



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.06.2017

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P.(MD) No.7840 of 2017

&

Cr1.M.P.(MD).No.5347 of 2017

WEB COPY

- 1.Jancibin Xavier Raj
- 2.Paulraj
- 3.Charlet
- 4.Preeda Elizabeth Rani
- 5.Beulah Kingsly Joylet

: Petitioners/Accused Nos.1 to 5

-vs-

1. State Rep. by
Inspector of Police,
All Women Police Station,
Kuzhidurai, Kanyakumari District,
In Crime No.26 of 2008 : Respondent/Complainant

2. S.Jeba Jemila : 2nd Respondent/Defacto Complainant

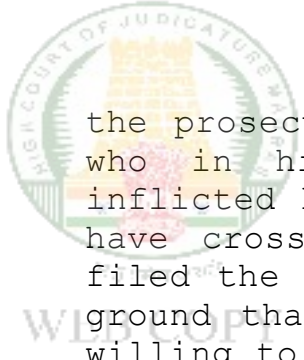
Prayer: Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records in pursuant to the charge sheet in C.C.No.22 of 2010 on the file of the Judicial Magistrate, Padmanabhapuram, Kanyakumari District and quash the same.

For Petitioners : Mr.T.Selvakumaran

For Respondent : Mr.K.Anbarasan for R1
Government Advocate (Cr1.side)

O R D E R

On the complaint lodged by Jeba Jemila, the first respondent police have registered a case in Crime No.26 of 2008 and after completing the investigation the police have filed a charge sheet in C.C.No.22 of 2010 before the learned Judicial Magistrate, Padmanabhapuram for offences under Sections 498(A) and 406 IPC against the petitioners/accused herein. Trial in this case commenced with the examination of Jeba Jemila as PW-1 on 18.01.2017. When she was examined in chief, she stated a few sentence about her marriage with A1 and later she abruptly stopped the evidence and stated that she is not willing to give any further evidence. Therefore, the Trial Judge has recorded the same and closed her evidence. Strangely she was not declared hostile by the prosecution for the reasons best known to them. Thereafter,



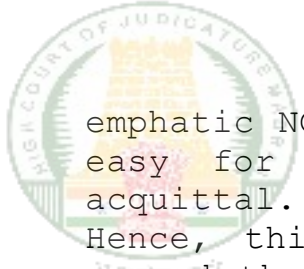
the prosecution examined Selvaraj PW2, the father of Jeba Jemila, who in his evidence has stated about the cruelty that was inflicted by the accused on his daughter Jeba Jemila. The accused have cross-examined Selvaraj (PW-2). While so, the accused have filed the present application for quashing the prosecution on the ground that Jeba Jemila, the defacto complainant, herself is not willing to give evidence in the Trial.

2. Heard, Mr.T.Selvakumaran, the learned counsel for the accused and the learned Government Advocate for the first respondent.

3. The learned counsel for the accused submitted that during the pendency of the Trial proceedings, the marriage between A1 and Jeba Jemila was dissolved by a decree of divorce in the year 2013 itself and therefore, the prosecution should be quashed. In support of his submissions, the learned counsel for the petitioner Mr.T.Selvakumaran, has placed strong reliance on the judgment of this Court in R.Maheswaran V. State in Criminal Appeal (MD).No.362 of 2005, dated 09.12.2014. He placed reliance at paragraph 6 of the said judgment.

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

5. This Court gave its anxious consideration to the rival submissions. It is seen that Jeba Jemila got married to A1 on 05.01.2005. It was alleged that Jeba Jemila was subjected to cruelty by the accused. Therefore she had lodged a complaint, based on which, the respondent police registered an FIR in the year 2008 as crime No.26 of 2008 for the offence under Sections 498 (A) and 406 IPC. After completing the investigation, the police have filed the charge sheet in the year 2010 and the same was taken on file as C.C.No.22 of 2010 by the learned Judicial Magistrate, Padmanabhapuram. From the year 2010 to 2017, the Trial had no progress. In the mean time, the Matrimonial Court appears to have granted a decree of divorce between Jeba Jamila and the first petitioner/A1. After the delay of 7 years, when the case was taken up for trial, Jeba Jamila for the reasons best known to her got into the witness box and stated that she does not want to give any further evidence. No witness can claim any immunity from giving evidence in a Court of law. On account of systemic failure for providing timely justice to the victim, she might have stated so in the witness box. The Public Prosecutor could have declared her hostile and cross-examined her. That was not done. The judgment relied upon by the learned counsel for the petitioners relates to a criminal appeal against the conviction and sentence after a regular trial. In this case, the accused want to put a <https://hcservices.ecourt.gov.in/hcservices/> the Trial by filing this present quash application. Assuming for a moment that an eye witness dies before Trial, can the prosecution be quashed on that ground. The answer is an



emphatic NO. If that is permitted, in every murder case it will be easy for the accused to liquidate the eye witness and get acquittal. The facts in issue can be proved by other evidence. Hence, this is not a fit case to quash the prosecution on the ground that Jeba Jameila had not willing to give evidence. It is always open to the Trial Court to exercise its power under section 311 Cr.P.C. to recall Jeba Jamila for the purpose of examining her or for declaring her as hostile to the prosecution case.

6. The learned Government Advocate submitted that NBW is pending against A1 to A4, since they have not appeared before the Trial Court.

7. In view of the above, this petition is dismissed with a direction to the petitioners to surrender before the Trial Court within two weeks from the date of receipt of a copy of this order, failing which the respondent/police shall register a fresh FIR against the accused under Section 229(A) IPC. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To:

1. Inspector of Police,
All Women Police Station,
Kuzhidurai, Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
3. The Judicial Magistrate, Padmanabhapuram.

+1cc to Mr.T.Selvakumaran, Advocate Sr.No.62113

JIKR

VB/MR/SAR1/10.07.2017/3P/5C

Order made in
Cr1.O.P. (MD) No7840 of 2017
27.06.2017