



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2018

Delivered on : 07.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.9281 of 2013

and

M.P.(MD)No.2 of 2013

1.Velusamy
2.Raja Sulochana
3.Saroja
4.Selvaraj
5.Mahalakshmi
6.Kaliammal
7.Saranya
8.Ramasamy Uthamandar ... Petitioners

Vs.

1. The State Rep. by
The Inspector of Police,
All Women Police Station,
Papanasam,
Thanjavur District.
(Crime No.6/2011)

2. Shanthi ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with C.C.No.140 of 2012 pending on the file of the Judicial Magistrate Court, Papanasam, and quash the same.

For Petitioners : Mr.S.Chandrasekaran
for Mr.D.Selvanayagam

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

For R2 : Mr.P.Sesubalan

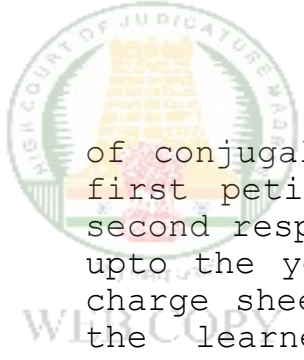
**ORDER**

Admittedly, the first petitioner herein is the husband of the second respondent, who is the de-facto complainant in C.C.No.140 of 2012 pending on the file of the Judicial Magistrate Court, Papanasam. According to the second respondent, the second petitioner herein is the second wife of the first petitioner and the other petitioners are close blood relatives of the petitioners 1 and 2. Now, this petition has been filed by the petitioners to quash the abovesaid charge sheet.

2. On going through the copy of the charge sheet, it is seen that the first respondent police laid a charge sheet against the petitioners for the offences under Sections 498(A), 494, 294(b) and 506(ii) IPC before the District Munsif-cum-Judicial Magistrate Court, Papanasam and the same was taken on file in C.C.No.140 of 2012. According to the prosecution, as of now, the said case was posted for cross-examination of P.W.1 to P.W.12. Accordingly, the chief-examination of the above witnesses were already recorded after framing the charge.

3. The first and foremost contention raised by the petitioners is that the matrimonial relationship between the petitioner and the second respondent has ended in the year 2005 itself. But, without giving the particulars with regard to lodging of the complaint before the respondent police in 2005, the second respondent herein lodged a complaint before her on 28.07.2011, for which, charge sheet has been laid on 12.07.2012. It is true that on 24.02.2005, the Inspector of Police, All Women Police Station, Papanasam, issued a summon to the first petitioner to appear for enquiry before her in respect of the complaint given by the second respondent. Except the above notice, no other documents were produced by the first petitioner in order to show the case has been registered based on the complaint given by the second respondent in the year 2005. So, mere showing the summon is not a proof to show that the second respondent left out the matrimonial home in the year 2005 itself.

4. It is an admitted fact that in the year 2007, the first petitioner herein filed a petition in H.M.O.P.No.10 of 2007 before the Principal Subordinate Court, Trichy, for the relief of restitution of conjugal rights. Thereafter, in 2011, another one petition in H.M.O.P.No.121 of 2011 was filed in the same Court, for the relief of divorce. The said application is pending as on date. Furthermore, on going through the summons issued by the District Social Welfare Officer, Thanjavur, dated 29.01.2010, it is seen that in 2009 the second respondent lodged a complaint against the first petitioner under the provisions of the Domestic Violence Act. Hence, all those documents, viz., (i) A copy of the summon issued by the District Social Welfare Officer, Thanjavur; (ii) A copy of the petition filed by the first petitioner for the relief of restitution



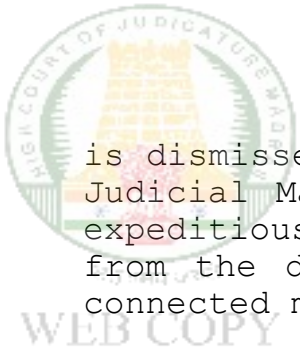
of conjugal rights; and (iii) A copy of the petition filed by the first petitioner for the relief of divorce, would show that the second respondent and the first petitioner are continuously fighting upto the year 2012 till lodging of the complaint pertaining to the charge sheet mentioned in this case. So, the contention raised by the learned counsel appearing for the petitioners that the relationship between the first petitioner and the second respondent has ended in 2005 itself, is not supported by substantial documents.

5. In the above situation, the allegations levelled by the second respondent in the complaint are all purely on the factual aspect and only upon considering the evidences given by the witnesses cited in the charge sheet alone would show that the allegation is true or not. Particularly, on going through the copy of the charge sheet, some of the witnesses were cited as eyewitnesses to the alleged occurrence. So, even the contention of the petitioners may be true one, they are having an opportunity to file an application under Section 239 Cr.P.C. for discharging them from the charges. Without availing the opportunity provided in the Statute, the petitioners herein straightaway filed this petition and asked the relief of quashing the charge sheet.

6. In **Ajay Kumar Das Vs. State of Jharkhand and another** reported in **2011 (12) SCC 319**, the Hon'ble Apex Court has held as follows:

'15. allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.'

7. Applying the ratio laid down by our Hon'ble Apex Court in the abovesaid judgment to the present case on hand, the allegation levelled by the second respondent can be sort out only by way of examining the witnesses. Furthermore, now, considering the stage of the case in the Trial Court, it is very easy to dispose of the same within a short span of time, if the petitioners co-operate with the Trial Court. Accordingly, this Court comes to the conclusion that the petitioners are not having any valid ground for quashing the case pending against them. Hence, this Criminal Original Petition



is dismissed. However, as the case is of the year 2012, the learned Judicial Magistrate, Papanasam, is directed to dispose the same as expeditious as possible, preferably within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Papanasam.
2. The Inspector of Police,
All Women Police Station,
Papanasam,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.D.SELVANAYAGAM, ADVOCATE IN SR No. 46992
+ 1 CC TO Mr.P.SESUBALAN RAJA, ADVOCATE IN SR No. 46781

SMN2

TE/KKR/SAR-2 : 15/02/2018 : 4P/6C

Cr1.O.P. (MD) No. 9281 of 2013 and
M.P. (MD) No. 2 of 2013
07.02.2018