



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.08.2017

CORAM :

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

Cr1.O.P(MD).No.6993 of 2017

and

Cr1.M.P(MD).Nos.5524 to 5526 of 2017

- 1.Ashokkumar
- 2.Velammal
- 3.Kaladevi
- 4.Rani
- 5.Thathupandi
- 6.Suganya
- 7.Selvi
- 8.Kalisamy

... Petitioners/Accused Nos. 1 to 8

Vs.

1. The Inspector of Police,  
All Women Police Station,  
Ramanathapuram,  
Ramanathapuram District .

..Respondent/Complainant

- 2.Balamalathi

...2<sup>nd</sup> Respondent/DefactoComplainant

**PRAYER:** Criminal original petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the private complaint in C.C.No.23 of 2016 on the file of the Judicial Magistrate No.I, Ramanathapuram and quash the same.

For Petitioners : Mr.Subashbabu

For Respondent-1 : Mr.K.Anbarasan,  
Government Advocate (Cr1. Side)

For Respondent-2 : Mr.S.Palanivelayutham

### **ORDER**

This Criminal Miscellaneous Petition has been filed to quash the proceedings in C.C.No.23 of 2016 on the file of the Learned Judicial Magistrate, No.1, Ramanathapuram. The petitioners 1 to 8 are all accused in this criminal case, which was registered for offences punishable under sections 498(A), 494, 294(b) IPC & Section 4 of Women Harassment Act.

<https://hcservices.courts.gov.in/hcservices/> It is noted that the criminal case was registered on the basis of the complaint received from the 2<sup>nd</sup> respondent / de-facto



complainant on 07.11.2015. The de-facto complainant, namely, the second respondent gave a complaint on 07.11.2015, stating that she is a legally wedded wife of the first petitioner / first accused in crime No.20 of 2015. As per the complaint, she stated that her marriage was solemnized on 22.02.2005, as per custom and practice and in the presence of the elders.

3.It is the case of the second respondent that she got two children. When her first child was at the age of 4 years, her husband, namely, the first petitioner developed illicit intimacy with the seventh petitioner and later married the sixth petitioner, who is none else the seventh petitioner's daughter. It was specifically alleged that the marriage between the first petitioner and the sixth petitioner was solemnized with the active support of other members of the first petitioner's family, namely, mother, two sisters and one of the sister's husband. It was specifically stated in the complaint that the first petitioner had driven out the de-facto complainant from the matrimonial home and thereafter though attempt was made by the de-facto complainant through pangalis, the first petitioner and the second petitioner did not accept her in the matrimonial home.

4.Though the de-facto complainant was forced to leave out of the matrimonial home at the instance of the first petitioner and the sixth petitioner, she gave a complaint on 07.11.2015. The complaint was registered only for the offences punishable under Sections 498(A), 494, 294(b) IPC & Section 4 of Tamil Nadu Women Harassment Act. Having regard to the specific allegation found in the First Information Report and the charge sheet, this Court is not able to see any specific reference to commission of any offence by the petitioners 2 to 5 and 7 and 8.

5.This Court has gone through the F.I.R and Charge Sheet and the connected materials filed along with the charge sheet. For the offence under Section 494, except the first petitioner no other person including the sixth petitioner can be charged. Section 494 read as follows:

**494. Marrying again during lifetime of husband or wife –**

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Exception–** This section does not extend to any person whose marriage with such husband or wife has been declared void by a court of competent jurisdiction, nor to any person who contracts a marriage during the



life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

i) In the complaint preferred by the de-facto complainant, it has been stated that after the second marriage, the first petitioner has thrown out the de-facto complainant from her matrimonial home. This allegation is specific. After the de-facto complainant was sent out of the matrimonial home in or about 2007 or 2008, no other incident of violence till the complaint was lodged involving any other petitioner namely the petitioners 2 to 5, 7 and 8. The statement as against the mother is that she also refused to entertain or engage the de-facto complainant in the matrimonial home along with the first petitioner. The allegation appears to be unnatural and artificial having regard to the other circumstances of the case and specific averments found in the complaint. The statement obtained from the petitioner under Section 161 (3) of Criminal Procedure Code also indicate only the involvement of the petitioners 2 to 5, 7 and 8 in their participation in the second marriage. Even assuming that they are involved in conducting the second marriage, Section 494 is not attracted. However, no other averment is found to involve them for offence under Section 498 or Section 294 of Criminal Procedure Code with respect to the family members.

6. As a matter of fact, no particulars were found in the complaint or in the charge sheet or even in the statement given under Section 161 (3) involving petitioners 2 to 5, 7 and 8. As a matter of fact, the statement obtained from the de-facto complainant under Section 161(3) reveals that it is artificial and even contrary to the contentions found in the original complaint. The fact that the statement under Section 161(3) was obtained on the date of complaint itself shows the intention. In such circumstances, this Court is of the view that the proceedings and the charge sheet filed is liable to be quashed so far as the petitioners 2 to 5, 7 and 8 are concerned, having regard to the facts narrated above. Hence, this Criminal Original Petition is allowed to the extent indicated above and the charge sheet so far as it relates to the petitioners 2 to 5 and 7 and 8 alone is quashed. Consequently, the connected miscellaneous petitions are closed.

<https://hcservices.ecourts.gov.in/hcservices> 7. As against the proceedings as against the petitioners 1 and 6 are concerned, the learned Judicial Magistrate No.I, Ramanathapuram is directed to dispose C.C.No.23 of 2016 as



expeditiously as possible preferably within a period of 6 months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(RTI)

WEB COPY

/True copy/

Sub Assistant Registrar

To:

- 1.The Inspector of Police,  
All Women Police Station,  
Ramanathapuram,  
Ramanathapuram District.
- 2.The Judicial Magistrate No.I,  
Ramanathapuram.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 cc to Mr.S.Palanivelayutham , Advocate in SR.No. 73336

+1 cc to Mr.M.Subash Babu , Advocate in SR.No. 73291

mm/msa

AE/JC/SAR3/19.09.2017/4P/6C

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