



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 21.03.2018

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THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.13722 of 2013
and
M.P.(MD)Nos.1 and 2 of 2013

1.Manoharan
2.Lakshmi
3.M.Meena

... Petitioners/A2 to A4

Vs.

1. The Inspector of Police,
All Women Police Station,
Madurai South,
Madurai City.
(Crime No.24 of 2011)

2.Tmt.R.Selvi

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.249 of 2011 pending on the file of the Judicial Magistrate Court No.I, Madurai and quash the same.

For Petitioners : Mr.K.Muthumalai

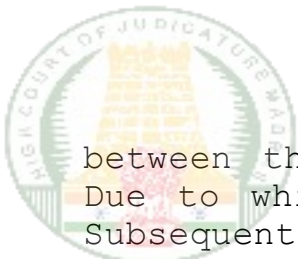
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate
(Criminal side)

For R2 : Mr.P.Santhanakrishnan

ORDER

The petitioners herein are Accused Nos.2 to 4 in C.C.No.249 of 2011 pending on the file of the Judicial Magistrate Court No.I, Madurai. Now, this Criminal Original Petition has been filed by the petitioners seeking the relief to quash the abovesaid case as illegal.

2.The case of the prosecution is that the second respondent, who is the de-facto complainant in this case, is the wife of one A.Raju [who is no more]. At the time of filing the charge sheet by the first respondent police, the said A.Raju was arrayed as first accused and the petitioners herein were arrayed as A2 to A4. On 23.05.1994, as per the wishes of elderly people, the marriage



between the said Raju and the second respondent was solemnized. Due to which, they were blessed with one daughter and one son. Subsequent to the birth of two children, the deceased A1-Raju started illegal intimacy with the second petitioner herein and thereafter, he started to treat the second respondent cruelly and abused her continuously. In the course of such ill-treatment, on 11.09.2011, at 9.00 p.m., when the de-facto complainant was in her house along with her children, the petitioners herein and the deceased Raju unlawfully entered into the house and threatened the second respondent to vacate the Village. Further, the deceased Raju/A1 assaulted her and poured kerosene on her body. The children present there begged their father to leave their mother. Accordingly, all of them jointly committed the offences punishable under Sections 498-A, 506(ii) and 294(b) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. As per the statement given by the children, viz., Hari Rakesh and Hema Dharsini, the said fact was substantiated. Hence, the first respondent police laid a charge sheet in C.C.No.249 of 2011 before the Judicial Magistrate Court No.I, Madurai, against the petitioners and the said Raju/A1. Aggrieved over the same, the petitioners/A2 to A4 have filed the present petition seeking the relief to quash the same.

3.The first and foremost contention raised by the learned counsel appearing for the petitioners is that the allegation levelled by the prosecution is only against the deceased - Raju/A1 and not against the present petitioners/A2 to A4 and therefore, facing trial by the petitioners herein will be an abuse of process of law. Therefore, he prayed for quashing of the proceedings in C.C.No.249 of 2011.

4.On the other hand, the learned counsel appearing for the second respondent submitted that prior to the alleged occurrence the deceased Raju/A1 had an illegal intimacy with the wife of the first petitioner, who is arrayed as A3 in the case pending before the Trial Court. Due to the abovesaid act, the second respondent/de-facto complainant suffered mental cruelty and therefore, the offence punishable under Section 498-A is attracted.

5.This Court heard the submissions of the learned Government Advocate (Criminal side) appearing for the State on the abovesaid submissions.

6.It is true that if the husband is in illegal intimacy with some other lady, definitely, it would cause great mental cruelty to the wife. But, in this case, the husband of the second respondent/de-facto complainant is admittedly no more. With regard to the offences committed by the deceased Raju/A1 and the second petitioner herein/A3, the same is nothing but adultery and



comes under the purview of Section 497 IPC. As of now, the first accused is no more, the offence punishable under Section 497 IPC, is not at all maintainable against A3, since she is a lady. Accordingly, for creating mental cruelty, in the instant case, the second petitioner is not at all responsible. Moreover, except the above allegation, the first respondent police have not made any allegation against the petitioners herein in the charge sheet. The charges levelled in the charge sheet are mainly on the deceased/A1.

7. In the above circumstances, it is relevant to refer the judgment of the Hon'ble Supreme Court in **Neelu Chopra and another Vs. Bharti** reported in **2010 (1) SCC (Cri) 286 : 2009 (10) SCC 184**, wherein in Paragraph No.9, it has been held as follows:

'9. In order to lodge a proper complaint, mere mention of the sections and the language of those sections is not the be all and end all of the matter. What is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence.'

8. So, considering the verdict of the Hon'ble Supreme Court, in this case also, the first respondent police does not say anything about the role played by the petitioners herein. Accordingly, filing of charge sheet against the petitioners for the offences punishable under Sections 498-A, 506(ii) and 294(b) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, is not maintainable in the eye of law. Hence, the proceedings in C.C.No.249 of 2011 on the file of the Judicial Magistrate Court No.I, Madurai, pending against the petitioners shall stand quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Madurai.

2. The Inspector of Police,
All Women Police Station,
Madurai South,
Madurai City.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AE/JC/SAR2/18.04.2018/4P/4C

Cr1.O.P. (MD) No.13722 of 2013
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