

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.3881 of 2013

and

M.P.No.1 of 2013

1.Sennimalai
2.Dhanalakshmi

... Petitioners

Vs.

State Rep.by its
1.The Inspector of Police
All Women Police Station
Karungalpalayam
Erode,
Erode Distrit.

2.C.Sakunthala Devi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the Criminal Case in C.C.No.282 of2008, pending on the file of the learned Judicial Magistrate No.II, Erode and to quash the same in respect of the petitioner/the accused 2 and 3 and to allow the above Crl.O.P.

For Petitioners: Mr.P.T.Ramadevi
For R1 : Mrs.Kritika Kamal.P
Government Advocate (Crl.Side)
For R2 : No Appearance

ORDER

The prayer in the present petition is to call for the records pertaining to the Criminal Case in C.C.No.282 of2008, pending on the file of the learned Judicial Magistrate No.II, Erode and to quash the same in respect of the petitioners/the accused 2 and 3 and to allow the above Crl.O.P.

2. The petitioners herein are father-in-law and mother-in-law of the second respondent. It is seen that the marriage between the respondent and her husband took place on 30.08.2001 and a male child was born out of wed-lock. The second respondent's husband was residing in United Kingdom.

3. The case of the prosecution is that the petitioners herein had demanded a sum of Rs.5,00,000/- (Rupees Five Lakh Only) as dowry and that they were also instrumental in having the second pregnancy aborted and hence, they were charged for offences under Sections 498(A) and 312 of IPC read with Section 4 of Dowry Prohibition Act.

4. Heard Mr.P.T.Ramadevi, learned counsel for the petitioners and Mrs.Kritika Kamal.P (Crl.Side), learned Government Advocate for the first respondent. Though the notice was served on the second respondent and her name is printed in the cause list, none appears.

5. The learned counsel for the petitioners would submit that the entire case of the second respondent is false and that owing to mental agony caused by the second respondent, the marriage had gone estranged. The learned counsel further submitted that there was no material backing the allegation of demand of dowry and all the witnesses who had been examined are interested. In this backdrop, the learned counsel for the petitioners further submitted that the defacto complainant had again re-married and hence she is not interested in getting along with the case.

6. The learned Government Advocate, on the other hand, by relying upon the statement of the witnesses submitted that the offences have been clearly made out and as such, all these grounds can be raised during trial and quashing the charge sheet was not warranted.

7. I have carefully considered the submissions made by the learned counsel. One crucial fact, which has to be seen is that incident of the demand of dowry is alleged to have been made on 20.11.2002 and the FIR came to be only lodged on 18.11.2005. The investigation is pending for more than almost three years and the charge sheet came to be filed on 31.05.2008. There was absolutely no explanation as to why, there was delay of almost three years in making the complaint.

8. In my view, the delay is inordinate particularly, taking into account that the petitioners herein who are in laws are aged 75 and 71 years respectively. It is further seen that the defacto complainant has since re-married and has not chosen to appear before this Court and may not co-operate with the prosecution and the trial as such, may not reach a logical conclusion, in the absence of the defacto complainant's co-operation. Above all, the grievance of the complainant seems to be more against her husband and hence, it is open to the Trial Court to proceed against the husband for the alleged

offences.

9. Insofar as, the offence under Section 312 is concerned, it is the specific statement of the learned counsel for the petitioners/accused 2 and 3 it was not a case of mis-carriage and that the 2nd respondent/defacto complainant herself had chosen to abort the pregnancy.

10. The prosecution had come to a conclusion that there was forceful termination of the pregnancy by the second respondent, which is based on the statement of the defacto complainant and her relatives. Apart from that, there is no support to the prosecution case. As already observed, the complainant has chosen not to co-operate in the proceeding and has also not appeared before this Court. As such, the evidence of the interested persons may not be sufficient to establish the offence under Section 312 IPC.

11. Though the present petition has been filed by the in laws/accused 2 and 3, in view of the my findings that the defacto complainant may not co-operate in the proceedings and that she had chosen not to appear before this Court, I am not able to comprehend, as to how, the Trial Court can come to a logical conclusion in the absence of her evidence. As such, it would be appropriate to quash entire proceedings. Hence, the proceedings in C.C.No.282 of 2008 on the file of the learned Judicial Magistrate No.II, Erode, hereby is quashed.

12. In the result, the Criminal Original Petition is allowed with the above observations. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

dna

To

1.The Inspector of Police
All Women Police Station
Karungalpalayam
Erode, Erode Distrit.

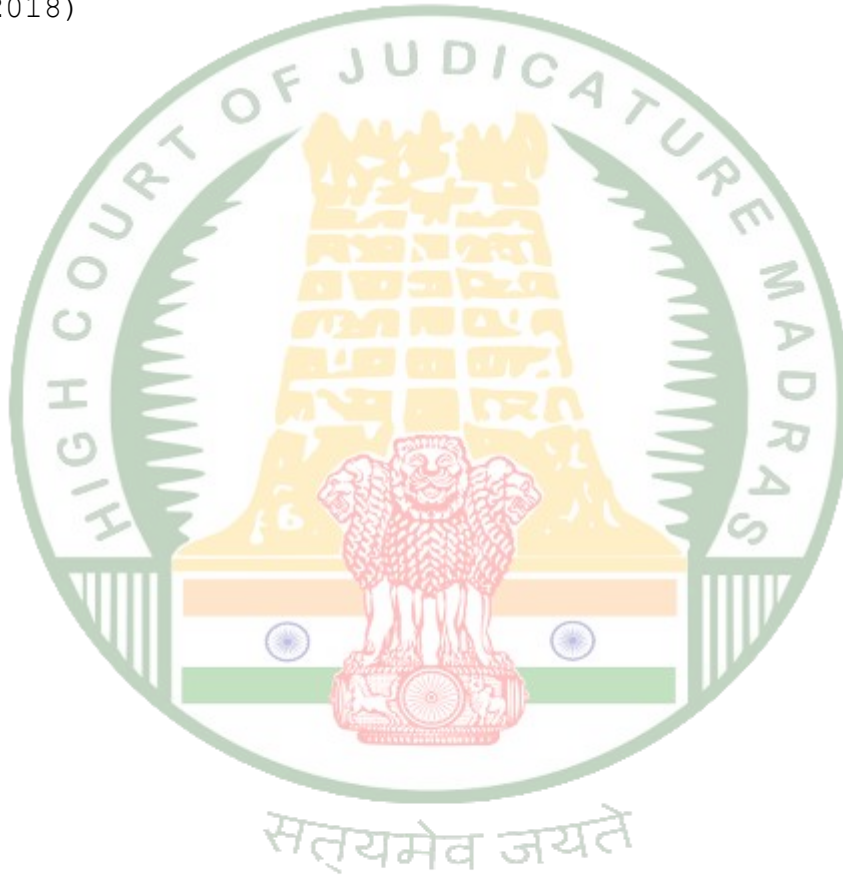
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2.The Public Prosecutor,
High Court, Madras.

+1 CC to Ms.P.T. Ramadevi, Advocate sr 23454.

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SP(17/04/2018)



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