

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.3153 of 2017
and Crl.M.P.No.2290 of 2017

1 Thulasimani
2 Selvaraj
3 Mayavan

... Petitioners

Vs.

1 The State represented by the
Inspector of Police,
All women Police Station,
Virudhachalam.

2 Periyammal

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to to call for the records in Sessions Case No.283 of 2016 on the file of Mahila Court, Cuddalore and quash the same in so far as this petitioner/Accused 2 in concerned.

For Petitioners : Mr.T.Sivagnanasambandan

For Respondent-1 : Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

On the complaint lodged by the second respondent, the first respondent police have registered a case in Crime No.26 of 2007 and after completing the investigation, filed a final report. After the committal of the case, the same is now pending in S.C.No.283 of 2016 on the file of the Mahila Court, Cuddalore for the offence under Sections 294(b), 506(ii), 417 and 376 IPC and Section 4 of the Dowry Prohibition Act against Thulasimani (A1), Selvaraj (A3) and Mayavan (A4) for quashing which, the accused are before this Court.

2 Heard Mr.T.Sivagnanasambandan, learned counsel for the petitioners and Mr.C.Iyyapparaj, the learned Additional Public Prosecutor for the first respondent.

3 The allegations in the charge sheet are hereunder:

The de-facto complainant was married and since her husband was mentally unwell, she got divorce on 14.02.2007 in the village panchayat; she came to attend the temple festival during May 2007, where she got introduced to Thulasimani (A1); Thulasimani (A1) promised to marry her and on that promise, had physical relationship with her, on account of which, she became pregnant; Thulasimani (A1) thereafter, reneged and when the de-facto complainant approached him for marrying her, Thulasimani's uncles Periasamy (A2), Selvaraj(A3) and Mayavan (A4) allegedly abused the de-facto complainant. Hence, the FIR and the charge sheet.

4 Challenging the prosecution, Periasamy (A2) filed CrI.O.P.No.23789 of 2010, in which, this Court by order dated 10.09.2012, was pleased to quash the prosecution by giving the following findings:

"7.It is not in dispute that the second accused is the paternal uncle of the first accused. Further, in the complaint, there is no specific allegation against the second accused except stating that he abused her and disputed her character. It is pertinent to note that the petitioner has given a complaint while she was seven months pregnant. It is also pertinent to note that at the time of investigation, DNA tests were taken and the allegation made by the complainant against the first accused with regard to paternity was negated in the report.

8.In view of the above position, I am of the view that nothing has been established against the petitioner/second accused. Therefore, the proceedings in PRC.No.19 of 2010 is quashed in respect of the petitioner herein/second accused."

5 Mr.T.Sivagnanasambandan, learned counsel for the petitioners submitted that the order dated 10.09.2012 would apply in all its fours qua the case against Selvaraj (A3) and Mayavan (A4). He also further submitted that in the DNA test, it can be established that the child born to the de-facto complainant was not fathered by Thulasimani (A1).

6 However, the learned Additional Public Prosecutor submitted that after charges have been framed by the trial Court, two witnesses have been examined. Under normal circumstances, this Court would quash the prosecution as against Selvaraj (A3) and Mayavan (A4), on the short ground that there are no materials whatsoever as against them. They stand on same footing on that of Periyasamy (A2). However, notice has not been served on the de-facto complainant and that apart, trial has

begun with the examination of PW.1 and PW.2.

7 Under such circumstances, only on these grounds, this quash application is closed with a direction to the trial Court to bear in mind, the observations of this Court in CrI.O.P.No.23789 of 2010 dated 10.09.2012 and the aforesaid observations, while dealing with the case of Selvaraj (A3) and Mayavan (A4). The trial Court shall complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is also closed.

8 The learned counsel for the petitioners submitted that the presence of Selvaraj (A3) and Mayavan (A4) before the trial Court may be dispensed with.

9 Accepting the said submission, the presence of the petitioners before the trial Court shall be dispensed with on condition that, they shall be present for receiving the complaint, for answering the charge, at the time of questioning under Section 313, Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioners shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that they will not dispute their identity and that the counsel named by them in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (CrI) 288]. On such application being filed, the trial Court may liberally consider the same. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against them under Section 229-A IPC.

Sd/-
Assistant Registrar (CS IV)

//True copy//

Sub Assistant Registrar

rpl

To

1 The Mahila Court,
Cuddalore

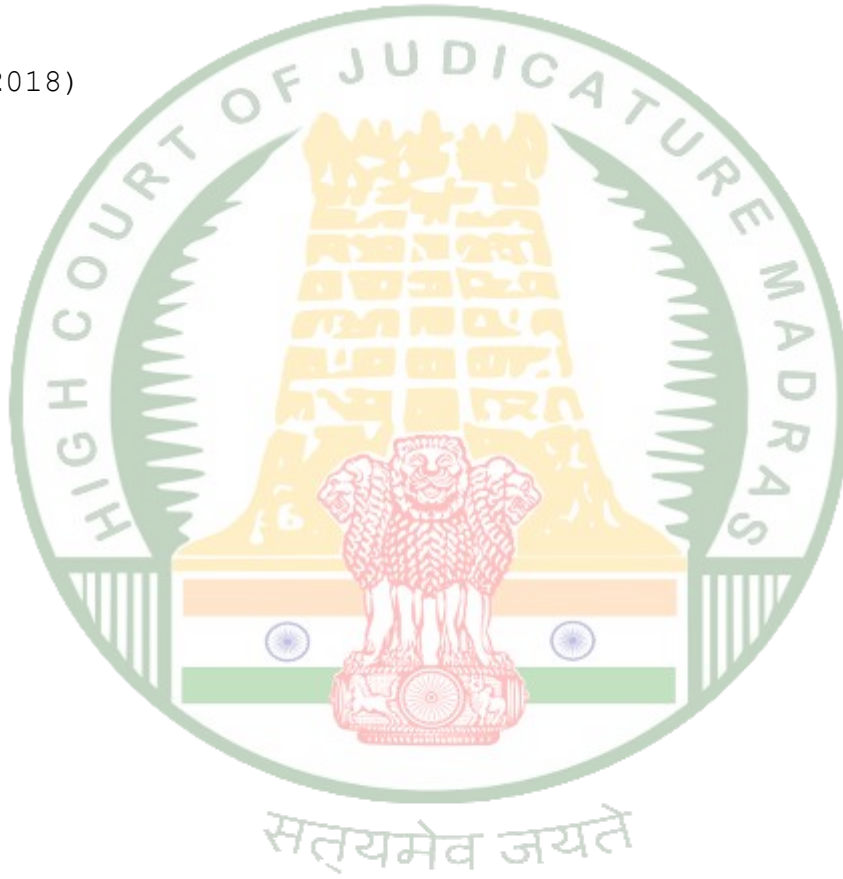
2 The Inspector of Police,
All women Police Station,
Virudhachalam.

3 The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Sivagnana sambandan, Advocate SR.No.51477

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GN(31/07/2018)



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