

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2017

(Orders Reserved on 02.08.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.4383 of 2013

and

M.P.No.1 of 2013

Malathy @ Mahalakshmi Petitioner/Proposed Accused

.. Vs ..

The State, Rep. by
The Inspector of Police,
All Women Police Station,
Villiyannur, Puducherry. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records passed in Crl.R.P.13/2011 on the file of the Principal Sessions Judge, Puducherry, dated 04.10.2012 in confirming the order passed in Cr.M.P.No.2080/2010 in C.C.No.32/2009 on the file of the Chief Judicial Magistrate, Puducherry, dated 30.06.2011 and set aside the same as illegal, incompetent and without jurisdiction.

For Petitioner : S.C.Vishwanath
For Respondent : Mr.A.Tamilvannan,
Government Advocate (Pondicherry)

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ORDER

The proposed accused in C.C.No.32 of 2009 on the file of the learned Chief Judicial Magistrate, Puducherry, is the petitioner herein.

2. The brief facts which are necessary for determination of the case are as follows:-

The respondent herein viz., Inspector of Police, All Women Police Station, Villianur, in Crime No.2 of 2008, has filed a final report under Section 173 (2) of Cr.P.C. before the trial Court for the offences under Sections 498-A, 494 and 506(ii) r/w.34 of IPC against Thamba @ Tamilarasan (A1) and Thaiyalnayagi @ Visalatchi (A2). The trial Court took up the case on file in C.C.No.32 of 2009, framed charges and proceeded with the trial. During trial, the de facto complainant namely, Hemalatha @ Sangeetha was examined in chief on 28.07.2010. On 17.08.2010, the Inspector of Police, All Women Police Station, Villianur, has filed an Additional Final Report under Section 173(8) of Cr.P.C. before the trial Court against the present petitioner namely, Malathy @ Mahalakshmi. The Inspector of Police has also filed a

petition in Cr.M.P.No.2080/2010 to take the Additional Report on file, adding the accused Malathy @ Mahalakshmi as third accused. The learned Chief Judicial Magistrate, Puducherry, after hearing both sides, allowed the said petition in Cr.M.P.No.2080/2010 filed by the Investigating Officer and included the present petitioner as third accused in the case and thereafter, framed charges for the offence under Section 494 of IPC.

3. As against the said order passed by the learned Chief Judicial Magistrate, Puducherry, in Cr.M.P.No.2080/2010, whereby, the present petitioner was added as third accused in the above said calendar case, the petitioner herein has preferred a criminal revision in Cr.R.P.No.13 of 2011 before the learned Principal Sessions Judge, Puducherry, who after hearing both the parties, had confirmed the order passed by the learned Chief Judicial Magistrate, Puducherry, in Cr.M.P.No.2080/2010 in C.C.No.32/2009 on 30.06.2011 and dismissed the revision and directed the petitioner to face the trial. Aggrieved by the said order, the petitioner has filed this criminal original petition before this Court.

4. Learned counsel appearing for the petitioner submitted that initially, final report has been filed only as against the first and second accused for the offences punishable under Sections 498-A, 494 and 506(ii) r/w.34 of IPC and the same was taken on file and when P.W.1 was in the witness box, the Investigation Officer has filed an additional final report under Section 173(8) of Cr.P.C. and also filed a petition to include the name of the petitioner herein, the second wife of A.1 as third accused stating that by mistake, the name of the petitioner was not included in the final report and the same is against the principles of Criminal Procedure Code and hence, he seeks to set aside the said order passed by the learned Chief Judicial Magistrate, Puducherry.

5. Learned Government Advocate (Pondicherry) made submissions in support of the order of the trial Court.

6. Heard both. Perused records.

7. It is seen from the records that Hemalatha is the de facto

complainant and she has preferred a complaint before the respondent police alleging that the first accused Thamba @ Thamilarasan, after promising to marry her, had refused to marry her and subsequently, there was a panchayat and they got married and both of them were lived together as husband and wife in Ariyankuppam and begotten a child. Subsequently, at the instigation of the second accused/Thaiyal Nayagi @ Visalachi, who is the mother of the first accused, the first accused harassed the de facto complainant and left her lonely.

8. It is further alleged by the de facto complainant Hemalatha that under the instigation of the second accused, the first accused has illegally contracted marriage with one Malathy @ Mahalakshmi, the present petitioner herein and as the husband/A.1 had refused to live with the de facto complainant, she gave the complaint and it was taken on file in Crime No.2/2008 by the All Women Police Station, Villianur, Puducherry.

9. After investigation, final report has been filed against A.1 and A.2 (mother of A.1) for the alleged offences under Sections 498-A, 494 and 506(ii) r/w.34 of IPC and it was taken on file as C.C.No.32 of 2009

by the learned Chief Judicial Magistrate, Puducherry.

10. During trial, when P.W.1 was in the witness box, she has narrated the relationship with the first accused and the mental cruelty committed by A.1 and A.2 and also specifically deposed about her complaint made to the police as well as to the family members of the petitioner herein.

11. P.W.1-de facto complainant has stated that she is the legally wedded wife and she has given a complaint before the police to prevent contracting of second marriage during the subsistence of her marriage with A.1. Thereafter, it appears that despite the complaint, A.1 has contracted second marriage with the petitioner herein Malathy @ Mahalakshmi.

12. On a perusal of the statement recorded under Section 161 of Cr.P.C. as well as the complaint, it is seen that the de facto complainant has specifically stated about the subsistence of her marriage with the first accused. Further, in her statement during the investigation, the de facto complainant has specifically averred that

her marriage with A.1 is in subsistence and she gave a complaint and on 17.09.2007, the investigation officer has contacted the family members of the petitioner herein and strictly told that not to contract the second marriage and on 27.11.2007, she lodged the complaint with the police.

13. It is also specifically stated by the de facto complainant Hemalatha on 24.12.2008 in her statement to the police that her husband A.1 has contracted second marriage and the bangle festival for the pregnancy of Malathy @ Mahalakshmi is scheduled on 06.10.2008 and handed over the invitation printed for the said function. Accordingly, the police, laid the final report for alleged offence under Section 494 of IPC, however not arrayed the said Malathy @ Mahalakshmi as one of the accused.

14. It remains to be stated that P.W.1, who is the de facto complainant has specifically averred in the complaint and also in her statement and further statement about the information she dispelled about her marital status as that of the legally wedded wife of A.1 herein to the family members of the petitioner herein and thereafter,

she gave a complaint. During the investigation also, she gave a further statement regarding the bangle wearing function for the petitioner herein and also now in the witness box, she has also produced Birth Certificate of the child born to A.1 and the proposed accused, the present petitioner herein.

15. After obtaining necessary permission from the Court, the Investigation Officer has also filed a memo to include the name of the petitioner as third accused. Both the Courts below have concurrently held that in view of the availability of the overwhelming material on record as to the marital status of the de facto complainant and the earlier steps taken by her in preventing the contract of the second marriage between the present petitioner and A.1 and subsequent invitation for the bangle wearing function and also in her statement as a witness in the Court. The petitioner herein has to be arrayed as an accused and as sufficient materials are available to include the petitioner herein as third accused, the trial Court has rightly come to a conclusion and accordingly, allowed the petition.

16. The Lower Appellate Court, on appraisal of the admitted

facts as borne out by records, held that there are sufficient materials for inclusion of the petitioner as third accused in C.C.No.32 of 2009, besides also observed the suo motu powers of the Criminal Court for adding the accused under Section 319 of Cr.P.C. Be that as it may, the order was challenged before this Court is to the limited extent that there is no material available to proceed against the petitioner herein and the same is found to be factually incorrect. There are sufficient materials available against the petitioner, who is directed to be tried as a third accused and to be tried for trial and the order is found to be factually correct and both the Courts below, on factual appreciation of the case and also on proper application of law, ordered for inclusion of the petitioner herein as third accused and the same is well merited and well considered which does not warrant any interference by this Court. In any view of the matter, the order of the trial Court as confirmed by the Lower Appellate Court does not suffer from any infirmity or illegality and accordingly, this Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

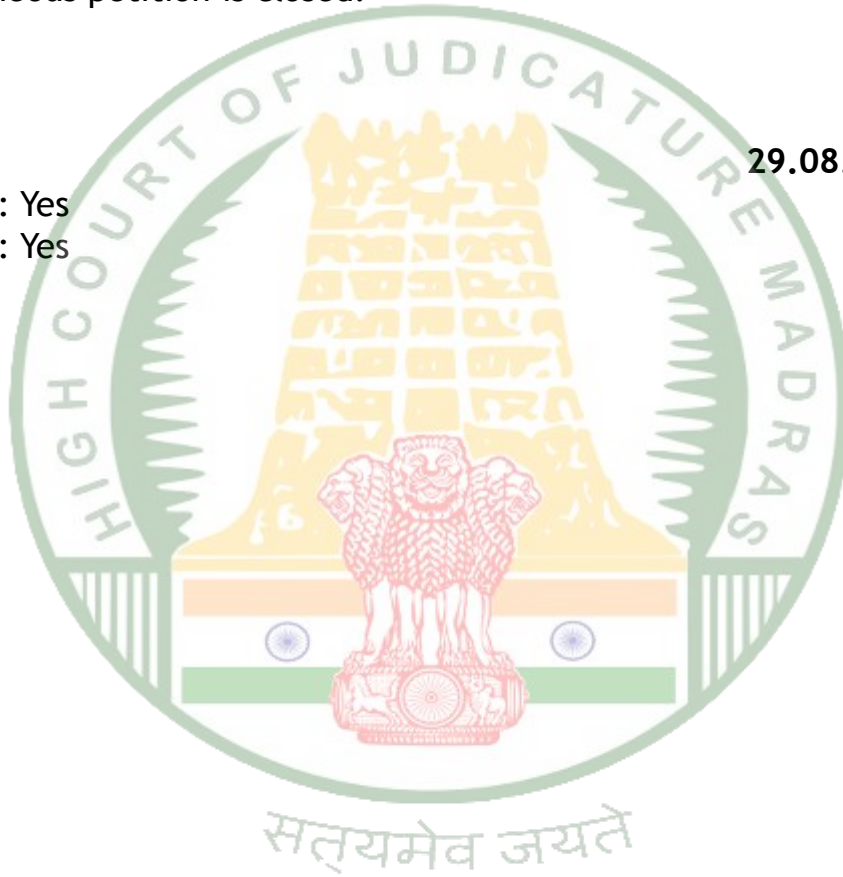
17. In the result, this Criminal Original Petition is dismissed.

Since the case is of the year 2009, the learned Chief Judicial

Magistrate, Puducherry, is hereby directed to complete the proceedings as early as possible within twelve weeks from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is closed.

Index : Yes
Internet : Yes
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29.08.2017



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To

1. The Principal Sessions Judge,
Puducherry.
2. The Chief Judicial Magistrate,
Puducherry.
3. The Inspector of Police,
All Women Police Station,
Villiyannur, Puducherry.
4. The Government Advocate,
Puducherry.



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RMT.TEEKAA RAMAN, J.

Jrl



Order in
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