



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.OP.(MD)Nos.9311 and 8948 of 2017
and

Crl.M.P(MD)Nos.6319,6320,6055 and 6056 of 2017

CRL.OP.(MD)No.9311 of 2017

1.C.Jeyakumar
2.Suganya
3.Boopathi
4.Chellam
5.Vengatesan
6.Arumugam
7.Chandra

... Petitioners/Accused No.1 to 7

Vs.

Latha @ Latha Devi

... Respondent/Complainant

CRL.OP.(MD)No.8948 of 2017

1.C.Jeyakumar
2.Chellam
3.Boopathi
4.Jeyamalathi
5.Vengatesan
6.Karthikeyan

... Petitioners/Accused No.1 to 6

Vs.

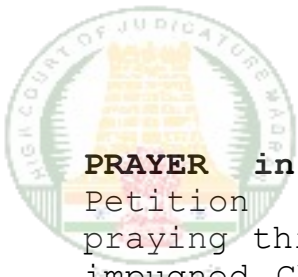
1. The State, represented by
All Women Police Station,
Sivagangai, Sivagangai District.

... 1st Respondent/Complainant

1. Latha @ Latha Devi

... 2nd Respondent/De-facto
Complainant

PRAYER in Crl.O.P(MD)No.9311 of 2017: This Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying this Court to call for the entire records relating to the impugned private complaint filed by the respondent herein pending in C.c.No.145 of 2017, on the file of the District Munsif-cum-Judicial Magistrate, Illayankudi and to quash the same.



PRAYER in **Crl.O.P(MD)No.8948 of 2017:** This Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying this Court to call for the entire records relating to the impugned Charge sheet filed by the first respondent herein pending in C.C.No.42 of 2013, on the file of the District Munsif-cum-Judicial Magistrate, Illayankudi and to quash the same.

For Petitioner : M/s.S.Veeranasamy
in both Crl.L.O.Ps'

COMMON ORDER

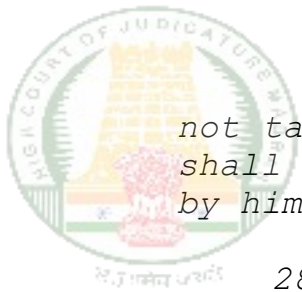
These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.42 of 2013 and 145 of 2017, on the file of the District Munsif-cum-Judicial Magistrate, Illayankudi.

2.Heard the submissions of Mr.S.Veeranasamy, learned counsel for the Petitioners and perused the materials placed before this Court.

3.On the basis of the complaint given by the second respondent/De-facto complainant, in Crl.O.P(MD)No.8948 of 2017, a case was registered in Crime No.15 of 2012, for the offence under Sections 498(A), 406 and 294(b) IPC. The same was taken on file in C.C.No.42 of 2013.The same de-facto complainant in the second case in Crl.O.P(MD)No.9311 of 2017 filed another complaint and the same was registered for the offence under Sections 494, 495, 294(b), 506 (II r/w Section 109 of IPC. After filing the final report, charge-sheet was filed and taken on file in C.C.No.145 of 2017, on the file of same Court namely, the District Munsif-cum-Judicial Magistrate, Illayankudi. The second respondent is the de-facto complainant in both the cases and she is the wife of the Petitioner. The incidents on the basis of which complaints given in these cases are entirely different.

4.The learned counsel for the Petitioners submitted that the different complaints on similar allegation are not maintainable and relied on a judgment of the Honorable Supreme Court in the case of **Pal @ Palla .vs. State of Uttar Pradesh reported in (2010) 10 Supreme Court Cases, 123**, wherein it is held as follows:

'27.Sub-Section (2) of Section 210 provides that if a report is made by the investigating officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub-Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does



not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the Code.

28. Although it will appear from the above that under Section 210 Cr.P.C., the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises.

29. In our view, this is a case where the decision in *Harjinder Singh Case* would be more apposite. In the said case, the question of Article 20(2) of the Constitution, as well as Section 300 Cr.P.C. Relating to double jeopardy was considered. A similar situation has arisen in this case where the versions in the complaint case and the police report are totally different, though arising out of the same incident. In our view, this is a case where the two trials should be held simultaneously but not as a single trial.

30. The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in *Harjinder Singh Case*, clubbing and consolidating the two cases, one on a police challan and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases could be disposed of simultaneously."

5. The case relied upon by the learned counsel for the Petitioners is in a different context and has no application to the present case. To a greater extent, this judgment is against his submission. No other legal issue is raised by the learned counsel for the Petitioners and hence, this Court cannot entertain these quash Petitions merely on the basis of certain factual disputes



which are required to be resolved after completion of trial and on the basis of evidence.

6.Hence these Criminal Original Petitions are dismissed. The learned counsel for the Petitioners made a submission that the parties are same in both cases and therefore a simultaneous trial will benefit both the Petitioners as well as the de-facto complainant. Considering the facts and circumstances and convenience of parties, the District Munsif-cum-Judicial Magistrate, Illayankudi, is directed to conduct simultaneous trial of the two cases in C.C.No.42 of 2013 and 145 of 2017, on its file and dispose of the same on merits and in accordance with law within a period of six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The District Munsif-cum-Judicial Magistrate,
Illayankudi.
2. The All Women Police Station,
Sivagangai, Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.VEERANASAMY, ADVOCATE IN SR No. 67059

VSN

TE/JC/SAR-I : 28/07/2017 : 4P/5C

ORDER MADE IN
CRL.OP.(MD)Nos.9311 & 8948/2017 &
Crl.M.P(MD)Nos.6319,6320,6055 & 6056/2017
20.07.2017