

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16513 of 2018

and

CrI.MP.Nos.8507 & 8160 of 2018

1.K.Raja

2.K.Jothika

.... Petitioners/Accused

Vs

1.The Inspector of Police

W-34, All Women Police Station

Ennore, Chennai-600 057.

2.Preetha @ Preetha

...Respondents/Complainants

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet filed in C.C.No.53 of 2018 on the file of the Judicial Magistrate Court at Thiruvotriyur dated 22.01.2018 and quash the same.

For Petitioners: Mrs.R.Saritha

For Respondents: Mrs.Kritika Kamal.P
Govt. Advocate (CrI.side),
For R1

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the charge sheet filed in C.C.No.53 of 2018 on the file of the Judicial Magistrate Court at Thiruvotriyur dated 22.01.2018 and quash the same.

2. On the complaint lodged by the second respondent, the first respondent police have registered a case in Crime No.4 of 2015 and after completing the investigation, has filed a charge sheet in C.C.No.53 of 2018 before the Judicial Magistrate, Tiruvotriyur, for the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act, 1961, against these petitioners, for quashing which, this petition has been filed.

3. Heard Mrs.R.Saritha, learned counsel for the accused, who submitted that there are no prima facie case against the accused in the charge sheet.

4. However, on a reading of Section 161(3) Cr.P.C. statement of the de facto complainant, she has alleged that she got married to K.Raja (A1) on 14.05.2014; that Jothika (A2) is the sister of K.Raja (A1); that at the time of marriage, the de facto complainant's parents gifted 19 sovereigns gold, Rs.25,000/- to K.Raja (A1) for buying two wheeler and household articles worth Rs.2 Lakhs; that after marriage, she settled in the house of K.Raja (A1); that at the instigation of Jothika (A2), K.Raja (A1) beat her very frequently and Jothika (A2) demanded air conditioner and tortured her. The de facto complainant has further alleged that unable to withstand the cruelty meted out by her, she left to her parental home, by bus No.159E and at that time, K.Raja (A1) got into the bus and persuaded her to return home; that on returning to the matrimonial home, K.Raja (A1) and Jothika (A2) started beating the de facto complainant; that unable to withstand the cruelty, she became unconscious; that fearing something happen to her, K.Raja (A1) and Jothika (A2) informed the de facto complainant's parents, by phone; that when the de facto complainant's parents came, they told that the de facto complainant is mad.

5. On a reading of the statements of the other witnesses, this Court finds that there are sufficient materials against K.Raja (A1) and Jothika (A2) to frame charge and therefore, the prosecution cannot be quashed.

6. The learned counsel for the accused submitted that K.Raja (A1) has divorced the de facto complainant and produced the decree.

7. On a perusal of the decree dated 18.08.2015, it is seen that K.Raja (A1) has obtained ex-parte decree against the de facto complainant. Be that as it may, when there are sufficient materials on record, the prosecution cannot be quashed.

8. In the result, this petition is dismissed.

9. The learned counsel for the accused submitted that the presence of Jothika (A2) before the trial Court may be dispensed with.

10. Accepting his submission, the second petitioner shall appear before the trial Court for receiving the charge sheet, for answering the charges, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the second petitioner shall file a petition before the trial Court under Section 317 Cr.PC., 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. If the accused adopts any dilatory tactics, it is open to the trial Court to insist upon her presence and remand her to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the accused absconds, the trial Court shall direct registration of an FIR against her under Section 229-A IPC. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate
Tiruvotriyur.
- 2.Do- Thro The Chief Judicial Magistrate,
Ponneri.
- 3.The Inspector of Police
W-34, All Women Police Station
Ennore, Chennai-600 057.
- 4.The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Karunagaran, Advocate Sr.41277

CRL.O.P.No.16513 of 2018

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srg 05/07/2018