



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD)No.21335 of 2016

&

Crl.M.P.(MD).Nos.10934 and 10935 of 2016

1.Dinesh Ponraj
2.Shanmugathai
3.Subbiah
4.Divya
5.Rajamani
6.Veluthai

: Petitioners

Vs.

1.State through rep. by
The Inspector of Police,
All Women Police Station,
Tiruparankundram,
Madurai.
Crime No.116/2014)

:1st respondent/Complainant

2.R.Mythili

:2nd Respondent/De facto complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the impugned charge sheet in C.C.No.41 of 2016 on the file of the Additional Mahila Court (Judicial Magistrate Level), Madurai and quash the same as illegal.

For Petitioners

: Mr.R.Shankar Ganesh

For Respondent

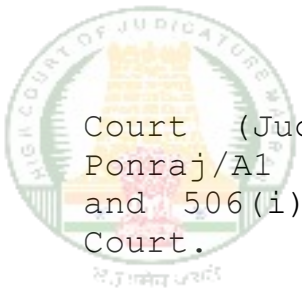
: Mr.T.Mohan (for R1)

Additional Public Prosecutor

ORDER

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent.

2. For the sake of convenience, the parties would be referred to by their name. Dr.Mythili (defacto complainant) got married to Dr.Dinesh Ponraj on 12.05.2014 and within 4 months, their marriage ran into a rough weather resulting in Dr.Mythili lodging a complaint with the first respondent police, based on which a case in Crime No.116 of 2014 was registered by the police against Dr.Dinesh Ponraj and his family members. After completing the investigation in Crime No.116 of 2014, the police have filed a charge sheet in C.C.No.41 of 2016 before the Additional Mahila



Court (Judicial Magistrate Level), Madurai, against Dr.Dinesh Ponraj/A1 and 5 of his family members under Sections 498(A), 406 and 506(i) IPC, challenging which the accused are before this Court.

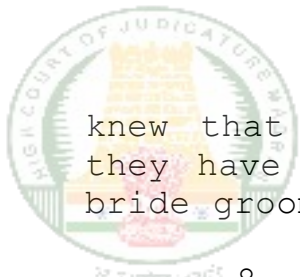
3. This Court ordered notice to Dr.Mythili and the court notice was served. She did not choose to enter appearance and therefore her name has been printed in the cause list. Private notice sent by the counsel on record for the accused to Dr.Mythili has also been acknowledged as could be seen from the postal acknowledgement card that has been filed along with the affidavit of service. That apart from the case records, this Court finds a private communication sent to the Hon'ble Chief justice of the High Court and Judges of the Supreme Court addressed by one V.Ramasamy, father of Dr.Mythili seeking early disposal of the case, in which he has referred to the pendency of CrI.O.P.(MD). No.21335 of 2016 (the present case) before this Court. Therefore Dr.Mythili cannot feign ignorance of these proceedings.

4. The complaint lodged by Dr.Mythili was sent by the police to the District Social Welfare Officer for enquiry. The enquiry report dated 10.06.2015 shows that Dr.Mythili attended the enquiry and stated that there is no dowry harassment.

5. The learned counsel for the accused submitted that the marriage was an arranged one and that the couple were not able to live for four months together and so the marriage had broken. The allegations made by Dr.Mythili in her complaint as well as the police investigation clearly show that there are no *prima facie* materials against the accused herein.

6. Per contra, the learned Additional Public Prosecutor, strongly refuted the contentions.

7. This Court gave its anxious consideration to the rival submissions. In order to appreciate the contentions of the learned counsel for the accused, it may be appropriate to refer to the allegations made by Dr.Mythili both in the complaint as well as in the impugned charge sheet. It is alleged that Dr.Mythili got married to Dr.Dinesh Ponraj on 12.05.2014 and that it was an arranged marriage. Further, it is alleged that Dr.Mythili's family gave 50 sovereigns of gold jewels to her and also gave 5 sovereigns of jewels and Rs.1,50,000/- to the Bride groom's family. It is her specific allegation that the marriage was not consummated, because Dr.Dinesh Ponraj is impotent. Whenever she wanted to have matrimonial relationship with him, he would somehow avoid going to bed with her by saying he is unwell or that he is very tired. It is her further allegation that when she enquired about the relationship with her in-laws, who are accused A2 to A6, they seem to have said that Dr.Dinesh Ponraj will be like that and intimidated her. Therefore, it is her specific allegation that all the accused



knew that Dr.Dinesh Ponraj was impotent and concealing the same they have solemnized the marriage. It is her allegation that the bride groom family have not returned the sreethana jewellery.

8. The learned counsel for the accused further submitted that Dr.Mythili filed HMOP No.108 of 2015 before the Family Court, Madurai, for dissolution of marriage on the ground of impotency. She also filed I.A.No.527 of 2015 for a direction to send Dr.Dinesh Ponraj to the Government Rajaji Hospital, Madurai for testing his potency. Dr.Dinesh Ponraj appeared before the Professor and Head of Department of Urology, Government Rajaji Hospital, Madurai, wherein he was examined. The Medical Examination report, dated 20.09.2016 reads as follows:-

"32 years old Mr.S.DINESH PONRAJ Married H/O Marital Dysfunction

H/O Couples are in separation due to sexual problems.

Respondent wants potency check up.

C/o No Erectile dysfunction.

No H/O HT/IHD/TB/DM

No H/O Neurological deficit.

On Examination

GC Fair, Secondary Sexual Characters are

Normal

G/E: PENIS : NORMAL

Right Left

Testis Normal Normal

Vas + +

Epididymis Normal Normal

Consistency Normal Normal

Semen Analysis - Count 60 million per ml

- Motility 40%

USG Scrotum - Left testis 4.0 x 2.5 x 2.0 cm

Right testis 4.2 x 2.6 x 2.3 cm

No varicocele.

Technical Examination of the potency tests done..

(I) ICIVAD + Penile Doppler

Clinical Response : Full Erection with Grade IV Rigidity

Impression : Normal Vascular Response to ICIVAD

Based on the medical examination and investigations of the respondent Mr.S.Dinesh Ponraj there is nothing to suggest that the respondent is impotent."

He also brought to the notice of this Court that even before the charge sheet was filed, Dr.Mythili had entered into an agreement, on 13.11.2014 under which all the Sreethana articles were returned to her in the presence of witnesses. Therefore, he contended that the entire case is an abuse of process of law. There appears to be

an abuse of process of law in the submissions of the learned counsel for accused.



9. To recapitulate, the marriage was solemnized on 12.05.2014 and the First Information Report was registered on 23.09.2014. The allegation in the First Information Report even according to Dr.Mythili is that the bride groom's party knew that Dr.Dinesh Ponraj was impotent and concealing the same they got him married to her. She has also made an averment that when she questioned about this, Dr.Dinesh Ponraj would consume alcohol and would cause annoyance to her.

10. On a complete reading of the First Information Report and 161 (3) statements of the witnesses, it is nowhere alleged that the accused had inflicted any physical cruelty on the *defacto complainant*. Of course, mental cruelty also would fall within the meaning of Section 498 (A) IPC. But, in this case, the respondent police did not send Dr.Dinesh Ponraj for potency test. Even without ascertaining the truth of the allegations in the complaint given by Dr.Mythili, the charge sheet has been filed. On the contrary in the matrimonial proceedings that was initiated by Dr.Mythili, the Family Court has sent Dr.Dinesh Ponraj to the Government Rajiji Hospital for potency test and the report clearly shows that he does not suffer any impotency. In the opinion of this Court, unlike in western countries, where pre-marital sex is an accepted norm, in India this is still a taboo. Therefore, it is very preposterous to allege that all the accused knew Dr.Dinesh Ponraj was impotent and they got him married to Dr.Mythili by suppressing the same. In the considered opinion of this Court, impotency *per se* of the spouse cannot be termed as an act of cruelty under Section 498(A) IPC. It may be a good ground for matrimonial proceedings, but not for a criminal prosecution.

11. In view of the above, the present prosecution is an abuse of process of law and accordingly this petition is allowed and the entire proceedings in C.C.No.41 of 2016 on the file of Additional Mahila Court, (Judicial Magistrate Level), Madurai District, against the petitioners/accused are quashed. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

/True copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station,
Tiruparankundram,
Madurai.



2. The Additional Mahila Court (Judicial Magistrate Level),
Madurai District.

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

+1 CC to M/s.R.SHANKAR GANESH, Advocate, SR No. 58580

JIKR

PSM/RSK/SAR1/19.06.2017/5P/5C

Order made in
Cr1.O.P. (MD) No. 21335 of 2016 &
Cr1.M.P. (MD) .Nos. 10934 and 10935 of 2016
Dated: 05.06.2017