

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.04.2019

CORAM

THE HONOURABLE Mr.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.3591 of 2014

and

M.P.Nos.1 and 2 of 2014

1.Saravana Selvam
2.Subramani
3.Nachiyammal
4.Shanthi
5.Pandidurai

... Petitioners

Vs

1. State. represented by
The Inspector of Police,
Tambaram All Women Police Station,
Tambaram.

2.J.Vijayalakshmi

... Respondents

Prayer:

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the Criminal Proceedings in C.C.No.33 of 2014, arising out of the FIR No.18 of 2013 on the file of the Judicial Magistrate, Tambaram and quash the same.

For Petitioners : Mr.C.V.Shanmuganathan

For Respondent-1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For Respondent-2 : M/s.Va.Vu.Si.Vazhakagam

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O R D E R

This Criminal Original Petition has been filed by the petitioners seeking to quash the proceedings in C.C.No.33 of 2014, arising out of the FIR No.18 of 2013 on the file of the learned Judicial Magistrate, Tambaram.

2. The respondent police have registered a case the FIR in Crime No.18 of 2013 as against the petitioners for the offences under sections 498(A), 406 IPC.

<https://hcservices.ecourts.gov.in/hcservices/>

3. The brief facts of the case are that the defacto complainant and the 1st petitioner/1st accused are the husband

and wife. The 2nd and 3rd petitioner are the father and mother of the 1st petitioner, the 5th petitioner is the elder brother of the 1st petitioner and the 4th petitioner is the sister-in-law of the 1st petitioner and the 5th petitioner is the brother of the 1st petitioner. They got married on 06.06.2011 at UKR Kalayana Mandapam, Cheranma Nagar, Vilankurichi Road, Coimbatore, according to Hindu rites and customs. After the marriage, both of them have stayed in Coimbatore and thereafter New Perungalathur and set up their matrimonial life. Out of their wedlock, the 2nd respondent has be gotten a male child on 03.05.2012. The 1st petitioner was prevented from lifting the child and they had gone to the extent of abusing the 1st petitioner as well as his parents. Even the 1st petitioner's parents were not allowed to lift the child. Thereafter, the 2nd respondent informed the 1st petitioner over phone that he is permitted to visit the child by her parents once in two weeks. During such time, she used to abuse the first petitioner. In fact, even during the inception of marriage the 1st petitioner's in-laws used to visit the 1st petitioner's matrimonial roof and created some ugly scenes by misrepresenting to the 2nd respondent about the 1st petitioner. They had gone to the extent of blaming the 1st petitioner as impotent. The 1st petitioner and 2nd respondent continued their happy life in their absence. Thereafter, the 1st petitioner's mother-in-law has insisted the 1st petitioner to permit her to stay along with the 1st petitioner and 2nd respondent. As, due to her activity, the 1st petitioner and the 2nd respondent's matrimonial life was disturbed, and therefore, the 1st petitioner has not agreed for the same. On 23.10.2012, the 1st petitioner's in-laws have taken the 2nd respondent and also her child along with them to Coimbatore. Thereafter, the 1st petitioner has tried to contact the 2nd respondent over phone but his efforts ended in vain. All his efforts to bring back the 2nd respondent to the matrimonial life were ended in futile. Having left with no other option the 1st petitioner had filed a petition in HMOP.No.262 of 2013 on the file of Sub Court, Tambaram, seeking for restitution of his conjugal rights and the same is still pending. Therefore, none of the petitioners have not committed any adverse acts against the interest of the defacto complainant. In fact, in the complaint itself the defacto complainant has totally suppressed the pendency of HMOP.No.262 of 2013, on the file of the Sub Court, Tambaram and also the receipt of summons therein. The said complaint has been filed by the 2nd respondent only with a view to wreak vengeance on the petitioners for the reasons best known to her. Admittedly, when the 2nd respondent has been staying in her parent's house prior to delivery, the allegations in the FIR cannot be probable against the petitioners and the 2nd respondent herein only based upon some misunderstanding between herself and the 1st petitioner herein who had come forward with the allegations as found in the FIR to attack all the petitioners. The allegations as found in the FIR do not make out a case either under Section 406 (or) under section 498A IPC. The allegations is the complaint, do not make out any prima facie case under the above referred sections. Moreover, immediately after filing of HMOP.No.262 of 2013 the same was referred to Lok Adalat at the

instance of the 1st petitioner herein. Therefore, all the records in the above case would point out that the complaint made against the accused did not make out a prima facie case. When the offences itself is not made out, the proceedings with FIR is nothing but an abuse of process of law. Therefore, the complaint as it stands is liable to be rejected and the FIR deserves to be quashed. The petitioners were driven to this Court to get anticipatory bail orders in Criminal O.P.No.18912 of 2013 dated 01.08.2013 and also Crl.O.P.No.20237 of 2013, dated 12.08.2013. While the matter stood before thus, the petitioners filed a quash petition in Crl.O.P.No.472 of 2014 on the file of this Court seeking for the relief of quashing the FIR in Crime No.18 of 2013 dated 23.07.2013. During the pendency of the aforesaid quash petition, the first petitioner understood that the first respondent police at the instance and behest of the second respondent, complainant and her parents, has hurriedly filed a charge sheet before the learned Judicial Magistrate Court, Tambaram. Now, the said proceedings is numbered as C.C.No.33 of 2014 on the file of the Judicial Magistrate, Tambaram and the same was closed in Crl.O.P.No.472 of 2014, dated 02.02.2014. In fact, the petitioners came to know about the laying of the aforesaid charge sheet only at the date of hearing of the quash petition in Crl.O.P.No.472 of 2014. Immediately, the petitioners have applied for the certified copies of charge sheet and 161 statements of the defacto complainant and the witnesses. Apparently, there is no independent recording of the statements said to have been made by the witnesses and obviously the 161 statements are recorded mechanically by the first respondent. The main allegation of the defacto complainant and 161 statements of the witnesses 1 to 3 that on 12.06.2013 when the defacto complainant and her mother were pushed out by the first petitioner, 3rd petitioner and 4th petitioner herein and thereafter, the neighbours intervened and they said to have advised the petitioners 1,3 and 4. Whereas, the 161 statement of the 4th witness did not corroborate the aforesaid statements made by the defacto complainant and her parents and on the other hand, the 4th witness has categorically stated that he has no knowledge about the aforesaid incident and there will be a domestic fight between the first petitioner and the defacto complainant which is normal in family life. Further, a plain reading of the complaint 161 statements and the charge sheet on the fact of them, do not make out a prima facie case against the petitioners for having dishonestly misappropriated the alleged stridhan of the defacto complainant allegedly handed over to the petitioners so as to attract the commission of offence of criminal breach of trust punishable under section 406 IPC. The case on hand, it is a classical example of abuse of process of Court especially when the criminal proceedings initiated by the 2nd respondent'/defacto complainant is tainted with malafide and said complaint has been lodged with ulterior motive for wreaking vengeance on the accused. Hence, the petitioners have filed this criminal original petition to quash the charges framed against them.

<https://hcservices.ecourts.gov.in/hcservices/> Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the respondents

5. It is seen that the 4th petitioner is the sister-in-law of the defacto complainant. Though the allegations are vague and bald and also general, the offences under Section 420 and 406 IPC are made out as against the petitioners except fourth petitioner. There are specific allegations made out against the petitioners.

6. In view of the above discussion, the Criminal Original Petition is allowed insofar as the 4th petitioner is alone. Considering the fact that the case is of the year 2013, the learned Judicial Magistrate, Tambaram, is directed to complete the trial and dispose of the matter as against the other accused persons within a period of three months from the date of receipt of a copy of this order. The other petitioners are at liberty to raise all the points before the Trial Court. Further, the second petitioner passed away and in respect of him all the charges got abated.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Judicial Magistrate, Tambaram.
2. The Inspector of Police,
Tambaram All Women Police Station,
Tambaram.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr. C.V.Shanmuganathan, Advocate, S.R.No.33102
+1cc to M/s.Va Vu Si. Vazhakagam, Advocate, S.R.No.33000

Cr1.O.P.No.3591 of 2014
and
M.P.Nos.1 and 2 of 2014

RK(CO)

RRS (29/04/2019)

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