



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.18188 of 2013

and

M.P.(MD)No.1 of 2013

1.Andiappan

2.P.Bala Krishnan

... Petitioners

Vs.

S.Gurusamy

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in C.C.No.176 of 2011 on the file of the Judicial Magistrate Court No.I, Tirunelveli and quash the same.

For Petitioners : Mr.P.Pethu Rajesh

For Respondent : No Appearance

ORDER

The petitioners are shown as Accused Nos.1 and 2 in a private complaint instituted by the respondent herein. The respondent herein filed C.C.No.176 of 2011 on the file of the Judicial Magistrate Court No.I, Tirunelveli, accusing that the petitioners herein have committed the offences punishable under Section 10 of the Prohibition of Child Marriage Act, 2006 and Section 418 IPC.

2.The respondent/complainant is the father of one Mahalingam, who is working as Civil Assistant Surgeon at Tirunelveli Medical College Hospital, Palayamkottai. The daughter of the first petitioner herein viz., Gomathy @ Muthurani was given in marriage to the said Mahalingam on 25.03.2010. The case projected by the respondent herein in the impugned private complaint is that the said Gomathy @ Muthurani had not completed 17 years and that the petitioners herein have thus, contravened the provisions of the Prohibition of Child Marriage Act. The first petitioner is the father of the girl, while the second petitioner is the friend of the first petitioner, who also took part in the marriage activities.



3. Even though the respondent/complainant was served and his name appears in the cause list, he has not chosen to appear either in person or through counsel.

4. As rightly pointed out by the petitioners' counsel, the petitioners have already given a complaint and the same was registered as Crime No.4 of 2011 on the file of the Inspector of Police, All Women Police Station, Tirunelveli Town, for the offences under Sections 498-A IPC @ 498-A and 506(i) IPC and Sections 4 to 6 of Child Marriage and Registration Act, 1929. The petitioners' counsel pointed out that the respondent/complainant herein is figuring as third accused in the said case. Mahalingam, the husband of the first petitioner's daughter is figuring as A1. The police have filed final report in the said case and the same has been taken on file in C.C.No.546 of 2013 on the file of the Additional Mahila Court, Tirunelveli and the same is pending. The petitioners' counsel further contended that the present complaint has been filed purely as a counter blast and to wreak vengeance on the petitioners herein.

5. The Hon'ble Supreme Court in the decision reported in **AIR 1992 SC 604 [State of Haryana and others Vs. Ch.Bhajan Lal and others]** held that if the Court comes to the conclusion that the prosecution has been instituted to wreak vengeance, the same has to be quashed. In this case, it is seen that the respondent herein is facing prosecution and figuring as A3 in the case lodged at the instance of the first petitioner herein. When on the same set of facts, the first petitioner herein has lodged a criminal case and the same is also pending, wherein the respondent is also shown as Accused No.3, filing the present case on the same set of facts is an abuse of process of the law. Therefore, the impugned proceedings relating to C.C.No.176 of 2011 shall stand quashed. This Criminal Original Petition is allowed accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl side)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.I,
Tirunelveli.

+ 1 cc TO Mr.P.Pethu Rajesh , Advocate in SR No. 62065

smn2

AE/SV MMS/SAR3/15.05.2018/2P/3C