



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

CRL.O.P. (MD) No.3874 of 2017

and

CrI.M.P. (MD) Nos.2845 and 2846 of 2017

Y.Henri Patrick Tiphagne : Petitioner/Sole Accused

-Vs-

1.State rep. by
Sub-Inspector of Police,
E-1, K.Pudur Police Station,
Madurai City. : 1st Respondent/Complainant

2.Parameswari : 2nd Respondent/Defacto Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records and quash the charge sheet in C.C.No.473 of 2016 on the file of the learned Judicial Magistrate No.VI, Madurai, in the interest of justice.

For Petitioner : Mr.C.Muthu Saravanan

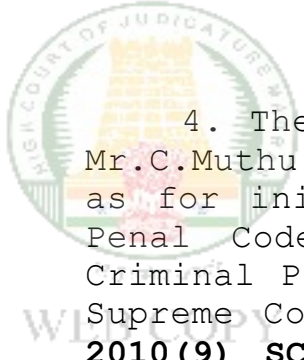
For Respondent No.1 : Mr.A.P.Balasubramani,
Government Advocate (CrI.side)

O R D E R

On the complaint lodged by the second respondent, a case in Crime No.1207 of 2016 was registered and after completing the investigation, the police have filed a final report in C.C.No.473 of 2016 before the learned Judicial Magistrate No.VI, Madurai, against the petitioner for offences under Sections 188 and 506(ii) of the Indian Penal Code, challenging which, the petitioner is before this Court.

2. Heard Mr.C.Muthu Saravanan, learned counsel for the petitioner and Mr.A.P.Balasubramani, learned Government Advocate (Criminal side), appearing on behalf of the first respondent.

3. Mr.C.Muthu Saravanan, learned counsel for the petitioner submitted that for taking cognizance of an offence under Section 188 of the Indian Penal Code, the procedure contemplated under Section 195 of the Code of Criminal Procedure should have to be followed and in this case, the same has not been followed, but, whereas, a final report has been filed under Section 173 of the Code of Criminal Procedure by the police, based on which, the learned Judicial Magistrate No.VI, Madurai, has taken cognizance of the offence.



4. There appears to be sufficient force in the submission of Mr.C.Muthu Saravanan, learned counsel for the petitioner. Inasmuch as for initiating a prosecution under Section 188 of the Indian Penal Code, the procedure under Section 195 of the Code of Criminal Procedure has to be followed, which has been held by the Supreme Court in **C.Muniappan v. State of Tamil Nadu** reported in **2010(9) SCC 567**. Therefore, the order of the learned Magistrate taking cognizance of the offence under Section 188 of the Indian Penal Code stands quashed.

5. However, on a reading of the final report, it is seen that there are prima facie materials to proceed against the petitioner for the offence under Section 506(ii) of the Indian Penal Code.

6. In the result, this Criminal Original Petition is partly allowed. However, it is made clear that whatever mentioned herein is only for the limited extent of deciding the quash application and not for trial and the Trial Court shall proceed with the case uninfluenced by this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.VI, Madurai.
2. The Sub-Inspector of Police,
E-1, K.Pudur Police Station, Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.C.Muthu Saravanan, Advocate, SR.No. 50538

Order made in
CRL.O.P.(MD) No.3874 of 2017
Dated: 05.04.2017

SML

MKV-SKN-RSK-SAR 4/13.4.2017/2P-5C