



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

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CRL.O.P.(MD) Nos.7429 of 2017 &
Cr1.M.P.(MD).No.5072 and 5073 of 2017

1.Pethu Naidu
2.Kanjana
3.Bhuvaneswari
4.Gurusamy : Petitioners/Accused Nos.2 to 5

-Vs-

1.The State rep by
Inspector of Police,
Karaikudi North Police Station,
Sivagangai District. : Respondent No.1 /Complainant
(Crime No.694 of 2016)

2.Mrs.Alamelu @ Sudha : Respondent No.2/Defacto complainant

PRAYER: Petition is filed under Section 482 of the Criminal Procedure Code to call for the records in respect of the case in C.C.No.101 of 2017 on the file of the Principal District Munsif cum Judicial Magistrate Court, Karaikudi, Sivagangai District and to quash the same as illegal, violation of law.

For Petitioners : Mr.G.Marimuthu

For Respondents : Mr.K.Anbarasan
Government Advocate(Crl.Side)
for R.1

O R D E R

On a complaint lodged by one Alamelu @ Sudha, the respondent police registered a case in Crime No.694 of 2016 for the offence under Section 498(A) IPC, Section 4 of Dowry Prohibition Act, 1961 and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 and after completing the investigation, the respondent police have filed a charge sheet in C.C.No.101 of 2017 before the learned Principal District Munsif cum Judicial Magistrate, Karaikudi against 5 accused. Challenging which the accused Nos.A2 to A5 are before this Court.

2. Heard Mr.G.Marimuthu, learned counsel for the petitioners/accused and the learned Government Advocate appearing for the respondent.



3. The learned counsel for the petitioners submitted that there are no allegations against A2 to A5, inasmuch as the *defacto complainant* got married A1 way back in the year 2005 and after that A1 had filed a divorce application and had obtained divorce in HMOP No.9 of 2015. He further contended that there are discrepancies in the First Information Report and the charge sheet. It is his contention that in the charge sheet it is stated that during Vinayaga Chathurthi in September 2015, when the *defacto complainant* went to the house of the accused, she was man handled, whereas in the First Information Report, the *defacto complainant* stated that in August 2015, when she went to the house of the accused, there was an attempt to disrobe her in Public. Therefore, the learned counsel submitted that there are no materials against the petitioners herein.

4. Per contra, the learned Government Advocate refuted the submissions.

5. This Court gave its anxious consideration to the rival submissions. On a through reading of the statement of the *defacto complainant*, it could be seen that she got married to A1 on 23.01.2005 and a daughter was born to her on 16.10.2006. She has also narrated the various acts of cruelty. As regards the incident, in which she was assaulted by A2 to A5, she has clearly stated that in the Month of August 2015, when she went to A-1's house to question him about his re-marrying one Senthamarai, A2 to A5 assaulted her in the Public road and pulled her saree. When there are serious allegations in the First Information Report, some discrepancies between two statements of the *defacto complainant* given to the police cannot be a reason to quash the charge sheet. Disputed question of facts cannot be gone into in the quash application.

6. The learned counsel for the petitioners further submitted that there is a delay in registering the First Information Report, inasmuch as the incident said to have been taken place in August 2015, but the First Information report was registered only in December 2016. The *defacto complainant* has given a clear explanation in her complaint that she did not want to rush to the police station because her mother was sick and she has no one to take care of herself and the child. Thus, there is an explanation in the complaint given by the *defacto complainant* for the delay. In such circumstances, this case is not a fit case to quash the prosecution at the threshold. Accordingly, this petition is dismissed. Consequently, connected miscellaneous petitions are closed.

7. The learned counsel for the petitioners submits that the petitioners presence before the Trial Court may be dispensed with.



8. Accepting the submission, this Court directs the petitioners 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. For all other dates, if the petitioners 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(CSI)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Principal District Musnif cum Judicial Magistrate,
Karaikudi, Sivagangai District.
- 2.The Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr.G.Marimuthu, Advocate, SR.No.60782

jikr

RL/5C/3P/KP/SAR1/29/6/2017

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