

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2018

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CrI.O.P.No.12123 of 2011  
and  
M.P.No.1 of 2011

H.Swamynathan

... Petitioner

Vs.

1. State of Tamil Nadu,  
Rep. The Inspector of Police,  
Mayiladuthurai Police Station,  
Mayiladuthurai,  
Tamil Nadu.  
(Cr.No.412 of 2010)

2. T.Mathi

... Respondents

(Impleaded the second respondent as per  
the order of this Court dated 02.06.2011  
in M.P.No.3 of 2011)

PRAYER: Criminal Original Petition filed under Section 482 of  
Cr.P.C, to call for the records in C.C.No.314 of 2010, pending  
on the file of the Judicial Magistrate No.I, Mayiladuthurai  
and quash the same.

For Petitioner : Mr.Ashok Menon  
For Respondents : Mr.T.Shunmugarajeswaran  
Government Advocate for R1  
Mr.C.J.Pavel Nirmalan  
for M/s.K.M.Vijayan Associates  
for R2

ORDER

The petitioner is the accused in C.C.No.314 of 2010 on  
the file of the learned Judicial Magistrate No.I,  
Mayiladuthurai. The Inspector of Police, Mayiladuthurai Police  
Station, registered a First Information Report in Cr.No.412 of  
2010 of Mayiladuthurai Police Station, based on the complaint  
dated 19.04.2010 preferred by the de-facto complainant, the  
2nd respondent herein, against the present petitioner for the  
alleged offences punishable under Sections 294(b), 323, 324,  
506(I) and 498(A) of IPC read with Section 4 of the Tamil Nadu  
Prevention of Harassment of Women Act.

2. After completing the investigation, the Inspector of Police, Mayiladuthurai Police Station, laid a final Report before the learned Judicial Magistrate No.I, Mayiladuthurai, against the present petitioner, for the aforesaid offences and the learned Judicial Magistrate No.I, Mayiladuthurai, took cognizance of the offences and issued summons to the present petitioner. The case of the prosecution is that the accused abused the de-facto complainant in filthy language and assaulted and threatened her with dire consequences.

3. In the present petition, the petitioner has contended that he has not committed any offence as alleged by the prosecution and that the de-facto complainant who is his wife had left the matrimonial home on 19.04.2010, after taking all her belongings and lodged a complaint with the Inspector of Police, with a malafide intentions. According to the petitioner, the allegation in respect of the offence punishable under Section 498(A) is barred by limitation.

4. Mr.Ashok Menon, learned counsel appearing for the petitioner would contend that since the defacto complainant has not implicated her husband in her earliest version on 18.04.2010 before the Doctor while taking treatment and also had taken away all her articles and jewels from her house without any hindrance the complaint preferred by her before the Mayiladurai Police is clearly an abuse of process of law. He also relied on the decision in Padal Venkata Rama Reddy alias Ramu Vs. Kovvuri Satyanarayana Reddy and others, reported in (2011) 12 SCC 437 and contended that whenever any attempt is made to abuse the authority so as to cause injustice, the Court has power to prevent the abuse.

5. A perusal of the entire records shows that there are prima facie materials available on record to proceed against the present petitioner/accused for the alleged offences punishable under Sections 294(b), 323, 324, 506(I) and 498(A) of IPC read with Section 4 of the Tamil Nadu Prevention of Harassment of Women Act. Merely because the defacto complainant has not mentioned her husband's name before the doctor, who gave her treatment on 18.04.2010, the entire case filed by the prosecution cannot be thrown out. Normally, a woman, in order to save the marriage, would not immediately make any allegation against her husband.

6. It is also pertinent to point out that the defacto complainant/2nd respondent had also filed a petition under Section 9 of the Hindu Marriage Act, 1955, for Restitution of Conjugal Rights before the I Additional Family Court, Coimbatore in HMOP No.72 of 2018. Therefore, no malafide intention can be attributed to the 2nd respondent/defacto complainant. In any event, this Court, at this stage, cannot go into the truth or otherwise of the allegations of the prosecution.

7. I, therefore, see, no good ground to quash the proceedings in C.C.No.314 of 2010 on the file of the learned Judicial Magistrate No.I, Mayiladuthurai. Since the case in C.C.No.314 of 2010 is pending for more than seven years, the learned Chief Judicial Magistrate, Nagapattinam is directed to dispose of the case within a period of three months from the date of receipt of a copy of this order.

8. With the above observations, the petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mkn/dna

To

1. The Judicial Magistrate No.I, Mayiladuthurai.
2. -do- thro The Chief Judicial Magistrate Nagapattinam.
3. The Inspector of Police,  
Mayiladuthurai Police Station,  
Mayiladuthurai, Tamil Nadu.
4. The Public Prosecutor, High Court, Madras.

+ 1 cc to MR. Ashok Menon, Advocate Sr.51760

+ 1 cc to M/s. K.M. Vijayan, Advocate Sr.51225

Cr1.O.P.No.12123 of 2011  
and  
M.P.No.1 of 2011

(AR-Audit)  
EU(06/09/2018)

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