



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.(MD)No.6998 of 2017 &

Crl.M.P.(MD) .No.4740 of 2017

1.Selvan
2.Muthu
3.Mookammal
4.Sudha
5.Pandiyarajan
6.Mokkapandi
7.Chittukkani
8.Antichami
9.Eswari
10.Vignesh
11.Virali
12.Eswari
13.Mahesh
14.Kasi
15.Kalai : Petitioners/Accused Nos.1 and 3 to 16

-Vs-

1. The Inspector of Police,
All Women Police Station,
Nilakkottai,
Dindigul District. :1st Respondent/Complainant
2.Anitha :2nd Respondent/Defacto Complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the C.C.No.58/2017 on the file of the Judicial Magistrate, Nilakkottai, Dindigul District and quash the same.

For Petitioners : Mr.K.Manikandan
For Respondent : Mr.K.Anbarasan
Government Advocate(Crl.Side)
for R.1
Mr.K.Appadurai for R2

O R D E R

For the sake of convenience, parties are referred to by their name. Anitha got married to Selvan, a police constable on 05.02.2003 and they have two children through their wedlock. Since Selvan developed illicit intimacy with another woman, he started



harassing Anitha. Anitha lodged a complaint, based on which the All Women Police Station, Madurai City, registered a case in Crime No.26 of 2011 on 02.12.2011 and after completing the investigation, the respondent police have filed a charge sheet in C.C.No.22 of 2012 before the learned Additional Mahila Court, (Magistrate level), Madurai for offence under Sections 406, 417, 498(A) and 506(ii) IPC and Section 4 of Tamil Nadu Dowry Prohibition Act against Selvan, Mookammal, Rajaathi @ Sudha, Antichami and Chittukkani. Since Anitha and two children were left in lurch, Anitha filed M.C.No.66 of 2011 before the Family Court, Madurai under Section 125 Cr.P.C. against Selvan and the Court had awarded maintenance of Rs.6,000/- per month in favour of Anitha and her children. Selvan has not paying the maintenance amount.

2.While so, Selvan developed illicit intimacy with one Geetha and got married to her. On coming to know about this, Anitha and her children went to Selvan seeking justice. At that time it is alleged that Selvan and other accused had criminally intimidated Anitha and her children that they will liquidate them if they come again to meet Selvan seeking maintenance. Therefore, Anitha gave another complaint based on which the respondent police registered a First Information report in Crime No.14 of 2016 on 01.08.2016 against Selvan and 15 others and after completing the investigation, the charge sheet in C.C.No.58 of 2017 was filed against Selvan and 15 others for the offence under Sections 147, 109, 494 and 506(i) IPC before the learned Judicial Magistrate, Nilakkottai. The learned Judicial Magistrate, has not taken cognizance for the offence under Section 494 IPC and take cognizance only for the offence under Sections 147, 109 and 506(i) IPC against 16 accused. Challenging the prosecution in C.C.No.58 of 2017, before the learned Judicial Magistrate, Nilakottai, all the petitioners/accused except A2 are before this Court.

3. Heard the learned counsel for the petitioners, the learned Government Advocate for the first respondent police and the learned counsel for the second respondent/defacto complainant.

4. On the direction of this Court, Anitha and two children are present before this Court today.

5. The learned counsel for the petitioners/accused submitted that even in the complaint in Crime No.26 of 2011, Anitha had stated that Selvan was having an affair with a lady and therefore, for the same offence, a second First Information Report in Crime No.14 of 2016 should not have been registered and that will amount to double jeopardy. He also submitted that Selvan is facing prosecution in C.C.No.22 of 2012 and therefore, the second prosecution in C.C.No.58 of 2017 is abuse of process of law and it



6. Per contra, the learned counsel appearing for the defacto complainant submitted that in the complaint which forms the basis of Crime No.26 of 2011, Anitha had complained that Selvan has affair with a lady and that lady is not Geetha, whereas in the complaint in Cr.No.14 of 2016, she has specifically stated that Selvan had got married to another lady by name Geetha and was living with her. Therefore the allegations in Crime No.26 of 2011 and the allegations in Crime No.14 of 2016 are different . That apart, in the proceedings in C.C.No.58 of 2017, the learned Magistrate has taken cognizance for offence under Sections 147 109 and 506(i) IPC for threatening and intimidating Antiha and two children.

7. Thus, there are prima facie materials in C.C.No.58 of 2017, and the same cannot be quashed at the threshold. In the result, the criminal original petition is devoid of merits and the same is dismissed. Consequently, the connected miscellaneous petition is closed.

8. It is represented that only A1 had appeared before the Trial Court and had obtained the copies of the charge sheet under Section 207 Cr.P.C. and the other accused are not appearing before the Trial Court, who are only filing the petition under Section 317 Cr.P.C. This Court directs all the accused to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C. for framing of charges and for questioning under Section 313 Cr.P.C. and on the day of judgment , failing which the Trial Court can issue NBW against them and refuse to entertain petition under Section 317 Cr.P.C. For all other dates, if the petitioner Nos.3, 4, 9 and 12, namely Mookammal, Sudha, Eswari W/o.Anthichami and Eswari W/o.Virali file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses in their absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence.

Sd/-

Assistant Registrar (CO)

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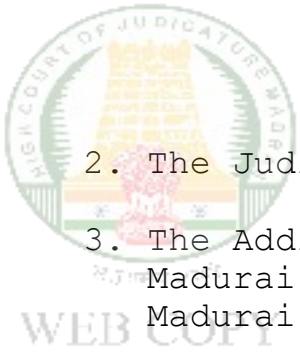
Sub Assistant Registrar

To

1. The All Women Police Station,

<https://hcservices.ecourt.gov.in/hcservices/>

Dindigul District.



2. The Judicial Magistrate, Nilakottai.

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

+1 CC to M/s.K.APPADURAI, Advocate, SR No.61284.

+1 CC to M/s.K.MANIKANDAN, Advocate, SR No. 61454.

JIKR

PSM/MR/SAR3/03.07.2017/4P/6C

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