

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2017

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Cr1.O.P.No.14340 of 2012

&

MP No.1 of 2012

1. S.Rajesh
2. P.Sekar
3. D.Moorthy
4. N.Kumaresan
5. S.Jeyachandira
6. S.Kavitha
7. K.Sujatha
8. S.Ramesh
9. Jeyaraman
10. L.Madanraj
11. G.Mani
12. Aiyadurai Nadar
13. Pichchapazham Nadar
14. S.Anitha
15. S.Jayanthi
16. D.Selvakumar
17. T.Damodharan
18. Suresh Kumar @ Moolakkarai Suresh
19. S.Rajinikanth
20. Sakthivel Nadar
21. Arumuga Nayinaar Nadar

... Petitioners

Vs.

सत्यमेव जयते

P.Johnson@Johnson Suresh

... Respondent

Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in C.C.No.373 of 2010 filed by the respondent herein pending on the file of Judicial Magistrate Court I, Thiruppur.

For Petitioners : Mr.S.Lingesh

For Respondent : No Appearance

ORDER

Petitioners seek for quashing of proceedings pending in C.C.No.373 of 2010, on the file of Judicial Magistrate Court I, Thiruppur. Such action has been moved by the respondent/ husband of the sixth petitioner and the complaint levels allegations against the wife, as also against the father, brother and other relatives of sixth petitioner. Offences under Sections 147,448,323 &506(i) IPC. are alleged. The complaint reads as follows:

Complaint filed under Sec.200 r/w.190(1)(a) Cr.P.C.:

1) Presently, the complainant is residing at No.735, Meenakshi Nagar, Kanakampalayam, Tirupur. On 12.04.2007, marriage was solemnized between the Complainant and Kavitha, belonging to Udankudi of Thoothukudi District, in Udankudi R.S. Uthirapandi Nadar Marriage Hall. Since, the marriage was solemnized by cheating the complainant by concealing the fact that Kavitha had not attained puberty at the time of marriage, because of this, difference of opinion arose between the Complainant and Kavitha. Hence, the complainant has filed a petition in H.M.O.P.No.13/2008 before the Sub-Court at Thoothukudi seeking for divorce, and on this day he got divorce. There was enmity between the families of the complainant and Kavitha in respect to that divorce case.

2) On 22.2.2008, at about 9.30 a.m., while the complainant was residing along with his mother, younger brother and younger sister in Door No.705, Bharathi Nagar, Thayammal Layout, Pitchampalayam Post, Tiruppur, the brother of complainant's wife Kavitha and the 1st accused viz., Rajesh had trespassed into complainant's house, accompanied by Accused Nos.2 to 21 who came in these four vehicles viz., Red coloured Qualis car, white coloured Tata Sumo Jeep, white coloured Tempo Traveller Van, Mahindra Maxi Cab Van with weapons such as wooden logs, stick. The aforesaid 1st accused Rajesh and 2nd accused Sekar had repeatedly beaten the complainant's mother viz., Pothippillai with their hands. Further, the 1st accused Rajesh has beaten the complainant's younger brother Sivakumar severely with his leg. On witnessing the aforementioned incidents, the younger sister of the complainant viz., Radhika Thilagam went inside the house and locked the door. At that time, the Accused Nos.1 to 4 forcefully entered into the complainant's house by breaking the door and they pushed the complainant's sister on the floor; by

falling on the ground she had suffered severe injuries on her head. Thereafter, the 1st accused stamped the complainant's younger sister with his leg and he strangled her neck. The accused nos.1 to 21 have threatened by saying that, "Are you going to the Court, if intend, we would destroy all of you wherever we want".

3) The complainant was not present in the house at the time of the aforesaid incident. As soon as it was informed to the complainant by the complainant's mother about the incident over phone, he went to Anupparpalayam Police Station and lodged a complaint. At that time, one Head Constable and one Constable who were present in the police station came to the place of the occurrence in a patrol vehicle, and they took the aforesaid 1st accused to the police station along with all other accused persons who were with him. As the Anupparpalayam police had declined to receive the complaint from the complainant in that regard, and on the basis of appeal made by the complainant before the Deputy Superintendent of Police, Tiruppur with regard to the aforesaid incident, on 23.02.2008, a case was registered in Cr.No.218/2008 u/s.147, 148, 323, 506(1) I.P.C. against the aforesaid 1st accused and 20 others and an First Information Report was registered. I have filed a certificate copy of the aforesaid First Information Report as a document in Ex.No.1 on the side of the Prosecution. All the aforesaid accused persons were having political influence, man power and money power. The below mentioned witnesses were all aware of the entire aforesaid events.

4) Since, the Anupparpalayam police did not take any steps whatsoever on the complaint lodged by the complainant, the complainant has approached the District Superintendent of Police, Coimbatore on 26.05.2008 in person, and on that basis, the Anupparpalayam police, without conducting any investigation whatsoever with regard to the aforesaid incident, had created a false document as if they had investigated the case on that day itself on 23.02.2008, they had prepared a R.C.S. by deciding erroneously regarding the events of the aforesaid case. The police had fraudulently obtained the signature of the complainant in R.C.S. Receipt No.25/2008 without informing the details about R.C.S. to the aforesaid complainant. The complaint which was preferred before the aforesaid District Superintendent of Police, Coimbatore has been filed as an Exhibit No.2 on the side of prosecution. In connection to obtaining of signatures from complainant fraudulently in the receipt

in R.C.S.No.25/2008, a complaint has been preferred before Deputy Superintendent of Police. The aforesaid copy of the complaint has been filed as Ex.P.-3 on the side of the Prosecution. Further, with regard to R.C.S., till date notice has not been sent even from the Court to the complainant. As per the order passed by the Hon'ble Madras High Court, the aforesaid police had sent the R.C.S., notice to the complainant through registered post on 25.08.2010.

5) Further, the petitioner had filed a Crl.O.P.No.25942/2008 before the Hon'ble High Court, Madras, and obtained orders on 03.11.2008 to the effect that Anupparpalayam police should enquire about the above said incident and to file a Final Report within one month before the Court concerned. A copy of the aforesaid Order is Ex.No.4 on the side of the petitioner.

6) Since, the Anupparpalayam police had not taken any further action on the aforesaid order of High Court, the petitioner had again filed a Contempt Petition No.341/2009 against the Inspector of Anupparpalayam Police Station. In the above said Contempt of Court case, since the Inspector of Anupparpalayam Police Station informed that the case of the above said petitioner was taken on RCS on 23.08.2008 itself and the Subordinate Court has not accepted the Final Report filed by them and hence, the Hon'ble High Court passed orders on 16.07.2010 directing to save the R.C.S. Notice dated 23.08.2008 to the petitioner to enable him to take further action within a period of two weeks. A copy of the above said order is Ex.No.5 on the side of the Prosecution. As per the order dated 16.07.2010 of the Hon'ble High Court, Chennai, the Inspector of Anupparpalayam Police Station had informed the petitioner on 25.08.2010 that the R.C.S. has been done through Registered Post. The registered postal cover and RCS receipt are Ex.No.-6 on the side of Prosecution.

7) Therefore, this case has been filed before the Hon'ble Court in time without any delay. Further, the above said incident had taken place within the jurisdiction of Anupparpalayam Police Station. The jurisdiction of the aforesaid police station is within the jurisdiction of this Hon'ble Court. That is why, the petitioner had filed this case as an individual's case before this Hon'ble Court.

8) Further, even though the above said incident took place at about 9.30 a.m on 22.02.2008 in the house of the petitioner and the petitioner had complained against the accused persons in that regard on that day

itself and even though the petitioner lodged a written complaint on 23.02.2008 itself and the Anupparpalayam Police has registered a case on 23.02.2008 and had registered a First Information Report in Cr.No.218/2008 and prepared a bogus document that the case was enquired on the day itself and the case details were finalized wrongly and set RCS on 23.08.2008 itself, and even though the petitioner filed CrI.O.P.No.25942/2008 in respect of the aforesaid incident and obtained orders directing the Anupparpalayam Police to enquire the matter and to file a Final Report within one month before the Court concerned; though the Anupparpalayam police had not taken any action on the above said order and again the petitioner filed a contempt petition against the Inspector of Anupparpalayam police station in No.341/2009 and the Hon'ble High Court, Chennai ordered on 16.07.2010 directing to serve the R.C.S. Notice dated 23.08.2008 to the petitioner to enable him to take further action within a period of 2 weeks, all these are the cause for filing an individual case by the petitioner.

9) The accused persons have committed the crime u/s.147, 448, 323 & 506(1) IPC.

10) Therefore, I request the Court to take the abovesaid case on file, issue notice to the accused persons and to punish them under Section 147, 448, 323 and 506(1) IPC.

3.Heard Mr.S.Lingesh, learned counsel for petitioners and Mr.S.N.Arun Kumar, learned counsel for respondent.

4.Learned counsel for petitioners submitted that pursuant to complaint preferred by sixth petitioner with the Commissioner of Police, Coimbatore, a case in Crime No.12 of 2008 on the file of the Tiruppur All Women Police Station was registered for the offence under Section 498(A) IPC on 24.02.2008. Upon completion of investigation, a charge sheet has been filed informing commission of offences under Sec. 498 (A) IPC and Sec.4 of the Dowry Prohibition Act. The case is pending trial in C.C.No.179 of 2008, on the file of the learned Judicial Magistrate I, Tiruppur. As a counter blast, the respondent had preferred a false complaint, which was registered in Crime No.218 of 2008 on the file of the Anupparpalayam Police Station, Tiruppur. On due investigation, it was found that there was no truth in the complaint and hence the police referred the case as a mistake of fact. Taking this Court through paragraphs 4 to 8 of the complaint, learned counsel submitted that though respondents repeated recourse to senior

police officials and this court could not be taken umbrage to, the same only reflected an unipolar intent of harassing petitioners.

5. Learned counsel for petitioners further informed that the respondent herein and his family members continue to threaten the sixth petitioner to withdraw her complaint filed with the police, against the respondent and others. When the relatives and well-wishers intervened and requested respondent to return the gold jewels and education certificates of sixth petitioner, he refused to oblige. Hence, the sixth petitioner filed a petition before the learned Judicial Magistrate No.II, Chengalpattu under the Protection of Women from Domestic Violence Act 2005 and the same is pending in C.C.No.322 of 2009. Despite the same, sixth petitioner's family members through their relatives and well-wishers tried to convince the respondent to rejoin her. Respondent refused. In the meantime, respondent preferred C.C.No.373 of 2010 before the learned Judicial Magistrate No.I, Thiruppur.

6. Learned counsel further submitted that in para 1 of C.C.No.373 of 2010, the respondent has made a wild allegation of sixth petitioner not having attained puberty and such position was not disclosed by sixth petitioner's family and thereby respondent was cheated into marriage. Learned counsel further submitted that in C.C.No.179 of 2008 itself, the learned Judicial Magistrate No.I, Thiruppur referred her to the Duty Medical Officer, Government Hospital, Thiruppur. After the Medical Examination, the Medical Officer has certified that '(1) Sexual organs of the 6th Petitioner is properly grown, (2) She is fit for family life'. This was suppressed by the respondent herein.

7. Learned counsel further submitted that in para 1 of C.C.No.373 of 2010, respondent herein has also suppressed the fact that an Ex-parte Divorce order obtained by him in H.M.O.P.No.13 of 2008 was set aside by order in I.A.No.250 of 2008, dated 07.09.2009. Since the respondent herein has not appeared before the Court, the above H.M.O.P. was dismissed for default by order dated 29.10.2010.

8. Learned counsel for petitioners inform that HMOP No.47 of 2012 moved by the sixth petitioner, towards obtaining divorce, has been allowed and the sixth petitioner and the respondent are no longer husband and wife. Sixth petitioner had moved such action after having lost all hope of a reunion.

9. Finding much force in submissions of learned counsel for petitioners and being satisfied that the case is one fit for quash, the criminal original petition is allowed and the

proceedings in C.C.No.373 of 2010 pending on the file of learned Judicial Magistrate Court I, Thiruppur is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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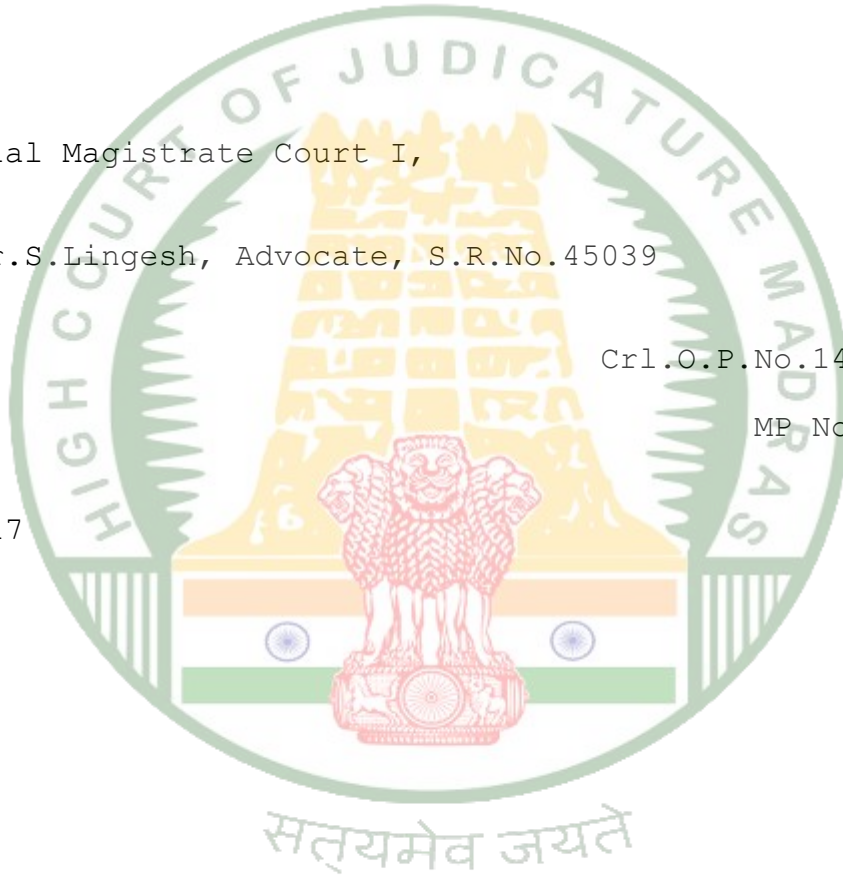
To

The Judicial Magistrate Court I,
Thiruppur.

+1cc to Mr.S.Lingesh, Advocate, S.R.No.45039

Crl.O.P.No.14340 of 2012
&
MP No.1 of 2012

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