

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.10723 of 2018

&

Crl.M.P.Nos.5487 & 5488 of 2018

1.S.Safiallah
2.Kathar @ S.Syed Kathar
3.J.Dhahira Bee
4.Rahamath Bee @ A.Rahamath Nisha
5.S.Magbul Bee
6.K.Ameer SharifPetitioners/Accused

Vs

1.State Represented by,
Inspector of Police,
All women Police Station,
Thirukovilur, Villupuram District.
Crime No.21 of 2016.

2.M.K.JarinRespondents/Complainant
and Defacto Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the entire records in connection with C.C.No.31 of 2018 on the file of the learned Judicial Magistrate, Thirukovilur, Villupuram District and quash the same.

For Petitioners :Mr.J.Agni Selvaraju

For Respondent-1 :Mrs.P.Kritika Kamal learned
Government Advocate (Criminal side)

ORDER

The relief sought for in this petition is to quash the entire records in C.C.No.31 of 2018, on the file of the learned Judicial Magistrate, Thirukovilur, Villupuram District.

2. The defacto complainant got married to the A-1 on 14.12.2011 and after marriage A-1 went on employment abroad, leaving behind the defacto complainant in the company of his parents and relatives namely A2 to A7.

3. It is the case of the defacto complainant that she was not able to bear a child and therefore she was being continuously tortured and harassed by A2 to A7 in the matrimonial home. It is the further allegation that on account of the torture meted out by her, she was sent back to her parental home. On 25.10.2016, the defacto complainant and her family members came to the matrimonial home for taking back their house hold articles. On that day, a quarrel ensued in which both sides attacked each other. Therefore, on the complaint of Jarin, a case was registered in Arakandanallur Police Station in Crime No.490 of 2016 under Sections 147, 148, 294 (b), 323, 324, 506 (i) of IPC read with Section 4 of TN Prohibition of Harrassment of Women Act, 2002 by the police against the in-laws of the defacto complainant.

4. Similarly, on the counter complaint of Thagi Rafi, the Arakandanallur Police registered a counter case in Crime No.491 of 2016 on 26.10.2016, under Sections 294(b), 323, 324, 506(i) IPC on 26.10.2016 against Jarin and her family members. Thus two cases were registered and investigated separately by Arakandanallur Police Station. Thereafter, Jarin approached the All Women Police Station, Thirukoilur and lodged a complaint based on which, a case in Crime No.21 of 2016 was registered on 05.12.2016 and after completing the investigation, the police have filed a charge Sheet in C.C.No.21 of 2016 before the Judicial Magistrate, Thirukoilur, for the offences under Section 498(A), 294(b) and 506(i) IPC against the accused 1 to 7, challenging which A1 to A6 are before this Court.

5. Heard the learned counsel for the accused and the learned Government Advocate (Crl. side) for the respondents.

6. Learned counsel for the accused submitted that the 7th accused died and therefore prosecution against him stood abated. Learned counsel further submitted that there are two FIRs for the same issue and therefore the entire prosecution in CC No.21 of 2016 is vitiated. He further submitted that for the incident that took place on 25.10.2016, already two FIRs have been registered in Crime No.490 & 491 of 2016 and therefore the present charge sheet which also speaks of the incident that took place on 25.10.2016 deserves to be quashed.

7. Per contra, the learned Government Advocate (Crl. Side) refuted the contention. This Court considered the rival submissions.

8. There appears to be a fallacy in the submission of the learned counsel for the petitioners because, the two FIRs namely Crime Nos.490 and 491 of 2016 are, case and counter case with regard to the incident that took place on 25.10.2016. As regards, the case in All Women Police Station, in Crime No.21 of 2016, which is the subject matter of CC

No.31 of 2018, the allegation against the accused is that after marriage A1 to A7 were harassing the defacto complainant for being barren. It is also alleged that the accused illegally retained the properties of the defacto complainant. Thus the charge sheet in C.C.No.21 of 2016 may overlap with the allegations in Crime Nos.490 and 491 of 2016 in respect of offences under Sections 294(b) and 506(i)IPC that is said to have taken place on 25.10.2016. But, that by itself cannot be a reason to quash the charge sheet. Though the law mandates that a person cannot be punished twice for the same offence, yet this question will arise only during the trial in C.C.No.31 of 2018 and cannot be a ground to quash the entire proceedings.

9. Thus, when there are sufficient materials against the accused, this Court is of the view that this is not a fit case to quash the proceedings. However, as the accused 3 to 5 are being ladies, in the interest of justice, their presence before the Trial Court is dispensed with. Accordingly, this Quash Application is dismissed, with a further direction that A3, A4 and A5 shall appear before the Trial Court for collecting the charge sheet under Section 207 Cr.P.C , for answering charges, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. The A3, A4 and A5 shall file an affidavit of undertaking, before the Trial Court that they will not dispute their identity; 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 (Cr1.) 288] and that they will not adopt dilatory tactics. If they adopt dilatory tactics, the trial Court can insist on their presence for other hearings. Consequently, connected Miscellaneous Petitions are closed.

-sd/-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vum/avr

To

- 1.The Judicial Magistrate,
Thirukovilur, Villupuram District
2. The Inspector of Police,
All women Police Station,
Thirukovilur, Villupuram District.

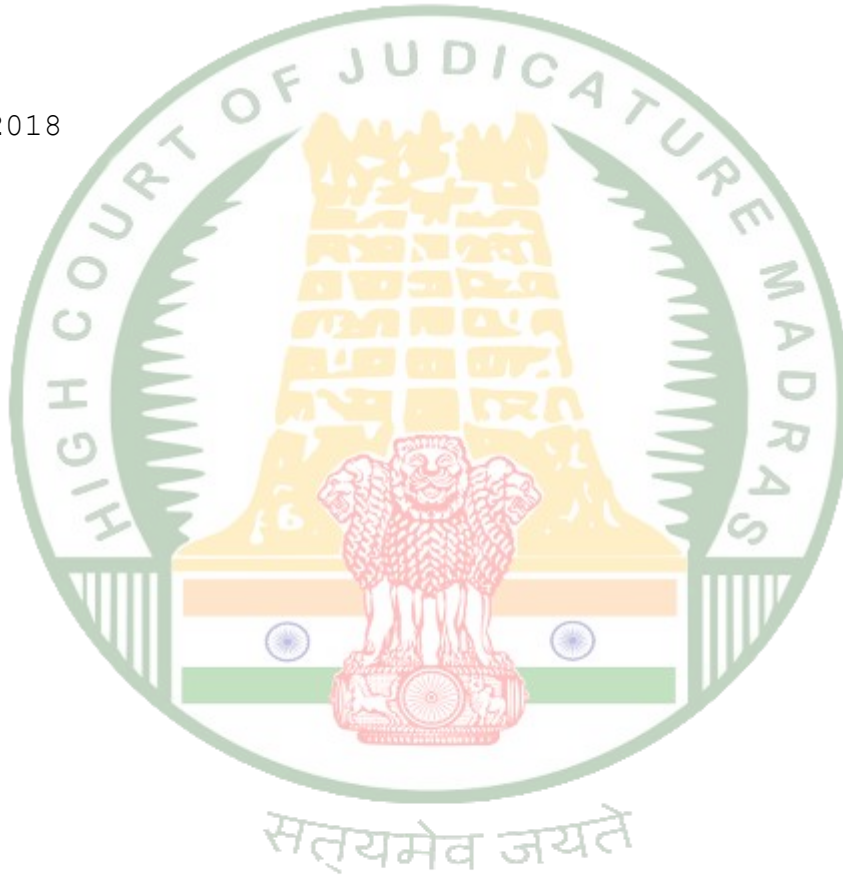
3.The Public Prosecutor,
Madras High Court, Chennai.

C.C. to Mr.J.Agni Selvaraju Advocate SR.NO. 25052

CrI.O.P.No.10723 of 2018

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SAI (CO)
VS 17.04.2018



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