



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P.(MD)No.4999 of 2013

and

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

S.Ramya

... Petitioner/ Accused No. 2

Vs.

T.Indira

... Respondent/ Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.135 of 2012 on the file of the learned Judicial Magistrate No.III, Thanjavur.

For Petitioner : Mr.R.Maheswaran

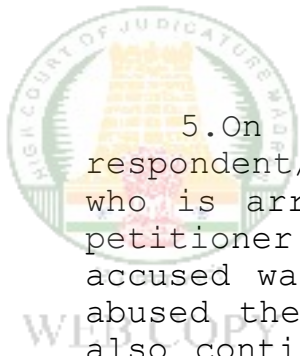
For Respondent : Mr.S.Gokulraj

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to C.C.No.135 of 2012, on the file of the learned Judicial Magistrate No.III, Thanjavur and to quash the same.

2.The petitioner herein is the second accused in C.C.No.135 of 2012, on the file of the learned Judicial Magistrate No.III, Thanjavur. The respondent/complainant, namely,Tmt.T.Indira has filed a private complaint before the learned Judicial Magistrate No.III, Thanjavur against her husband, namely, T.Sudhakar and this petitioner.

3.In the said complaint, the respondent/complainant herein alleged that her husband, who is the first accused in this case has committed the offence under Sections 497 & 498(A) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. Further, she made allegation against this petitioner that she has committed the offence under Section 497 I.P.C., After taking cognizance, when the case is posted for trial proceedings, the petitioner filed this application under Section 482 Cr.P.C., to quash the proceedings against the respondent herein.



5. On going through the entire facts of the case, the respondent/complainant alleged that after the marriage, her husband who is arrayed as A1 in this case made illegal intimacy with the petitioner herein. In these circumstances, the act of the first accused was questioned by the respondent herein, the first accused abused the respondent by using filthy language, assaulted her and also continuing his illegal contact with the petitioner herein. He has also made sexual intercourse with the petitioner.

6. The learned counsel appearing for the petitioner submitted that since the petitioner is a lady, the offence under Section 497 I.P.C., had not been attracted against the petitioner, thereby, he prays to allow this application, for which, he relied upon the Judgment of W.Kalyani Vs. State through Inspector of Police and another reported in (2012) 1 Supreme Court Cases 358, in which, our Hon'ble Apex Court held as follows:

"Only a man can be proceeded against and punished for the offence of adultery. Section 497 IPC expressly provides that the wife cannot be punished even as an abettor. Mere fact that the appellant is a woman, makes her completely immune to the charge of the adultery and she cannot be proceeded against for that offence. On the basis of allegation made in complaint, charge of wrongful restraint can also not be made out against the appellant. The High Court was in error in not allowing the quashment application filed by the appellant. The criminal proceedings insofar as the appellant is concerned, are quashed".

7. So, considering the verdict of our Hon'ble Apex Court and the factual issues seen in this case, it is to be noted that the petitioner herein arrayed as A2 in this case is a lady. Now, only allegation against this lady is that she is having sexual intercourse with the respondent's husband, after knowing that first accused is the husband of the respondent herein. Since the Hon'ble Apex Court clearly held that the offence under Section 497 I.P.C. does not attract against the ladies. Therefore, this Court came to the conclusion that the prayer sought for in the petition is justifiable and accordingly, this Criminal Original Petition is allowed and the case against the petitioner is quashed. Consequently, the connected miscellaneous petition is closed.

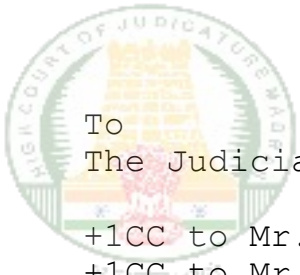
8. Since the case is pending from 2013, the learned Judicial Magistrate No. III, Thanjavur is directed to dispose of the case as expeditiously as possible, preferably within a period of four months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar



To
The Judicial Magistrate No.III, Thanjavur.

+1CC to Mr.S.Gokulraj, Advocate, SR.No. 50324

+1CC to Mr.R.Maheswaran, Advocate, SR.No. 50400

WEB COPY

Crl.O.P. (MD) No.4999 of 2013
and
M.P. (MD) No.1 of 2013

msa

AM/KK/SAR 3/07.03.2018/3P/4C