



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.01.2018

CORAM

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THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

Cr1.O.P(MD)No.3817 of 2011
and
M.P(MD)No.2 of 2011

K.Chokkalingam .. Petitioner/Accused

Vs.

1.The State of Tamil Nadu rep. by
The Inspector of Police,
All Women Police Station,
Palayamkottai, Tirunelveli District. .. Respondent No.1/
Complainant

2.C.Manohari .. Respondent No.2/
De facto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, 1973, praying to call for the records relating to the case in C.C.No.564 of 2010 on the file of the Judicial Magistrate Court No.1, Tirunelveli and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.S.Vellaichamy

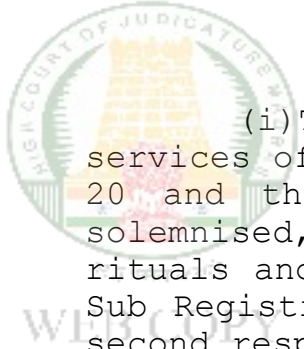
For Respondent No.1 : Mr.A.Robinson,
Govt. Advocate (Cr1. Side).

For Respondent No.2 : No appearance

ORDER

The petitioner is the sole accused in C.C.No.564 of 2010 on the file of the Court of Judicial Magistrate No.I, Tirunelveli and was the husband of the second respondent. The present petition is filed to quash the proceedings in C.C.No.564 of 2010 on the file of the Court of Judicial Magistrate No.I, Tirunelveli, in and by which, the petitioner/sole accused is facing prosecution for the alleged commission of the offences, under Sections 498-A, 506(i), 294(b) of I.P.C. and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 2002.

2.The facts leading to the filing of this petition, briefly narrated, for the purpose of disposal of this Criminal Original Petition, are as follows:

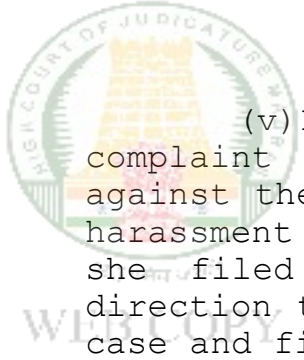


(i) The petitioner was employed as an Assistant Manager of the services of the State Bank of India, Vinayagapuram Branch, Madurai - 20 and the marriage between him and the second respondent was solemnised, on 01.02.2004, at Palayamkottai as per Hindu rites and rituals and it was also registered on the file of the office of the Sub Registrar, Tirunelveli, on 08.07.2004. The petitioner and the second respondent, after marriage, settled at Coimbatore.

(ii) The petitioner claims that his wife/second respondent is an atheist and whereas he is a strained Hindu visiting temples and therefore, she used to humiliate and castigate him, on account of the said belief. The parents of the second respondent came to Coimbatore, on 30.07.2004, and while they left, the second respondent had also gone with them, without informing the petitioner and despite repeated efforts made to bring her back, she has not turned up. The second respondent also got became pregnant and there was no "Conventional Valaikappu Function" and he was informed through telegram, on 27.11.2004, about the birth of a male child. The efforts made by the petitioner herein to join with the company of his wife became futile and after exchange of legal notices, he filed H.M.O.P.No.172 of 2005, under Section 9 of the Hindu Marriage Act, on the file of the Court of Subordinate Judge, Tirunelveli, for restitution of conjugal rights. The said petition was allowed ex parte, on 08.03.2007. Despite such an order, the second respondent failed to join with the petitioner/her husband and during pendency of the same, she has also filed a petition for transfer and it was also dismissed.

(iii) The second respondent also filed M.C.No.262 of 2007 before the Family Court, Chennai, praying for maintenance and after contest, it came to be allowed and according to the petitioner he is strictly complying with the said order by paying maintenance to his son alone, for the reason that his wife is also an employee of State Bank of India Insurance Company.

(iv) It is further stated by the petitioner that despite the order, dated 08.03.2007, made in H.M.O.P.No.172 of 2005, the second respondent did not join with his company and therefore, he filed O.P.No.2040 of 2008, under Sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, to dissolve the marriage solemnised between him and the second respondent on 01.02.2004 and prior to that, the second respondent filed O.P.No.2456 of 2007, under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights. Both petitions were taken up for joint trial by the Third Additional Family Court, Chennai and vide order, dated 27.08.2015, the petition for divorce, filed by the petitioner herein, came to be allowed and the marriage between him and the second respondent was declared to be dissolved and O.P.No.2456 of 2007 filed by the second respondent for restitution of conjugal rights, got dismissed and the second respondent did not make any challenge to the said common order and the said common order has become final.



(v) It is also the case of the petitioner that she has filed a complaint on the file of All Women Police Station, Tiruenlveli, against the petitioner, his parents and her in-laws, alleging dowry harassment and the same was refused to be registered and therefore, she filed CrI.O.P(MD)No.5459 of 2009, praying for appropriate direction to register the First Information Report, investigate the case and file the final report. Similar Criminal Original Petitions along with the said Criminal Original Petition, were taken up for disposal, by this Court and vide common order, dated 19.02.2009, all the Criminal Original Petitions were dismissed and thereafter, on the basis of the similar complaint, the above said case, came to be registered and after investigation, it has been culminated in a charge sheet and taken on file in C.C.No.564 of 2010.

3.The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed-set of documents, containing statements of witnesses and would submit that main allegations are levelled against the parents of the petitioner and in-laws of the second respondent and the first respondent police after investigation, has said that no case has been made out against the accused 2 to 5 and laid the final report only against the petitioner and would further add that the statements of the witnesses examined during investigation, primarily accused the other accused, against whom, no charge sheet has been laid and except making the mere allegation that the petitioner has attempted to set her on fire, no materials have been placed to show that the petitioner has committed the offences, for which, he has been charged. It is the further submission of the learned counsel appearing for the petitioner that the petitioner has also exhibited his good intention to join with the second respondent, by filing H.M.O.P.No.172 of 2005, under Section 9 of the Hindu Marriage Act, for restitution of conjugal rights and though it was allowed, the second respondent has failed to join with him and in so far as the maintenance case filed by her in M.C.262 of 2007 was allowed, with regard to the male child and without making any challenge, he continues to pay the maintenance and despite his best efforts to persuade the second respondent to join with him, she did not do so and left with no other option only, he filed O.P.No.2040 of 2008, seeking for divorce and the Third Additional Family Court, Chennai has recorded the categorical finding that for the past eleven years, the petitioner as well as the second respondent are living separately and the oral and documentary evidence produced by him do prove that he sustained mental cruelty in the hands of the respondent therein and despite the efforts taken by the petitioner to persuade his wife/second respondent to join with him, she did not do so and in the light of the materials placed, the present proceedings are nothing, but an abuse of process of law and prays for quashment of the same.

4.The learned counsel appearing for the petitioner, in support of his submissions, placed reliance upon the following decisions:

- (i) (2009)10 Supreme Court Cases 604 [Bhaskar Lal Sharma and another v. Monica].
 (ii) (2011)3 Supreme Court Cases 351 [Harshendra Kumar D. v. Rebatilata Koley and others].

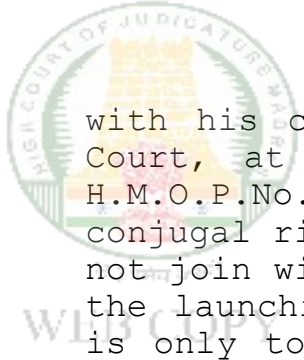
5. Though the second respondent has been served and her name appears in the cause list, there is no representation on her behalf.

6. Mr. A. Robinson, learned Government Advocate (Criminal side) appearing for the first respondent State would submit that the statements of the witnesses would prima facie disclose that the petitioner is guilty of the offences, for which, he is charged and the points urged by him, can be thrashed out during the course of trial and prays for dismissal.

7. This Court has considered the rival submissions as well as the decisions relied on by the learned counsel appearing for the petitioner.

8. The marriage between the petitioner and the second respondent was solemnised on 01.02.2004 and out of wedlock, a male child was also born and the said child is with the second respondent. It is the specific case of the petitioner that the second respondent without any justifiable cause or reason, left for matrimonial home and the parents of the second respondent had not even conducted the "Conventional Valaikappu Function" and despite the best efforts made by the petitioner, to persuade his wife to join with his company and in spite of the order, dated 08.03.2007, in H.M.O.P.No.172 of 2005, filed under Section 9 of the Hindu Marriage Act, she did not join with his company and the second respondent filed a petition for maintenance and it was ordered and in compliance of the same, he is also paying the maintenance without making a challenge to the said order. It is also brought to the knowledge of this Court that the petitioner herein also filed O.P.No.2040 of 2008 on the file of the Third Additional Family Court, Chennai, for divorce and earlier to that, the second respondent filed O.P.2456 of 2007, for restitution of conjugal rights and both petitions were taken up together for joint trial and vide common order, dated 27.08.2005, the Third Additional Family Court, Chennai, has allowed O.P.No.2040 of 2008 and granted a decree of divorce in favour of the petitioner and dismissed the petition, for restitution of conjugal rights, filed by the second respondent and no challenge has been made to both orders and thereby, those orders became final.

9. A perusal of the statement of the petitioner and other witnesses would disclose that main allegations are levelled against the in-laws and admittedly, the first respondent while filing the final report, has exonerated them and laid the charge sheet, only against the petitioner. The conduct of the petitioner would disclose that he has tried his level best to persuade his wife to join with his company and despite best efforts, she did not join



with his company and it is also brought to the knowledge of this Court, at this juncture, that it was the petitioner, who filed H.M.O.P.No.172 of 2005, at the first instance, for restitution of conjugal rights and though it was allowed, the second respondent did not join with his company. In the considered opinion of this Court, the launching of the criminal prosecution by the second respondent is only to wreck vengeance and the materials placed in support of the charge sheet, even if taken into consideration during the course of trial, would not make out a case against the petitioner for the commission of the offences, for which he is charged and in the considered opinion of this Court, the launching of criminal prosecution by the second respondent is an abuse of process of law and if it is allowed to continue, it would definitely result in miscarriage of justice.

10.Hence, for the reasons assigned above, this Criminal Original Petition is allowed and the proceedings in C.C.No.564 of 2010 on the file of the Court of Judicial Magistrate No.I, Tiruenelveli against the petitioner/sole accused, are quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Tiruenelveli.

2.The Inspector of Police,
All Women Police Station,
Palayamkottai, Tirunelveli District.

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

+1CC to Mr.V.Venkataseshan, Advocate, SR.No. 43712

ORDER MADE IN
Cr1.O.P (MD) No.3817 of 2011
and
M.P (MD) No.2 of 2011
23.01.2018

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