

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.19454 of 2016
and Crl.M.P.No.9118 of 2016

1.Selvaraj
2.Kandasamy
3.Muthusamy

.... Petitioners/A1 to 3

Vs.

1.The Inspector of Police,
All Woman Police Station,
Kallakurichi, Villupuram District.

2.Kiruthika

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining C.C.No.21 of 2016 on the file of the Learned Judicial Magistrate, Kallakurichi, Villupuram District and quash the same by allowing this Criminal original Petition.

For Petitioners : Mr.V.R.Kamalanathan

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 : No Appearance

ORDER

This petition has been filed to call for the records pertaining C.C.No.21 of 2016 on the file of the Learned Judicial Magistrate, Kallakurichi, Villupuram District and quash the same by allowing this Criminal original Petition.

2.The learned counsel for the petitioners would submit that the petitioners are arrayed as A1 to A3. He further submits that the ingredients are not at all satisfied by the defacto complainant. Only to harass the entire family members, present case has been filed as against the petitioners. Without considering the said fact and without conducting full fledged enquiry, the first respondent laid charge sheet under Section 498(a), 294(b) and 323 I.P.C. as against the petitioners.

Further he submits that even according to the case of the prosecution, the entire occurrence took place inside the house. Therefore, Section 294(b) I.P.C. would not attract as against all the petitioners herein. So far as petitioners 2 and 3 are concerned, they are father in law of the defacto complainant and uncle of the first accused and as against them there is absolutely no allegation even as per the prosecution. There is no specific averments to make out charge for the offences under Sections 498(a), 294(b) and 323 I.P.C. In this regard, he relied upon the judgment passed in the case of Preeti Gupta and Another Vs. State of Jharkhand and Another reported in (2010) 7 SCC 667 and prayed for quashing the entire proceedings in C.C.No.21 of 2016.

3. Per Contra, the learned Additional Public Prosecutor would submit that initially the case has been registered as against the five accused persons. Thereafter the first respondent conducted enquiry and laid charge sheet as against the petitioners and arrayed as A1 to A3. The first accused is the husband, second accused is the father in law of the defacto complainant, and the third accused is the uncle of the first accused. It is seen from the statement recorded from the witnesses, all the offences clearly attract as against the petitioners and whatever the points raised by the petitioners have to be considered only during the trial. Therefore he vehemently opposed to quash the entire proceedings.

4. Heard the learned counsel for the petitioner and learned Additional Public Prosecutor for the first respondent.

5. It is seen that the first accused is the husband of the defacto complainant, second accused is the father in law of the defacto complainant and the third accused is the uncle of the first accused. The allegations as against the petitioners are that the defacto complainant got married with the first accused in the year 2012. Due to their wedlock, they also gave birth to a child. Thereafter there was harassment made by the accused persons in respect of demanding further dowry for the reason that the petitioner / the first accused wanted to get marry another woman. Therefore, the first petitioner physically tortured the defacto complainant for which the other accused persons supported. While being so, on 18.06.2014, the petitioners went to the house of the defacto complainant and scolded her family members with filthy languages and also attacked the father in law and mother in law of the first accused. Therefore, they sustained injury. Hence, the charge. It is seen from the statement recorded from the defacto complainant / victim, there are specific allegations as against the petitioners. It is also supported by the mother and father of the defacto complainant by categorical statement. Therefore,

this Court is not inclined to quash the proceedings as against the petitioners. Further, the judgment relied upon by the petitioner is with regard to power of this Court under Section 482 Cr.P.C. to quash the criminal proceedings. But it cannot be exercised in this case. Since specific averments and materials are there to make out charge as against the petitioners to proceed further in the trial. However, the petitioners are at liberty to raise all the grounds before the trial Court during the trial, and the observation made in this order will not influence the trial Court while conducting trial.

6. However, considering the age of the second and third petitioners their personal appearance is dispensed with and they shall be represented by a counsel after filing appropriate application, but they shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

7. With the above observations, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

pds/lok

To

1. The Judicial Magistrate, Kallakurichi.
2. -do- Through' The Chief Judicial Magistrate, Villupuram
3. The Inspector of Police, All Woman Police Station, Kallakurichi, Villupuram District
4. The Public Prosecutor, High Court of Madras.

+1cc to Mr.VR.Kamalanathan, Advocate SR.No.12716

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SV(CO)
GMY(26/03/2019)