

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.08.2018

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No. 26904 of 2017

And

Crl.M.P.Nos. 15456, 15457 of 2017 & 6156 of 2018

1. K. Rajakumar Barathy
2. K. Jayamani
3. K. Kanagasabai

..... Petitioner / Accused-1 to 3

Vs

1. The Inspector of Police,
W18, All Women Police Station,
MKB Nagar,
Chennai - 600 012
(Crime No.9/2017)

..... Respondent /

Complainant

2. Mrs. Shamili

..... Respondent / Defacto Complainant

PRAYER Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records connected with the proceedings of the Charge sheet in C.C.No.216 of 2017 pending trial on the file of the Learned Additional Mahila Court, Allikulam.

For Petitioner : Mr. K. Thilageswaran

For 1st Respondent: Mrs. M. Prabhavathi
Additional Public Prosecutor

For 2nd Respondent : Ms.Y.Kavitha for
M/s. Giridhar & Sai.

O R D E R

K.Rajakumar Barathy (A1) got married to Shamili (second respondent / Defacto Complainant) on 09.03.2015 and their marriage ran into rough weather, resulting in the spouses getting estranged.

2. It is the case of the Defacto Complainant that her husband would not go to work ; that he would drink through out the day and harass her; that both the families decided to part company and therefore on 27.07.2016, the articles were exchanged and it was further agreed that they would approached the concerned Court for divorce.

3. While so, the Defacto Complainant came to know that the first accused got married to one Priya on 09.12.2016. Therefore, on the complaint given by the Defacto complainant, the respondent police registered a case in Crime No.9 of 2017 on 22.08.2017, under Section 294 (b), 498 (A), 506 (i) and 494 of IPC. After completing the investigation, the respondent police has filed charge sheet in C.C. No.216 of 2017 before the learned Additional Mahila Court Magistrate, Allikulam, against Rajakumar Barathy /A-1, his mother Jayamani and father Kanagasabai. For quashing the charge sheet, the petitioners/accused are before this Court.

4. Heard Mr. K. Thilageswaran, learned counsel appearing for the petitioner; Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent and Mr.Y.Kavitha, learned counsel appearing for the second respondent/de-facto complainant.

5. Mr. K. Thilageswaran, learned counsel appearing for the petitioner submitted that the first accused and the defacto complainant entered into a mutual agreement on 27.07.2016, under which all the articles were exchanged and they both agreed not to prosecute each other. Against the said agreement, the Defacto complainant has filed the present complaint and that has culminated in the impugned charge sheet. He further contended that the offence under Section 494 of IPC is a non cognizable offence and no final report has been filed by the police.

6. The learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the Defacto complainant refuted the contentions.

7. This Court gave anxious consideration to the rival submissions.

8. On a reading of the final report and 161 statement of the de-facto complainant, she has made specific allegations of cruelty against the first and second accused. Just because the parties had entered into mutual agreement not to prosecute each other, it will not mean that there cannot be any prosecution since there cannot be an estoppel against statue.

9. As regards the contention of Mr. K. Thilageswaran that a private complaint should have been filed under Section 494 of IPC, this issue has been settled by the Hon'ble Supreme Court in the case of Ushaben vs Kishorbhai Chunilal Talpada & Others reported in [(2012) 6 SCC 353]. However, this Court does not find any material worthy as against the third accused.

10. In the result, this Criminal Original Petition is partly allowed and the prosecution in C.C. No.216 of 2017 before the learned Additional Mahila Court Magistrate, Allikulam, against Kanagasabai/ father is quashed and the trial shall proceed against the first and second accused, namely, K.Rajakumar Barathy and K.Jayamani.

11. The learned counsel for the petitioner submitted that the presence of the mother/Jayamani before the trial Court may be dispensed with.

12. Accepting his submission, the second accused/ K.Jayamani is directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. The second accused shall engage an advocate on special Vakalat. The second accused shall appear before the trial Court for questioning under Section 251 Cr.P.C., at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the second accused shall file a petition before the trial Court under Section 317 Cr.P.C., giving an undertaking that she will not dispute her identity and that the counsel named by her in the affidavit will cross-examine the prosecution witnesses on the day she is examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same.

13. The accused are entitled to raise all points before the Trial Court after the charges are framed during trial. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

vsg/mtl

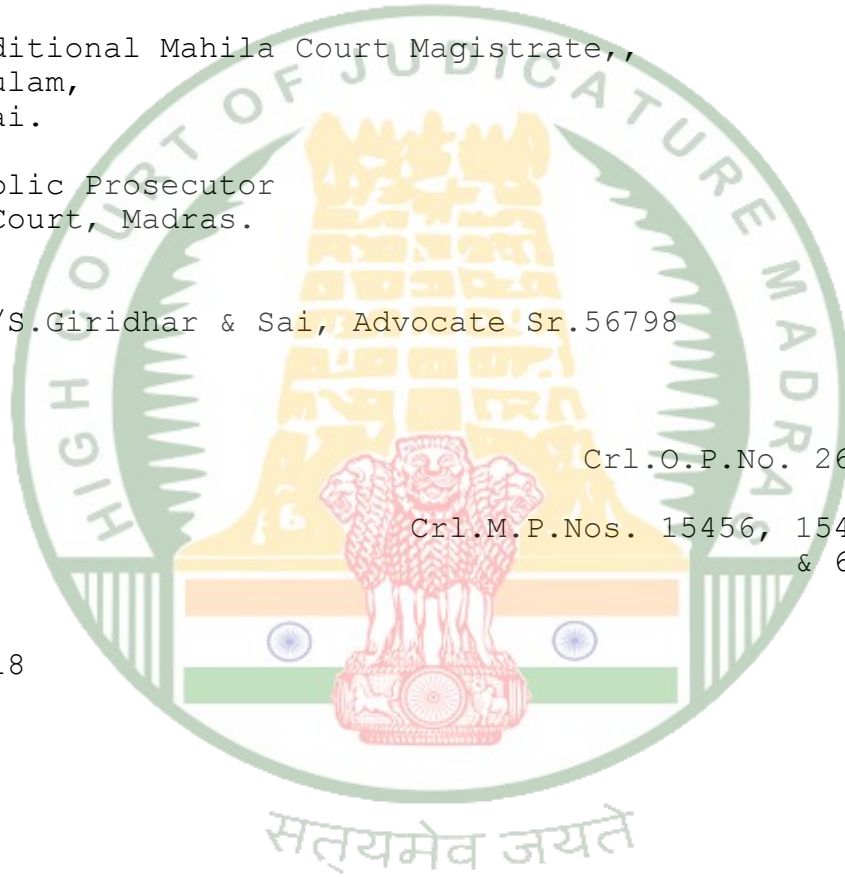
To

1. The Inspector of Police,
W18, All Women Police Station,
MKB Nagar,
Chennai - 600 012.
2. The Additional Mahila Court Magistrate,,
Allikulam,
Chennai.
3. The Public Prosecutor
High Court, Madras.

+lcc to M/S.Giridhar & Sai, Advocate Sr.56798

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sp 6/9/2018



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