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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P. (MD) No.19934 of 2013

and

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

1.Fathima
2.Kabiba Begum
3.Halic Ippnu
4.Prisal Begum
5.Seeni Ahamed

... Petitioners

Vs.

T.K.Sahul Hameed

... Respondent

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the private complaint filed by the respondent in C.C.No.224 of 2013 pending on the file of the Judicial Magistrate Court No.IV, Madurai.

For Petitioners : Mr.S.M.A.Jinnah

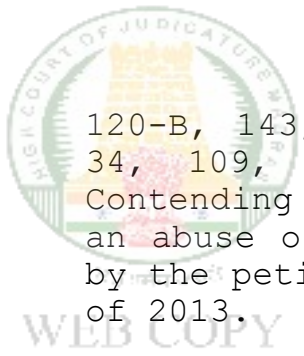
For Respondent : Mr.J.Senthilkumar

ORDER

The respondent herein has a son, by name, Rahamaduallah. The first petitioner was given in marriage to the said Rahamaduallah. The marriage between them took place on 08.03.2004. The second petitioner herein is the sister of the first petitioner. The third petitioner is the husband of the second petitioner. The fourth petitioner is the mother of the first petitioner. The fifth petitioner is a close relative. The matrimonial relationship between the first petitioner herein and the said Rahamaduallah got strained.

2.The learned counsel appearing for the petitioners submitted that the said Rahamaduallah had contracted a second marriage.

3.Be that as it may, it is the case of the first petitioner that compromise talks were conducted between both sides and the first floor of the property bearing Door No.11-A, Pillayarpalayam Road, South Gate, Madurai Town, measuring an extent of 600 sq.ft., was given to the first petitioner by way of Hibba and that she is in peaceful possession and enjoyment of the said property. Since she apprehended illegal dispossession of the property, she filed a Civil Suit in O.S.No.461 of 2012 before the District Munsif Court, Madurai, seeking the relief of permanent injunction. The said suit is still pending. In the meanwhile, the present private complaint has been instituted by the respondent herein and the same was taken on file by the learned Judicial Magistrate No.IV, Madurai, in C.C.No.224 of 2013 for the offences punishable under Sections 34,



120-B, 143, 380, 453 and 506(i) IPC against A1 to A5 and Sections 34, 109, 120-B, 166, 323 and 506(i) IPC against A6 and A7. Contending that the very institution of the present prosecution is an abuse of process of the law, this quash petition has been filed by the petitioners, who are shown as A1 to A5 in the said C.C.No.224 of 2013.

4.The learned counsel appearing for the respondent/complainant contended that the grounds urged by the petitioners in this quash petition ought to be raised only during the time of trial and that this quash petition is not maintainable. He further strongly contended that the property in question is the self-acquired property of the respondent and that it has been unlawfully occupied. He also took this Court through the factual allegations made in the private complaint.

5.This Court went through the contents of the private complaint. It is not in dispute that the respondent/complainant is residing in Puliyankudi at Tirunelveli District. However, in the complaint in question, he has averred that on 05.07.2012 he came to attend the hearing in Cr.M.P.No.335 of 2011 filed by the first petitioner herein and after attending the Court, when he went to his house, he was shocked to note that it had been locked and that the petitioners herein/A1 to A5 came from inside the house. He further alleged that he was coerced by the police personnel, who have been shown as A6 and A7 to sign in certain blank white papers. The specific allegation made in the private complaint is that the local police tried to play 'Katta Panchayat' in this matter. The respondent/complainant lodged a complaint on 09.07.2012 through registered post to the Commissioner of Police, Madurai and the same was received on 10.07.2012. Since no action was taken by the police, the impugned private complaint came to be filed on 17.07.2013.

6.As rightly pointed out by the learned counsel appearing for the petitioners, few facts are glaring on the face of it. The occurrence in question even according to the respondent, took place on 05.07.2012 and in this case, only a complaint by way of registered post appears to be sent and no steps have been taken for registering any FIR.

7.The learned counsel appearing for the respondent, however, pointed out that on the same day, information was lodged before the local police station. But, the fact remains that no steps were taken to pursue the matter. Instead, this private complaint came to be lodged a full one year later. Thus, there is a gap of one full year between the so-called occurrence and the lodging of this private complaint. As already pointed out, neither an FIR was registered in this case nor any steps were taken for conducting the police investigation. Secondly, in the private complaint, the respondent herein in Paragraph No.16, had claimed that the jewels and documents were in a Bureau in the house in question. It is beyond dispute that the respondent was not residing in the property



in question and that he is residing in Puliyangudi at Tirunelveli District. It stretches one's credulity that he could have kept his jewels and documents in the bureau in a house that is not in his occupation. This causes suspicion in the mind of this Court as regards the very veracity of the complaint.

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8. 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 allegations made in the FIR or complaint are so absurd and inherently improbable, the High Court would be justified in quashing the same. In the present case also, this Court comes to the conclusion that the averments set out in the complaint are inherently improbable and cannot be believed. Thirdly, the first petitioner is the daughter-in-law of the respondent herein. The marital relationship between the first petitioner and the son of the respondent/complainant is admitted. It is again not in dispute that the son of the respondent/complainant had left the first petitioner and is leading an independent life with another woman. Therefore, the first petitioner is entitled to have certain claims. Therefore, her stand that the property in question was given for the purpose of residing with her child that was born through the wedlock. In any event, the first petitioner has filed a Civil Suit in O.S.No.461 of 2012. The Civil Court is thus, seized of the matter. This Court can take notice of the fact that as per the statutory scheme set out in the Protection of Women from Domestic Violence Act a deserted wife is entitled to residence order. In any event, these are all matters to be adjudicated by the Trial Court in O.S.No.461 of 2012. Therefore, allowing the prosecution to continue against the petitioners herein would amount to a clear abuse of process of law. In the interest of justice, the prosecution launched in C.C.No.224 of 2013 on the file of the Judicial Magistrate Court No.IV, Madurai, shall stand quashed insofar as the petitioners are concerned. This Criminal Original Petition is allowed accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.IV,
Madurai.

SMN-2

DS/JC/SAR-2 :07.05.2018: 3P/2C