

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26759 of 2015 and MP Nos.1 to 1 & 2 of 2015  
& Crl.O.P.No.23586 of 2015 and MP No.1 of 2015

J.Srinivasan ..Petitioner in Crl OP No.26759 of 2015  
J.Anjali  
K.Karunagaran  
V.Kumaravel  
K.Savitha  
R.K.Jayaraman ...Petitioners in Crl OP No.23586 of 2015

Vs.

1. The State Rep. by  
Inspector of Police,  
All Woman Police station,  
Ranipet, Vellore District

...Respondent / Complainant in both  
Crl. OPs

2. S.Gayathrilakshmi ... Respondent / Defacto complainant  
in both Crl.OPs

Common Prayer: Criminal Original Petitions have been filed under  
Section 482 of Cr.P.C. to call for the records pertaining to the  
CC No.76 of 2015 on the file of District Munsif cum Judicial  
Magistrate Court, Ranipet, Vellore District and quash the same.

For Petitioner : Mr.B.Sundarapandiyan  
For Respondent 1 : Mr.M.Mohammed Riyaz  
Additional Public Prosecutor

COMMON ORDER

These Criminal Original Petitions have been filed  
seeking to quash the proceedings in CC No.76 of 2015 pending on  
the file of the learned District Munsif cum Judicial Magistrate  
Court, Ranipet.

2. The 2nd respondent, defacto complainant had given a  
complaint to the respondent police on 22.12.2014 based on which

an FIR came to be registered on the same day for an offence under Section 498A, 406, 323, 313 and 506(2) IPC r/w. Section 4 of the Dowry Prohibition Act. The investigation was completed and a final report was also filed and the same was taken on file by the Court below.

4. The case of the prosecution is that A1 was married to the defacto complainant on 13.11.2011 and they hardly lived for 80 days together. The defacto complainant had left the matrimonial home on 06.02.2012. A1 had filed a petition in HMOP No.101 of 2012 for restitution of conjugal rights. This petition was resisted by the defacto complainant and after some time, this petition was withdrawn and A1 filed HMOP No.119 of 2014 praying for divorce. Immediately, after the filing of this petition, the 2nd respondent had given a complaint before the respondent police on 22.12.2014 by making various allegations against the accused persons.

4. The learned counsel for the petitioner submitted that even as per the counter filed by the 2nd respondent in HMOP No.119 of 2012, the 2nd respondent has not denied the fact that she lived only for 80 days with A1 and that she left the matrimonial home on 06.02.2012. The efforts taken by A1 to live together by filing a petition for restitution of conjugal rights was also contested by the defacto complainant. Therefore, left with no other option, A1 filed a divorce petition in HMOP No.119 of 2014 and the Sub-Court, Ranipet by Judgement and decree dated 22.04.2014, was pleased to dissolve the marriage between A1 and the defacto complainant.

5. The learned counsel for the petitioners further submitted that even though the 2nd respondent is said to have left the matrimonial home on 06.02.2012, she has subsequently given a complaint before the respondent police as if an incident took place on 06.12.2012 at 11.00 p.m, wherein she was attacked by the accused persons and she had informed her parents about the same and they came to the matrimonial home and had taken back the defacto complainant. The learned counsel submitted that this single fact is enough to interfere with the proceedings pending before the Court below since there are overwhelming records to show that on 06.12.2012, the defacto complainant was not there in the matrimonial home and according to her own counter, she had left the matrimonial home on 06.02.2012 itself.

6. The learned counsel appearing on behalf of the defacto complainant submitted that the decree of divorce will not have any impact on the criminal proceedings and the Court below has to be directed to proceed further with the case based on the materials available on record. In order to substantiate his

arguments, the learned counsel relied upon the judgment of the Hon'ble Supreme Court reported in 2007 12 SCC 369 [Pratibha Vs. Rameshwari Devi and others].

7. The learned counsel further submitted that the defacto complainant was subjected to cruelty by the accused persons and during her stay in the matrimonial home, she was rudely abused and was asked to bring dowry from her parents. The learned counsel concluded his arguments by submitting that there are materials to frame charges against the accused persons and there are no grounds to interfere with the proceedings at this stage.

8. The learned Government Advocate appearing on behalf of the respondent police submitted that the final report has been filed before the Court below based on the statements made by the defacto complainant and her parents which clearly make out a case against the accused persons and the accused persons must face the trial before the Court below and prove their defense.

9. This Court has carefully considered the submissions made on either side and the materials placed on record.

10. The complaint given by the defacto complainant reads as if she left the matrimonial home on 06.12.2012, not able to tolerate the cruelty meted out against her by the accused persons. However, the complaint has been given after nearly two years on 25.12.2014. There is no reason as to why there was such a long delay of two years in giving the complaint. The respondent police surprisingly had registered the F.I.R on the same day on which the complaint was given even without making a preliminary enquiry as required by the Hon'ble Supreme Court in Lalitha Kumari Vs. Government of Uttar Pradesh reported in 2013 (6) CTC 353.

11. A preliminary enquiry ought to have been conducted for two reasons. The first reason is that there was an enormous delay in giving the complaint against the accused persons and the second reason is that the issue involves a matrimonial dispute wherein the preliminary enquiry has to be conducted before an F.I.R is registered.

12. The complaint proceeds as if the 2nd respondent left the matrimonial home on 06.12.2012, due to an incident which is said to have taken place on that day and she was taken back by her parents. However, there is unimpeachable material to show that the 2nd respondent has taken a specific stand before the Sub-Court, Ranipet in her counter affidavit filed in the HMOP proceedings that she hardly lived for 80 days in the matrimonial home and that she had left the matrimonial home on 06.02.2012. When such being the case, it is highly doubtful as to whether

any incident would have taken place on 06.12.2012 as alleged in the complaint.

13. That apart, the marriage between A1 and the defacto complainant has already been dissolved by a judgement and decree dated 22.04.2015 and this Judgement has become final. As on date, A1 has already married again and he has a child. This is one more important fact that has to be taken into consideration in this case. Yet another important fact that has to be taken into consideration in this case is that there was no reason as to why it took two full years for the 2nd respondent to give a complaint against the accused persons.

14. Useful reference can be made to the judgments of the Hon'ble Supreme Court in [Thermax Limited and others Vs.K.M.Johny and others] reported in 2011 (13) SCC 412 and [Prem Kumar and another Vs. State of Rajasthan] reported in 2016 SCC online SC 923, wherein, the Hon'ble Supreme Court has held that an inordinate delay and latches on the part of the complainant can also be taken into consideration while dealing with the quash petition under Section 482 of Cr.PC.

15. It is true that certain allegations have been made by the defacto complainant and her parents against the accused persons. However, in view of the above reasons given by this Court, no useful purpose will be served in proceeding further with the proceedings before the Court below and the same will result in abuse of process of Court. Therefore, this Court is inclined to interfere with the proceedings in exercise of its jurisdiction under Section 482 of Cr.PC to ensure the ends of justice. Almost all the family members of A1 have been roped in as accused in this case without any strong materials.

16. In the result, these Criminal Original Petitions are allowed and the proceedings before the Court below in CC No.76 of 2015 is hereby quashed. Consequently, the connected miscellaneous petition is also closed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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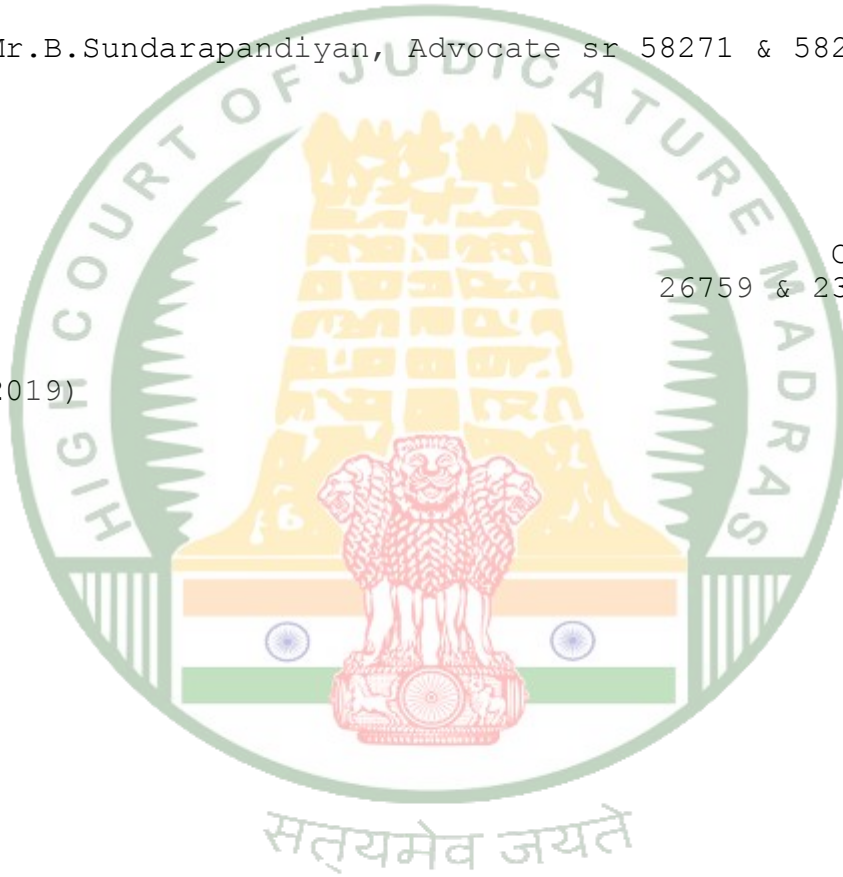
To

1. The District Munsif cum Judicial Magistrate Court,  
Ranipet, Vellore District
2. The Public Prosecutor,  
High Court, Madras.
3. The Inspector of Police,  
All Woman Police station,  
Ranipet, Vellore District

+2 CC to Mr.B.Sundarapandiyan, Advocate sr 58271 & 58272.

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26759 & 23586 of 2015

RSK(CO)  
SP(22/07/2019)



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