

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.O.P.Nos.338, 339, 340 and 341 of 2014
and
M.P.Nos.1, 1, 1 and 1 of 2014

Crl.O.P.No.338 of 2014

1.Dr.S.Leo Bernard
S/o.V.Sengolsamy

2.Dr.Swathika
W/o.S.Leo Bernard

Vs.

S.Pushparani Jeyasheela
W/o.P.Swaminathan

... Petitioners

... Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in D.V.A.No.10 of 2013 on the file of Judicial Magistrate III, Coimbatore and quash the same.

Crl.O.P.No.339 of 2014

1.Dr.S.Leo Bernard
S/o.V.Sengolsamy

2.Dr.Swathika
W/o.S.Leo Bernard

3.Aruna @ Dr.Aruna Shankari
W/o.Late Sivakumar

4.Thirugnanasambantham @ Dr.S.P.T.Sambandam
S/o.Palani Murugaiah

... Petitioners

Vs.

1.State represented by
The Inspector of Police,
All Women Police Station (East),
Coimbatore.
Crime No.43 of 2012

2.S.Pushparani Jeyasheela
W/o.P.Swaminathan

.. Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore and quash the same.

Cr1.O.P.No.340 of 2014

P.Swaminathan
S/o.Palani Murugaiah

.. Petitioner

Vs.

S.Pushparani Jeyasheela
W/o.P.Swaminathan

... Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in D.V.A.No.10 of 2013 on the file of learned Judicial Magistrate III, Coimbatore and quash the same.

Cr1.O.P.No.341 of 2014

P.Swaminathan
S/o.Palani Murugaiah

.. Petitioner

Vs.

1.State represented by
The Inspector of Police,
All Women Police Station (East),
Coimbatore.
Crime No.43 of 2012

2.S.Pushparani Jeyasheela
W/o.P.Swaminathan

.. Respondents

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore and quash the same.

Appearance:

For Petitioners in

Cr1.O.P.Nos.338 & 339 of 2014 :

Mr.N.R.Elango, senior counsel
for Mr.R.Vivekananthan

Crl.O.P.No.340 & 341 of 2014 : Mr.R.Muniyapparaj

For Respondents in

Crl.O.P.No.338 of 2014

: No appearance,

Crl.O.P.No.339 of 2014

: Mr.B.Ramesh Babu,

Government Advocate [crl.side][R1]

No appearance,

Crl.O.P.No.341 of 2014

: Mr.B.Ramesh Babu,

Government Advocate [crl.side][R1]

C O M M O N O R D E R

Petitioners in Crl.O.P.Nos.338 and 340 of 2014 seek quash of proceedings in D.V.A.No.10 of 2013 on the file of learned Judicial Magistrate III, Coimbatore.

2. Petitioners in Crl.O.P.Nos.339 and 341 of 2014 seek quash of proceedings in C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore.

3. Case in C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore, is pending prosecution for offences u/s.498-A IPC against A1, 498-A, 342 and 323 IPC against A2 and A3, 498-A, 342 and 323 r/w 109 IPC against A4 and A5 and 498-A and 506(i) IPC against A6 and A7. Petitioners in Crl.O.P.No.338 of 2014 are accused 2 and 3. Petitioners in Crl.O.P.No.339 of 2014 are accused 2, 3, 4 and 5. Petitioner in Crl.O.P.Nos.340 and 341 of 2014 is A1.

4. Petitioners 1 and 2 in Crl.O.P.Nos.338 of 2014 and 339 of 2014 are son-in-law and daughter of Swaminathan. Petitioners 3 and 4 in Crl.O.P.No.339 of 2014 are niece/brother's daughter and brother of Swaminathan. Respondent in Crl.O.P.Nos.338 and 341 of 2014 and second respondent in Crl.O.P.Nos.339 and 340 of 2014 is the second wife of Swaminathan. Parties are hereinafter referred to by their relationship.

5. Though the complaint in D.V.A.No.10 of 2013 on the file of learned Judicial Magistrate III, Coimbatore, has been preferred by second wife of Swaminathan on 30.04.2012, it is seen that the same was taken on file only in the year 2013. Similarly, C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore, arises out of case registered in Crime No.43 of 2012 on 13.10.2012.

6. Heard learned senior counsel for petitioners in Crl.O.P.Nos.338 and 339 of 2014, learned counsel for petitioners in Crl.O.P.Nos.340 and 341 of 2014 and learned Government Advocate [Crl.side] for State. There repeatedly is no

representation for second wife of Swaminathan.

7. As early as on 05.04.2012, Swaminathan has preferred a complaint against his second wife alleging that she had tortured him by demanding money and pressurising him to register a house in her name, which was already registered in the name of his daughter, born through his first wife. She had also threatened suicide. His wife also forced him to register their marriage. Father of Swaminathan informed that his health condition was poor and hence, he would sign an affidavit after his recovery. Angered thereby, wife of Swaminathan took all certificates, cash of Rs.70,000/-, bank deposit receipt and colobag belonging to husband and left the matrimonial home. Thereafter, continuously, she harassed Swaminathan demanding money and her brother also threatened that they would prefer a complaint alleging demand of dowry by Swaminathan.

8. The discord between parties clearly stems out of a sale deed dated 03.04.2012 executed by Swaminathan in favour of his son-in-law and daughter in respect of house property at Door No.81/6, Coimbatore Retidu, Singanallur Sabridu, Coimbatore Taluka, Uppilipalayam Village. In the complaint in D.V.A.No.10 of 2013, alleging acts of domestic violence, second wife of Swaminathan has stated that on 06.04.2012, upon information given by brother of Swaminathan that Swaminathan was in his house, she has gone to his house wherein Swaminathan, his brother, his daughter and his son-in-law were present. Son-in-law of Swaminathan has informed that the house in which the Swaminathan and his second wife were residing, was registered in the name of daughter of Swaminathan and asked her to leave the home. Further, they had also confined the second wife of Swaminathan in a room, threatened her as also caused injuries. They had also threatened that they would murder her and inform that she committed suicide. Second wife of Swaminathan escaped from the house and preferred a complaint against them. As they were financially sound and influential, no action has been taken against them.

9. In the civil action preferred by her in O.S.No.256 of 2013 on the file of District Munsif Court, Coimbatore, wherein she had inter alia sought declaration of the sale deed dated 04.04.2012 being void and an order of permanent injunction restraining the registering authorities from entertaining any registration of document with respect to the suit property, she has stated as follows:

"It is submitted that to the shock and surprise of the plaintiff all of a sudden, on 31.03.2012 the 1st defendant taken the Plaintiff to her sister shantha house at Thoothukudi and harassed and tortured the plaintiff like anything which necessitated the

plaintiff to return alone back to her matrimonial house namely the suit property on 01.04.2012 since the 1st defendant was held up and in the custody of her sister by that time and subsequent to that the 1st defendant did not return to the matrimonial home and further his mobile phone was switched off. In spite of the plaintiff's hectic search she could not able to trace out her husband namely the 1st defendant's whereabouts. Subsequent to that all the defendants joined hands and threatened the plaintiff in all aspects subsequently on 06.04.2012 one Thirugnanasambantham (brother of the 1st defendant) who is residing at Saibaba colony at Coimbatore invited the plaintiff to come to his home since the 1st defendant is at his home believing his words the plaintiff went there and saw her husband namely the 1st defendant who was sitting there but to her shock all the defendants together with the said Thirugnansambantham and his daughter brutally beaten the plaintiff, threatened, harassed her with dire consequences and grabbed the key of matrimonial home namely the suit property and pushed her out of the house. Having no other to go has come down to Madurai to her parental home after lodging necessary complaint before the Singanallur police officials."

10. The charge sheet in Crime No.43 of 2012 giving rise to C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore, seeks to inform thus (translated):

"On 06.04.2012, A5 asked the complainant Pushparani to come his house situated at Saibaba Colony, Coimbatore, and housed her in a separate room. Accused 2 to 5 informed the complainant Pushparani that they have registered the house, in which she was residing, in favour of A3 and threatened her to leave that house otherwise they would murder her and inform the same as suicide. They have assaulted the complainant Pushparani, took the home key and caused injuries.

If the husband or his relatives cause any mental or physical torture to the wife after marriage demanding money or property, the same is an offence u/s.498-A IPC."

11. On a subsequent date, viz., 03.08.2013, second wife of Swaminathan has preferred a complaint to the police authorities informing that on 30.05.2012, Swaminathan, his son-in-law and daughter appeared before the police station, made a false promise that they would settle the matter amicably and since the house has been registered in the name of son-in-law of

Swaminathan, they promised to pay a sum of Rs.25,00,000/- to her for the loss suffered by her and thus evaded action against them.

12. In the above scenario, this Court is in no doubt whatsoever that what is primarily a dispute over property is sought to be given criminal colour. Prosecutions of such type are not to be countenanced.

These Criminal Original Petitions are allowed. The proceedings in C.C.No.529 of 2013 on the file of learned Judicial Magistrate II, Coimbatore and D.V.A.No.10 of 2013 on the file of learned Judicial Magistrate III, Coimbatore, are quashed. It will be open to second wife of Swaminathan to work out her rights in the civil action initiated by her. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

gm

To

1.The Judicial Magistrate III,
Coimbatore.

2.The Judicial Magistrate II,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Muniyapparaj, Advocate SR.No.45413

Cr1.O.P.Nos.338, 339, 340 and 341 of 2014

MP (CO)
GN (08/02/2018)