



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.06.2018

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD) Nos.13767 and 19756 of 2013

and

M.P (MD) .Nos.1 & 2 of 2014 and 1 & 2 of 2013

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Crl.O.P (MD) .No.13767 of 2013

1.Mumtaz Basha

2.Aneez Akhtar

... Petitioners/Accused No.2 & 3

Vs.

Dr.Farhana Sulthana

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.62 of 2013 on the file of the Judicial Magistrate No.IV, Tiruchirappalli and quash the proceedings therein, as far as the petitioners are concerned.

For Petitioners : Mr.T.Senthilkumar

For Respondent : Mr.Arulvadivel @ Sekar

Crl.O.P (MD) .No.19756 of 2013

Shakir Ali Ismail

.. Petitioner/Accused No.1

/Vs./

Dr.Farhana Sultana

.. Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.62 of 2013 on the file of the Judicial Magistrate No.IV, Tiruchirappalli and quash the proceedings against him.

For Petitioner : Mr.A.Raghunathan, Senior Advocate

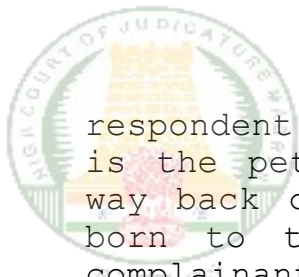
For Respondent : Mr.Arulvadivel @ Sekar

ORDER

The petitioners have filed these petitions to call for the records in C.C.No.62 of 2013 on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli and to quash the proceedings against them.

2.Heard both sides.

3.The petitioners in these two original petitions stand accused in C.C.No.62 of 2013 on the file of the Judicial Magistrate - IV, Tiruchirappalli. It is a private complaint filed by the



respondent Dr.Farhana Sultana. The first accused Shakir Ali Ismail is the petitioner in CrI.O.P.(MD)No.19756/2013. They got married way back on 07.07.1994. A girl child, namely Sarah Shaheen, was born to them on 16.11.1995. The child is presently with the complainant. All these years, the parties were residing only in Dubai.

WEB COPY

4.The complainant and her daughter came down to India on 28.03.2011. On 31.03.2011, she filed a case with the police and Crime No.14/2011 was registered with All Women Police Station, Srirangam. The case was, however, closed as mistake of fact. Aggrieved by the same, the complainant herein filed a protest petition. During the pendency of the said protest petition, the present complaint came to be filed before the Judicial Magistrate No.IV, Tiruchirappalli. Thereafter, the protest petition was withdrawn.

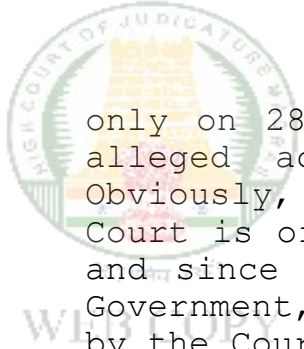
5.The learned Judicial Magistrate chose to take the complaint on file and issue summons to the accused. The accused are five in number. The first accused is the husband, the second accused is the mother-in-law, the third accused is the sister-in-law, while accused Nos. 4 and 5 happened to be the Inspector of Police and Sub-Inspector of Police, All Women Police Station, Srirangam police station. The learned Trial Magistrate took cognizance of the case only as far as the petitioners before this Court are concerned. To quash the same these petitions have been filed.

6.The learned counsel appearing for the complainant/respondent contended that the issue involves a factual investigation and that therefore the inherent powers of this Court are not to be exercised.

7.But, this Court carefully considered the rival submissions and also went through the entire materials on record. It is seen that the first accused had pronounced "Talaq" and divorced the complainant in the year 2010 itself. Whether the "Talaq" is valid or not need not detain us. This is because the complainant herself filed O.S.No.306 of 2011 before the Sub-Court, Trichirappalli, seeking dissolution of her marriage with the first accused. The said suit came to be decreed later. The articles belongs to the complainant appeared to have been returned on 22.04.2011.

8.The learned Senior counsel appearing for the accused primarily contended that the cause of action for initiating the complaint took place outside India. He further contended that in view of Section 188 of the Criminal Procedure Code, the Court below could not have taken cognizance of the complaint.

9.Section 188 of Cr.P.C reads that when an offence is committed outside India, such an offence shall not be inquired into or tried in India except with the previous sanction of the Central Government. In this case, the complainant had returned to India



only on 28.03.2011. Till then, she was in Dubai on UAE. She has alleged acts of cruelty on the part of the first accused. Obviously, they had taken place outside India. Therefore, this Court is of the view that Section 188 of Cr.P.C will come into play and since no previous sanction has been obtained from the Central Government, the impugned complaint could not have been taken on file by the Court below.

10. That apart, it is also seen that the first accused had pronounced "Talaq" on the complainant in the year 2010 itself. The same was communicated through E-mail. Therefore, this Court is of the view that the present complaint has been filed more as a counter blast.

11. The core allegation of the complainant is that the first accused is a womaniser. The complainant had enclosed materials in support of the said allegation. The Honourable Supreme Court has held that this would not by itself amount to an offence under Section 498 A of IPC. Section 498 A of IPC can be invoked only if the conduct of the accused is wilful and is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman. The conduct of the first accused would certainly not fall within the scope of the Explanation to Section 498 A of IPC. Therefore, even if all the allegations are assumed to be true, the same would not amount to an offence.

12. The learned Senior counsel appearing for the petitioners on instructions, submitted that the first accused is having $\frac{1}{2}$ share in the property, that is the subject matter of document No.136 of 2008 registered on the file of Sub Registrar, Woraiyur. According to him the first accused will not encumber the said property. It is in an unencumbered condition as of now. The $\frac{1}{2}$ share of the accused shall be settled in favour of the child on the eve of her "Nikha". The complainant shall inform the first accused about the marriage and immediately upon receipt of such communication, on the occasion of "Nikha" of their daughter, the first accused shall hand over the property documents conveying his $\frac{1}{2}$ share in the property in favour of the Child. The first accused has also filed an affidavit in this regard. The said affidavit is taken on record.

13. For all these reasons, the impugned proceedings in C.C.No.62 of 2013 on the file of the Judicial Magistrate No.IV, Tiruchirappalli is quashed. Both the criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

<https://hcservices.ecourts.gov.in/hcservices/>

Sub Assistant Registrar



1.The Judicial Magistrate No.IV, Tiruchirappalli.

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

+1CC to Mr.T.SenthilKumar, Advocate in SR.No.67923.

TM

DS/SV/SAR-4 :02.07.2018: 4P/4C

Cr1.O.P. (MD)No.19756 and 13767 of 2013
and
M.P (MD) .No.1 of 2013
12.06.2018