

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.10392 of 2018 & Crl.M.P. No.5324 of 2018

K. Kesavaraj @ Kesavan

Petitioner

vs.

1 State represented by
the Inspector of Police
All Women Police Station
Chidambaram
Cuddalore District
(Cr. No.5/2016)

2 Nivedha

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records of the proceedings pursuant to C.C. No.157 of 2017 in Cr. No.5 of 2016 pending on the file of the District Munsif-cum-Judicial Magistrate, Portonovo and to quash the entire proceedings against the petitioner herein.

For petitioner M/s. Nathan and Associates

For R1 Mrs. Kritika Kamal, P.
Govt. Advocate (Crl. Side)

For R2 Mr. G. Thyagarajan

ORDER

This Criminal Original Petition has been filed seeking to call for the records of the proceedings pursuant to C.C. No.157 of 2017 in Cr. No.5 of 2016, pending on the file of the District Munsif-cum-Judicial Magistrate, Portonovo and to quash the entire proceedings against the petitioner herein.

2 On the complaint lodged by Nivedha, the second respondent herein/de facto complainant, the first respondent police registered a case in Cr. No.5 of 2016 and after completing the investigation, filed a charge sheet in C.C. No.157 of 2018 before the District Munsif-cum-Judicial Magistrate, Portonova, for the offences under Section 498-A, 506 IPC and Section 4 of the Dowry Prohibition Act, 1961, read with Section 114 IPC against five accused, for quashing which, Kesavan (A5) is before this Court.

3 Heard the learned counsel for the parties.

4 Rangapriyan (A1) is the husband of Nivedha (de facto complainant); Achuthan (A2) and Santha (A3) are the parents of Rangapriyan (A1); Rajapriya (A4) is the sister of Rangapriyan (A1) and Kesavan (A5) is the friend of Rangapriyan (A1). There are serious allegations as against Rangapriyan (A1), inasmuch as, it is alleged by Nivedha (de facto complainant) that he had subjected her to cruelty and demanded dowry. However, the only allegation against Kesavan (A5) is that he, being a friend of Rangapriyan (A1), had exhorted Rangapriyan (A1) to divorce Nivedha (de facto complainant) during the course of compromise talk that was held on 14.10.2016.

5 The learned counsel for Nivedha (de facto complainant) submitted that Kesavan (A5) has abetted the offence committed by Rangapriyan (A1) and therefore, the proceedings against Kesavan (A5) should not be quashed. He

placed strong reliance of the judgment of the Supreme Court, wherein, it has been held that when there are *prima facie* materials against the accused, the prosecution cannot be quashed.

6 There can be no two opinions on this aspect. However, on a reading of Section 161 Cr.P.C. statements of the witnesses, it is seen that the only allegation against Kesavan (A5) is that during the Panchayat talks, he seems to have exhorted Rangapriyan (A1) to divorce his wife, viz., Nivedha (de facto complainant). In the considered opinion of this Court, that cannot amount to abetment under Section 107 IPC.

In the result, the proceedings against Kesavan (A5) in C.C. No.157 of 2017 in Cr. No.5 of 2016 is quashed and as a sequel, this Criminal Original Petition is allowed. Connected CrI.M.P. is closed.

14.06.2018

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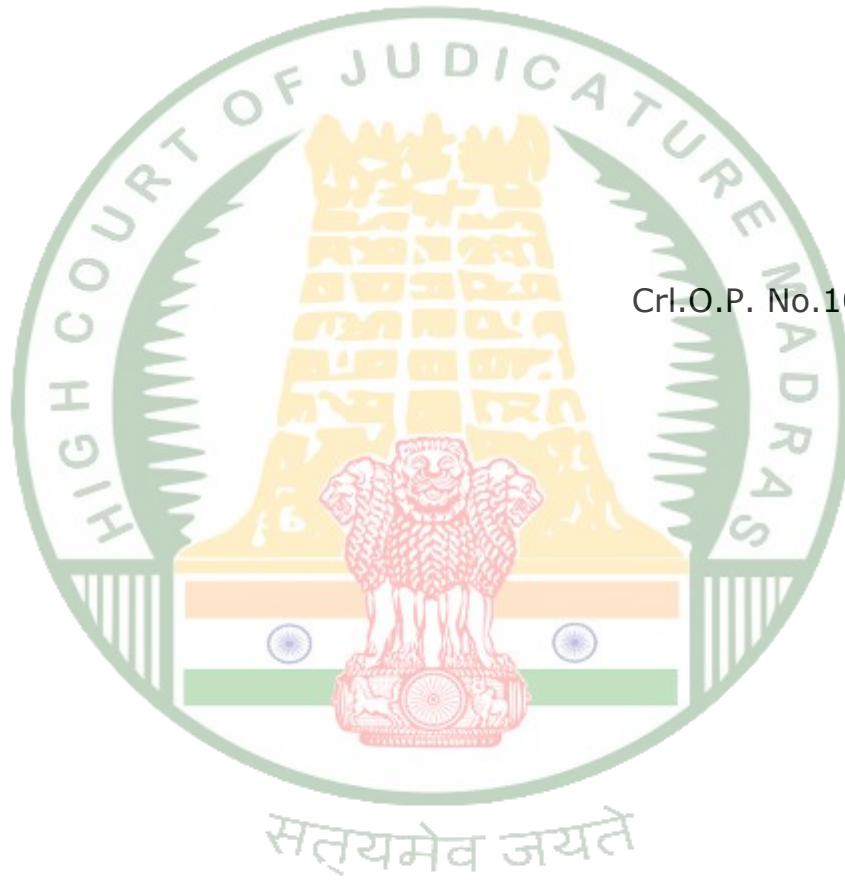
To

- 1 The Inspector of Police
All Women Police Station
Chidambaram, Cuddalore District
- 2 The District Munsif-cum-Judicial Magistrate
Portonovo
- 3 The Public Prosecutor
High Court of Madras, Chennai 600 104

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P.N. PRAKASH, J.

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