

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1130 of 2014 and  
M.P.No.1 of 2014

1. Ramalingam
2. Thambusamy
3. Ramamurthy

...Petitioners/Accused 1 to 3

Vs.

The State rep. By Inspector of Police,  
All Women Police Station, Nagapattinam,  
Nagapattinam District. ...Respondent/complainant  
Cr.No.7/2013

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 05.09.2014 made in C.M.P.No.2050 of 2014 in C.C.No.50 of 2014 on the file of the learned Judicial Magistrate II, Nagapattinam.

For Petitioner : Mr.N.Manokaran

For Respondents : Mr.R.Ravichandran  
Govt. Advocate (Crl.Side)

ORDER

The criminal revision has been filed against the order dated 05.09.2014 made in C.M.P.No.2050 of 2014 in C.C.No.50 of 2014 by the learned Judicial Magistrate II, Nagapattinam.

2 The facts leading to prefer this revision are as follows:

The Petitioners are Accused 1 to 3 in C.C.No.50 of 2014. The defacto complainant is wife of the son of the first accused. She gave a complaint before the All Women Police Station, Nagapattinam, on 07.12.2013 against the petitioners herein. Based on the complaint, FIR has been registered and the Inspector of Police, after investigation, filed a charge sheet under Sections 418 & 498 (A) of I.P.C., before the learned Judicial Magistrate II, Nagapattinam. The learned Magistrate has taken the charge sheet on file in C.C.No.50 of 2014. Pending the above case, the petitioners/Accused 1 to 3 had filed

miscellaneous petition in C.M.P.No.2050 of 2014 under Section 239 of Cr.P.C, seeking to discharge them from the above case. The learned Magistrate II, Nagapattinam, after hearing both sides, dismissed the petition by order dated 05.09.2014 observing that there is prima facie allegations made out against these petitioners.

3 Aggrieved against the above said order dated 05.09.2014, the petitioners/accused 1 to 3 have preferred the present revision before this Court.

4 The learned counsel for the petitioner would submit that there is no ingredient made out in the complaint to file a charge sheet under Section 418 & 498 (A) of I.P.C. Further, the husband of the defacto complainant had filed a petition in H.M.O.P.No.123 of 2013 for restitution of conjugal rights, which was decreed by order dated 07.02.2014. If the husband of the defacto complainant is mentally not sound as stated in the complaint, the defacto complainant would not have given consent for the marriage, since the marriage is not a one day ceremony. The learned Magistrate has failed to consider the materials placed before the Court and dismissed the application, which is liable to be set aside.

5 The learned Government Advocate (Crl.Side) appearing for the respondent/police would submit that the learned Magistrate, having found that there are prima facie allegations made out against these petitioners, has dismissed the discharge petition. Further, whether the allegations made in the complaint would attract Sections 418 & 498 (A) of I.P.C. or not is a matter for trial and the same need not be decided at this stage.

6 Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondent and perused the materials placed before the Court.

7 A perusal of the records reveal that the wife has preferred complaint before the respondent police against these petitioners, who are her in-laws, making some allegations and the respondent police registered FIR and after investigation, had filed a charge sheet before the learned Judicial Magistrate II, Nagapattinam. The learned Magistrate, found that there are prima facie allegations made out against these petitioners and dismissed the petition filed by the petitioners seeking discharge from C.C.No.50 of 2014. It is well settled proposition of law that while considering petition under Section 239 of Cr.P.C. seeking discharge, the Court has to see the documents filed by the prosecution under Section 173 of Cr.P.C. before the Court and prima facie, if there is any allegation made out, the Court need not look into the defence. Further probative value of the materials need not be gone into at this stage.

8 This Court is of the view that when there are prima facie allegations made out against these petitioners to proceed the case further, they have to face the trial. Hence this Court does not find any reason to interfere with the order dated 05.09.2014 passed by the learned Judicial Magistrate II, Nagapattinam.

9 In the result, the criminal revision is dismissed as there is no illegality or infirmity in the order passed by the Court below, and the Court below is directed to proceed with the case further, in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate II,  
Nagapattinam.

2. The Public Prosecutor,  
High Court of Madras.

3. The Inspector of Police,  
Allwomen Police Station,  
Nagapattinam, Nagapattinam District.

4. The Section Officer,  
Criminal Section,  
High Court, Chennai-104

+lcc to Mr.N.Manoharan, Advocate SR.No.56657

CrI.R.C.No.1130 of 2014 and  
M.P.No.1 of 2014

NMI (CO)

GMV (02/11/2018)