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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Crl.O.P.(MD)No.5275 of 2017
and
Crl.M.P.(MD)No.3729 of 2017

1.A.Sethuraman
2.S.Pandiammal
3.A.Radhakrishnan : Petitioners

-Vs-

State through
the Inspector of Police,
All Women Police Station,
Samayanallur,
Madurai District.
(Crime No.10 of 2008). : Respondent

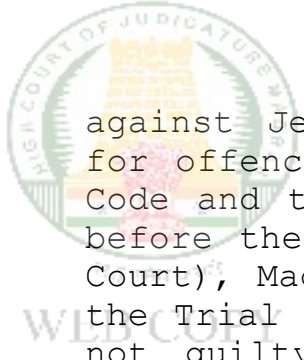
PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to the "B" Diary order issue summons to witnesses Nos.1 to 3 and posted for evidence dated 10.03.2017 passed in Spl.S.C.No.168 of 2011 on the file of the learned Additional District and Sessions Judge (Mahaleer Neethimandram), Madurai and set aside the same.

For Petitioners : Mr.T.K.Gopalan
For Respondent : Mr.A.P.Balasubramani,
Government Advocate (Crl.side)

O R D E R

For the sake of convenience, the parties should be referred to by their names.

2. It is the case of Sathiya that Jeevagapandian promised to marry her and had physical relationship with her, on account of which, she conceived. It is her further allegation that when she asked Jeevagapandian to marry her, he reneged and his family members viz, Sethuraman, Pandiammal and Radhakrishnan joined hands against her and prevented him from marrying her. Hence, she gave a complaint, based on which, Samayanallur police registered a case in Crime No.10 of 2008 on 27.04.2008 under Sections 420 and 506(i) of the Indian Penal Code. During the course of investigation, DNA profiling was done and the DNA report shows that the child that Sathiya was fathered by Jeevagapandian. During the pendency of investigation, Jeevagapandian died on 02.04.2010. The police completed the investigation and filed a charge sheet



against Jeevagapandian, Sethuraman, Pandiammal and Radhakrishnan for offences under Sections 417, 376 r/w 109 of the Indian Penal Code and the case is now pending trial in Spl.S.C.No.168 of 2011 before the learned Additional District and Sessions Judge (Mahila Court), Madurai. Charges for the aforesaid offences were framed by the Trial Court on 10.10.2011 against A-2 to A-4 and they pleaded not guilty. At that juncture, they did not choose to file a discharge application under Section 227 of the Code of Criminal Procedure. Thereafter, the petitioners have filed a petition under Section 216 of the Code of Criminal Procedure for alteration of the charges in Spl.S.C.No.168 of 2011, which, according to the petitioners, was allowed by the Judge on 10.03.2015. Since the case was pending from 2011, the present Judge has passed the following docket order on 10.03.2017:

"Trial. A-1 died. A-2 to A-4 absent. Petition u/s 317 Cr.P.C. filed and allowed. Since the case is of the year 2011, issue summons to Witness Nos.1 to 3. Call on 24.03.2017."

3. On 24.03.2017, the Judge has passed the following order:

"Crl.M.P.309 CrPC filed. A1 died. A 2 to A4 absent. Petition u/s 317 Cr.P.C. filed and allowed. Witness Nos.1 to 3 present. Crl.M.P.605 of 2017 is pending. Call on 17.04.2017."

4. While so, the petitioners, who are A-2 to A-4, have filed the present quash application to set aside the "B" diary entry dated 10.03.2017.

5. Heard Mr.T.K.Gopalan, learned counsel for the petitioners and Mr.A.P.Balasubramani, learned Government Advocate (Criminal side) appearing for the first respondent.

6. Mr.T.K.Gopalan, learned counsel for the petitioners submitted that after the death of Jeevagapandian, the offence under Section 376 of the Indian Penal Code will abate and no charge under Section 109 of the Indian Penal Code can be framed against the accused and, therefore, the Trial Court ought to have altered the charge. He also submitted that in the light of the order passed by the earlier Judge on the petition under Section 216 of the Code of Criminal Procedure, the present Judge ought not to have issued summons for examining L.Ws.1 to 3 on 10.03.2017 and, therefore, the docket order dated 10.03.2017 should be set aside.

7. Per contra, the learned Government Advocate (Criminal side) refuted the contentions.

8. This Court gave its anxious consideration to the rival submissions.



2.The Inspector of Police,
All Women Police Station,
Samayanallur,
Madurai District.

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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

SML

MAS/JC:09.05.2017:4P-4C

Order made in
CRL.O.P. (MD) No.5275 of 2017
Dated: 27.04.2017