



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.02.2018

Delivered on : 28.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P. (MD) No.5017 of 2013

and

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

1.M.Duraisamy

2.P.Shanthi

... Petitioners/Accused
Vs.

1.The Inspector of Police,
Thogamalai Police Station,
Karur District.
(Crime No.134 of 2012)

...1st Respondent/Complainant

2.Eraniyammal

...2nd Respondent/Defacto 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.23 of 213 on the file of the Judicial Magistrate Court No.I, Kulithalai and quash the charge sheet and consequential further proceedings as against the petitioners.

For Petitioners : Mr.D.Shanmugaraja Sethupathi

For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

For R2 : Mr.RM.Sivakumar

ORDER

The petitioners herein are arrayed as A1 and A2 in C.C.No.23 of 2013 on the file of the Judicial Magistrate Court No.I, Kulithalai. The learned Judicial Magistrate No.I, Kulithalai, took cognizance for the abovesaid case, based on the final report filed by the first respondent in Crime No.134 of 2012. Further, the first respondent registered the abovesaid case based on the complaint given by the second respondent. Now, the petitioners herein filed this petition under Section 482 Cr.P.C. for quashing the said charge sheet pertaining to C.C.No.23 of 2013.

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2.The case of the prosecution is that 20 years back, the de-facto complainant, who is the second respondent herein, married the first petitioner. Thereafter, they do not have any child through



their matrimonial life, due to which, the father of the second respondent, had settled certain properties through a Will in favour of the second respondent. During the time of alleged occurrence, the first petitioner herein induced the second respondent by mentioning that her signature is necessary for getting a bank loan. Believing his word, the second respondent also put her signature in the Registrar Office and then only, she came to know that the first petitioner married the second petitioner and living separately. Due to which, a wordy altercation between the first petitioner and the second respondent had happened. Moreover, on 26.03.2012, at 9.00 a.m., when the petitioners came to the agricultural field and asked the second respondent to get out of the agricultural field and threatened with dire consequences, the second respondent lodged a complaint before the first respondent, due to which, a case has been registered in Crime No.134 of 2012 for the offences punishable under Sections 294(b), 420, 494 and 506(i) IPC and ultimately, a charge sheet has been filed by the first respondent for the abovesaid offences.

3.Now, in order to substantiate the claim made by the petitioners, the learned counsel appearing for the petitioners made a submission as for the offence punishable under Section 294(b) IPC, the occurrence might have happened only in a public place. But, in the case on hand, as per the case of prosecution, the offence was stated to have happened in an agricultural field owned by the first petitioner and thereby, filing the charge sheet for the offence under Section 294(b) IPC is illegal. Further, he added that for the offence under Section 420 IPC, the prosecution may say as the person committed the offence is having dishonest intention, but in this case, the settlement deed executed by the second respondent in favour of the first petitioner was properly registered. Further, for the said act, the second respondent/de-facto complaint lodged a complaint after the period of more than 10 years. Furthermore, he submitted for the offence under Section 494 IPC, it could be filed only by way of private complaint under Section 198 Cr.P.C. Further, in the charge sheet, the place and time of occurrence were not mentioned and finally, he invited the attention of this Court to the definition 'criminal intimidation', which reads as follows:

''Criminal intimidation, as defined in Section 503 IPC, is the act of threatening with intent to cause claim to a person or to cause a person to do any act which is not legally bound to do, or to omit to do any act which a person is legally entitled to do, as the means of avoiding the execution of such threat.''

and completed his submission as in the charge sheet filed by the first respondent there are lapses as stated above and thereby, the allegation leveled by the second respondent and the statement recorded from the other witnesses, do not constitute the offences as stated in the charge sheet and thereby, filing of the final report against the petitioners, is nothing but illegal.



4. On the other hand, the learned Government Advocate (Criminal side) appearing for the first respondent and the learned counsel appearing for the second respondent made a submission as the offences committed by the petitioners are all matter of evidence. The statements recorded by the Investigation Officer clearly prove and constitute the *prima facie* case for the offences committed by the petitioners. Accordingly, without full-fledged trial, exercising the inherent power of Section 482 Cr.P.C. by this Court is not necessary.

5. Before going into the merits and de-merits of this case, it is necessary to see the judgment of State of Bihar Vs. Rajendra Agrawalla reported in 1996 (8) SCC 164, in which, our Hon'ble Supreme Court has held as follows:

'5. the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged.'

6. So, accordingly, as per the verdict of our Hon'ble Supreme Court, it is necessary on the part of this Court, to see whether the complaint and other materials filed by the first respondent do not constitute the offence alleged in the face value itself.

7. Accordingly, on going through the ingredients of the First Information Report, it seems that the second respondent herein clearly mentioned the factum of prior marriage with the first petitioner and obtaining the settlement by alleging that the signature is necessary for getting loan and also she made an allegation as the second petitioner married the first petitioner without any information.

8. Admittedly, the de-facto complainant is a rustic illiterate lady and residing in a remote Village. No doubt, these types of ladies are thinking that their husbands alone are God to them. The said culture is followed in the remote Villages as mentioned above. Even after using the advance technology, now-a-days, a person, aged about 50 years and odd in a Village is having the same concept and faith in the matrimonial life. Accordingly, the allegation leveled by the second respondent that believing the words of her husband, she put her signature in the Registrar Office, for obtaining bank loan is nothing but the first petitioner intentionally induced the second respondent for obtaining the property owned by her. Furthermore, whether the petitioners is having the intention or not has to be decided only after recording evidence from the witnesses



concerned. The other offences mentioned in the charge sheet also are entirely depending upon the evidences put forth by the prosecution. This Court cannot throw out the charge sheet filed by the first respondent as the final report does not contain the basic allegation.

9. In a case of Ravindra Kumar Madhanlal Goenka and another Vs. Rugmini Ram Raghav Spinners Private Limited reported in 2009 (11) SCC 529, the Hon'ble Supreme Court has held as follows:

'18. While entertaining a petition under Section 482 Cr.P.C., the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. It is a well-settled position of law that when there are *prima facie* materials available, a person for quashing the criminal proceedings cannot be entertained. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases.'

10. So, following the principle of our Hon'ble Supreme Court in this case also, the statements given by the witnesses before the first respondent and the allegation leveled by the second respondent constitute *prima facie* case for the charges mentioned in the final report and thereby, without conducting the trial, quashing the final report is nothing but injustice to the second respondent. Hence, this Criminal Original Petition fails and the same deserves to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate No.I, Kulithalai.
2. The Inspector of Police,
Thogamalai Police Station, Karur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+One cc to Mr. Shanmuga Raja Sethupathi, Advocate, SR.No.51852

+One cc to Mr. RM. Sivakumar, Advocate, SR.No.51965

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RL/6C/4P/SV/MMS/SAR2/7/3/2018

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