed against the petitioner.

6. As submitted by the learned counsel for the petitioner, already at the time of filing the charge sheet, petitioner's mother and brother were dropped and the charge sheet is laid only against the petitioner. It is also to be noted that the section of law under Section 406 I.P.C., was also deleted. Therefore, the remaining charges under Sections 498A and 506(i) of I.P.C, are being faced by the petitioner and they have to be substantiated and proved by the prosecuting agency only through the deceased defacto complainant. Since she is no more, those two charges cannot be proved by other listed witnesses. Under this circumstance, this Court finds that keeping alive of the criminal case in C.C.No.865 of 2009, would not serve any purpose. Even if the case is allowed to go for trial, the chance of conviction is bleak.

7. Having regard to all the relevant facts and circumstances, this Court finds that the petition is liable to be allowed. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.865 of 2009 pending on the file of the learned Judicial Magistrate, Alandur as against the petitioner is quashed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CCC)

True Copy

Sub-Assistant Registrar

ssn

To

1.The Judicial Magistrate,
Alandur.

2. Do Thro The Chief Judicial Magistrate
Alandur.

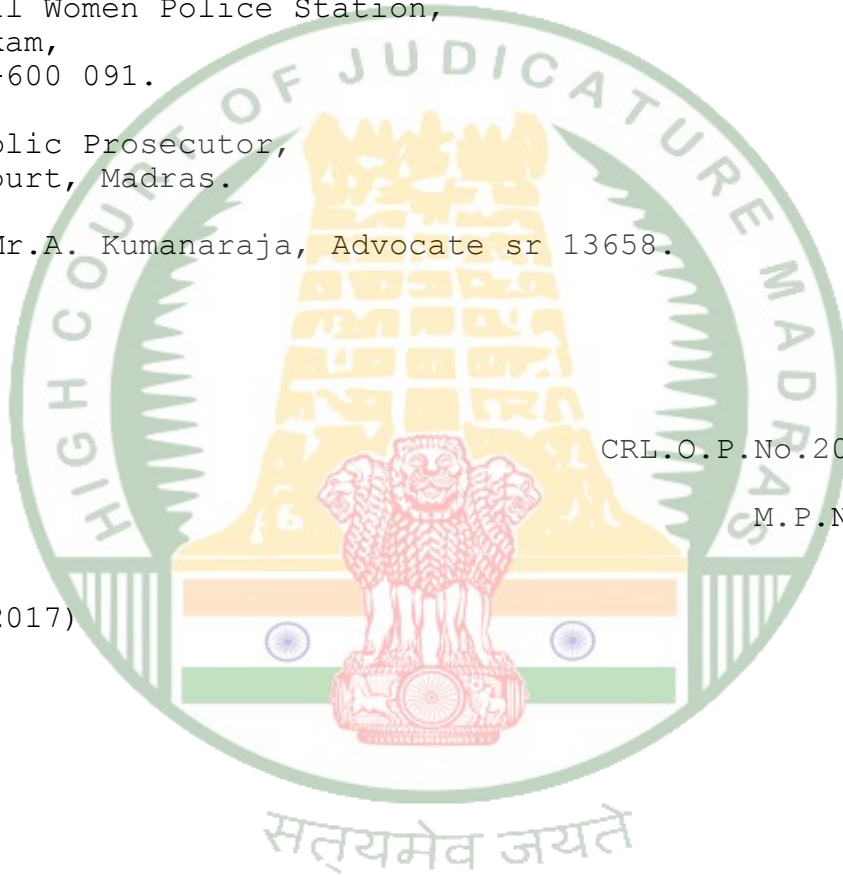
3.Inspector of Police,
W.32, All Women Police Station,
Madipakkam,
Chennai-600 091.

4. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.A. Kumanaraja, Advocate sr 13658.

EV(CO)
sp(17/08/2017)

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