

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED .07.2017

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :19.07.2017

PRONOUNCED ON :28.07.2017

CrI.OP No.56 of 2011

1.Govindan
2.Carolinmary Stella

.. Petitioners

Vs

Soundarajan

.. Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.126 of 2010 on the Judicial Magistrate's Court, Tirukoilur and quash the same.

For Petitioners :Mr.K.S.Ganesh Babu
For Respondent :No appearance

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in C.C.No.126 of 2010 on the Judicial Magistrate's Court, Tirukoilur and quash the same.

2. The short facts of this case is that the present quash petition has

been filed against the Private complaint filed under Section 200 Cr.P.C by the respondent against the petitioner for the alleged offence under Section 341,294(b),323,324 and 506(ii) I.P.C. Due to cruelty committed by the respondent on the second petitioner, she had filed Divorce petition against the respondent in O.P.No.1 of 2004 and the learned District Session Judge, Villupuram was pleased dissolve the marriage between the respondent and the second petitioner by its Judgment dated 22.06.2005. Thereafter, the petitioners are living together as husband and wife and due to said enmity on 28.04.2007 at night 12.30 when the first petitioner was in house and there was a noise at the front door when the first petitioner opened the door he was brutally assaulted with a knife by the respondent and ran away and the first petitioner was admitted as inpatient at Government Hospital Tirukoliur for treatment and from there he was taken to Jipmer Hospital on 2.5.2007 for further treatment. And the first petitioner complaint taken on file in Crime No.174 of 2007 and charge sheet filed against the respondent in C.C.No.287 of 2010 for the offence under Section 326 and 324 IPC and on the other hand the respondent had given false counter complaint against the petitioners with intention to create defence and to escape from the offence committed by him.

3. The learned counsel for the petitioners based on the above facts have submitted that there is no material evidence to take the complaint on file. The complaint has been taken on file mechanically and automatically without following procedure contemplated under provision of Cr.P.C. On the

earlier occasion for the same alleged offence, the previous complaint was forwarded by the learned Judicial Magistrate, Tirukoilur to the Sub-Inspector of Police, Manalurpettai Police Station with direction for an investigation and report and the Sub-Inspector of Police registered the said complaint in Crime No.137 of 2007 and after investigation and closed the complaint as mistake of fact.

4. The learned Government Advocate (Crl.side) has submitted that the case filed by the present petitioner against the respondent herein in C.C.No.287 of 2010 is filed is ready for trial.

5. After perusing the records, it is seen that the respondent and the second petitioner got married on 20.10.1997 according to Christian Customs and one daughter by name Prithinisha was born in the year 2000. The second petitioner has got an employment as a Teacher. The first petitioner is a Driver also doing agricultural work. Due to the certain alleged cruelty committed by the respondent/complainant, the second petitioner/second accused herein have moved I.D.O.P.1 of 2002 before the District Court, Villupuram and divorce has been granted on 22.06.2005.

6. According to the petitioner herein, on 29.04.2007 at about 0045 hours in Kangeyanallur Mariamman Kovil, North Street near the house of the first petitioner/the respondent herein Govindarajan came with knife and

attacked him and cause grievous injury in shoulder left wrist and also on the right wrist and left finger and hence, he gave a complaint before the Manalurpettai Police Station in Crime No.174 of 2007 and after investigation, charge sheet has been filed for an alleged offence under Section 324 and 326 of I.P.C against the respondent herein before the learned Judicial Magistrate, Tirukovilur and taken as on file on C.C.No.257 of 2010 and hence, as a counter blast, the respondent herein who is arrayed as an accused has filed a complaint before the Manalurpettai Police Station and as they have not taken any steps, he filed complaint before the Judicial Magistrate, Tirukovilur.

7. As per the Court direction, the Sub-Inspector of Police after registered a crime No.137 of 2007 and it has been closed after investigation as 'mistake of fact'. Thereafter, the respondent herein seems to have been moved the Judicial Magistrate, Tirukovilur by way of private complaint under Section 200 of Cr.P.C for taking cognizance of the offence alleged to have committed by the present petitioner herein namely Govindaraj and Carolinmary Stella wherein 4 independent witnesses and one Viswanathan, Governmnet Doctor, Kallakurichi had been shown as witnesses after taking the evidence therein. The Judicial Magistrate has taken a case as C.C.No.126 of 2010 and issue summons to the present petitioner.

8. On perusal of both calendar cases, it is seen that in C.C.No.287 of 2010 wherein the petitioners are defacto-complainant. The time and place of occurrence and scene of occurrence are 29.04.2007 at 0045 hours near the

North Street, Mariamman Kovil in Kankeyanallur Village in front of the house of the first petitioner herein. So, also the time and place of occurrence and scene of occurrence in respect of complaint given by the respondent herein is also one and the same as could be seen from the complaint as well as the complaint in C.C.No.126 of 2010.

9. On close perusal of the various averments in both the complaint, this Court finds that except 15 minutes difference between the 2 cases, the time and place of occurrence are one and the same and between the same parties, it is to be stated that admittedly, the second petitioner herein was originally married to the respondent/defacto-complainant and after obtaining the divorce from the District Court, Villupuram. She is now said to have been living with the first respondent.

10. Considering the factual matrix of the case and relationship between the parties and date and time and place of occurrence between the same parties, this Court comes to the conclusion that this is a case and counter case. In fact, the original complaint given by the respondent herein, the police have not taken action and after obtaining the direction from the District Munsif Court, Villupuram the case was registered, however, closed as a 'mistake of fact'. Subsequently, on an appropriate complaint filed under Section 200 Cr.P.C., the same was taken as C.C.No.126 of 2010 wherein Government Doctor is also shown as one of the witnesses and hence, this

Court is of the considered view that, the trial of both the cases has to be conducted in accordance with procedure laid down and therefore on factual matrix, I am of the view that this is not a fit case for exercising power under Section 482 of Cr.P.C to quash the charge sheet filed in C.C.No.126 of 2010 given by the respondent merely on the allegations made by the petitioner herein, the truth and veracity of the allegations are to be decided during the time of trial and hence, I am not inclined to accept the case of the petitioner.

11. Accordingly, this Criminal Original Petition is dismissed and the learned Judicial Magistrate ,Tirukovilur is hereby directed to take the both C.C.No.126 of 2010 and C.C.No.287 of 2010 and follow the procedure for the trial of the both the cases in accordance with law within a period of six months from the date of receipt of a copy of this order.

28.07.2017

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To

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- 1.The Judicial Magistrate's Court, Tirukoilur
2. The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN,J.,

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Pre-Judgment in
Crl.OP No.56 of 2011

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28.07.2017