

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22953 of 2013 and
Crl.M.P.No.1 of 2013

1.Bakiya Meenakshi
2.Govindasamy
3.Rajalakshmi

... Petitioners

Vs.

1.Devindiran
2.Krishnan
3.The State

Rep. by the Inspector of Police,
Asthampatti Police Station,
Salem.

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to allow this Crl.O.P and call for the records in connection with the order in C.M.P.No.617 of 2013, dated 22.05.2013 of the learned Judicial Magistrate No.III, Salem and set aside the same.

For Petitioners: Mr.Sakthivel for
Mr.R.Srinivas

For R1 & R2 : Mr.C.Prabakaran

For R3 : Mr.Hari Hara Arun Somasankar
Government Advocate [Crl. Side]

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ORDER

The petitioners are arrayed as accused Nos.1 to 3 on a private complaint filed by the 1st and 2nd respondents in C.M.P.No.617 of 2013, for the offences under Sections 191, 192 & 193 of IPC, which is pending on the file of the Judicial Magistrate Court No.III, Salem.

2.The case is that the 1st petitioner is the wife, the 2nd petitioner is the father-in-law and the 3rd petitioner is the mother-in-law of the 1st respondent. The 2nd respondent is the father of the first respondent. The marriage between the 1st

petitioner and the 1st respondent was held on 27.05.1999 at Sillarapatti, Dharmapuri District. Out of their wedlock they had two children viz., Poornima and Sundar. Subsequent to the marriage, the 1st respondent and his family members demanded dowry from the 1st petitioner and she was harassed and ill-treated. On several occasions, the demand was met with great difficulty by the petitioners. During one such demand on 10.03.2009, the 1st respondent has compelled the 1st petitioner to get an amount of Rs.1.5 lakhs from her father/2nd petitioner. Since the 2nd petitioner was injured and bedridden and the said demand could not be made by him immediately. Therefore, the 2nd respondent severely beaten the 1st petitioner, thereby she sustained severe injuries. Due to which, a complaint was lodged before the Kadathur Police Station, Dharmapuri District and the respondents were summoned by the police. During enquiry, the 1st respondent made incestuous allegations against the 1st petitioner. Further, the 1st respondent declared that he wanted to live with the concubine Murugammal and was not interested to run the matrimonial life with the 1st petitioner.

3.The 1st petitioner joined a course in Salem and stayed in her friends house at Kumaraswampatti East Street, Vincent, Salem and continued her studies. Even after, the 1st respondent and her family members continued the harassment to the 1st petitioner and therefore, she had lodged a complaint under Domestic Violence Act before the learned Judicial Magistrate No.III, Salem, which was taken on file as C.M.P.No.3859 of 2009 and later the said case was transferred on an administrative ground to the Additional Mahila Court, Salem and renumbered as D.V.C.No.46 of 2013. In respect of the same, the respondents filed a petition in C.M.P.No.1011 of 2013, seeking dismissal of the Domestic Violence Case filed by the 1st petitioner, on the ground that the 1st petitioner never resided in the given address. Thereafter, the case was transferred to the Court of Judicial Magistrate, Hosur on jurisdictional point.

4.Thereafter, the respondents had filed a private complaint before the learned Judicial Magistrate No.III, Salem in C.M.P.No.617 of 2013, on the ground that the 1st petitioner had furnished a false address, as though she is residing at Salem and thereby, she had committed the offences under Sections 191, 192 & 193 of IPC. The learned Judicial Magistrate No.III, Salem by an order dated 22.05.2013 directed the 3rd respondent/Inspector of Police Asthampatti Police Station, Salem to register a case against the petitioners and file a final report. Against which the present Criminal Original Petition has been filed.

5.The contention of the learned counsel for the petitioners is that the complaint given by the respondents is a malicious

prosecution, which amounts to abuse of process of Court. In C.M.P.No.3859 of 2009, the 1st petitioner stated that she was staying along with her friend in Salem, Kumaraswampatti East Street, Vincent, Salem District and in her Domestic Violence Complaint she had stated that she was residing temporarily in the said address and further stated that the said address was rented accommodation of her college friend and the complaint was given in the year 2008 and the objection was taken only in the year 2013 and by the time the 1st petitioner's friend also completed her studies and she is no longer available in the said address and there was no proof. Further submits that the case has been filed only to deter the petitioner and to heed to the dictum of the respondents.

6.The learned counsel for the respondents submits that the respondents had filed a complaint before the learned Judicial Magistrate No.III, Salem in C.M.P.No.617 of 2013, the learned Judicial Magistrate No.III, Salem. On perusal of the materials this Court has sought a report from the 3rd respondent about the verification of the address of the 1st petitioner. On receipt of the same, it is found that the 1st petitioner was not residing in the said address and hence, taking the report, the learned Judicial Magistrate has directed the 3rd respondent to register the case against the petitioners.

7.Considering the rival submissions and on perusal of the materials, it is found that even in the complaint filed by the respondents in C.M.P.No.617 of 2013, the address given by the 1st petitioner belongs to her friend and she did not continue her studies from that address as claimed by her. Except for this oral averment, there is nothing in the complaint. Further, the respondents had sought leave of the Court to produce necessary evidence to falsify the case of the petitioners.

8.From the complaint, it is seen that there is no documents annexed. Further, from the adjudication, it is seen that the case has been posted on 29.01.2013, for recording of Sworn Statement and thereafter, on 05.02.2013, the complaint of the respondents was forwarded to the 3rd respondent to investigate and register a case against the petitioners. Further awaiting progress of the investigation the case was adjourned periodically and finally, on 22.05.2013, the 3rd respondent filed a report. On perusal of the report, the learned Judicial Magistrate found that the 1st petitioner was not ordinarily residing in Kumaraswampatti East Street, Vincent, Salem - 7 and thus, came to a finding that the 1st petitioner wrongly furnished the address and had directed the 3rd respondent to register a case.

9. Further, except the complaint no other documents were produced by the respondents and there is nothing in the order to show on what basis the report was sustainable. Further the offences under Sections 191, 192, 193 are under chapter XI of IPC and as per the Chapter XIV of the Cr.P.C there is a condition requisite for initiation of proceedings under Section 195 of Cr.P.C and the same is extracted here under:-

"(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),"

10. In this case the respondents are private persons and for offence under Section 193 which is the punishing Section and there is a bar under Section 195 of Cr.P.C. to take cognizance of the offence. In view of the same, the learned Judicial Magistrate No.III, Salem is barred cannot take cognizance of the case referred to in C.M.P.No.617 of 2013.

11. In view of the above the order dated 22.05.2013 in C.M.P.No.617 of 2013 on the file of the Judicial Magistrate No.III, Salem is set aside.

12. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Joint Registrar (Judicial)

//True Copy//

Sub Assistant Registrar

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To

- 1) The Judicial Magistrate No.III,
Salem.
- 2) The Inspector of Police,
Asthampatti Police Station,
Salem.
- 3) The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.C.Prabakaran, Advocate, S.R.No.30784

Crl.O.P.No.22953 of 2013

SSV(CO)
SSM(31/07/2019).



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