



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

**Crl.O.P. (MD)No.4220 of 2016
and Crl.M.P. (MD) .Nos.2125 & 2126 of 2016**

Selvi .. Petitioner/Accused No.3

Vs.

1.State rep by
The Deputy Superintendent of Police,
Samayanallur Police Station,
Samayanallur Division,
Madurai District.
(Crime No.19 of 2011) .. 1st Respondent/Complainant

2.R.Sekar .. 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of S.C.No.43 of 2016 on the file of the learned District and Sessions Judge, (Mahila Court), Madurai (Mahalir Neethimandram) and quash the charges against the petitioner.

For Petitioner : Mr.N.Ananthapadmanabhan

For Respondents : Mr.R.Anantharaj
Additional Public Prosecutor for R1

Mr.C.Vakeeswaran for R2

ORDER

This criminal original petition is filed by the petitioner challenging the charge sheet filed against her in S.C.No.43 of 2016, on the file of the District and Sessions Court (Mahila Court), Madurai.

2. The respondent Police filed a final report as against this petitioner and two others for the offence under Section 304(B) IPC and Section 4(b) of Tamil Nadu Prohibition of Women Harassment Act. The petitioner is shown as third accused. The first accused is the husband of the deceased, namely, Preetha and the second accused is



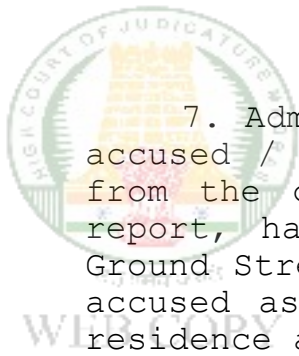
the mother-in-law of the deceased. This petitioner / third accused is the sister of the second accused.

3. The marriage between the first accused and the deceased Preetha was solemnized on 25.06.2009 in a community hall at Umachikulam. After the marriage, the first accused and the deceased lived together with the second accused / mother-in-law at Umachikulam. The deceased Preetha got conceived and in the seventh month of her pregnancy, a bangle ceremony was solemnized at the residence of the first accused. On that day, five sovereigns of jewels of the deceased kept in the Alamera was found missing. But the first accused suspected that she has given the same to her parents and creating a drama as if it was lost.

4. In the meantime, the deceased gave birth to a child. But, only after seven months, her husband / the first accused took her by arranging a separate family at Anna Nagar, Umachikulam. This petitioner is said to have made an SMS to the deceased that she should give a pledge before Pandi Muneeswarar Temple that she has not taken the jewel and also said to have demanded a sum of Rs.1,00,000/- as dowry, after the child birth, along with the other accused. On 19.01.2011, at about 06.00 pm, the deceased committed suicide by hanging. During the inquest, the Revenue Divisional Officer has conducted an enquiry and filed a report that the death was due to demand of dowry and therefore, the case originally registered under Section 174 Cr.P.C was altered into Section 304(B) IPC and in conclusion of the investigation, the Deputy Superintendent of Police, Samayanallur, filed the final report as against this petitioner / third accused, the husband of the deceased / first accused and the mother-in-law of the deceased / second accused, for the offence under Section 304(B) IPC and Section 4(B) of Tamil Nadu Prohibition of Women Harassment Act. Aggrieved, the petitioner has filed the instant petition.

5. Heard the learned Counsel appearing on either side and perused the documents placed on record.

6. The deceased was living with her husband and her mother-in-law prior to the child birth and after the child birth, was living in a separate house along with her husband at Anna Nagar, Umachikulam. There was a dispute in the family regarding missing of jewel, which was taken place eleven months prior to the occurrence. On the date of bangle wearing ceremony, the jewels kept in Alamera of the first accused's house was found missing and the first accused suspected the deceased that she would have given it to her parents and creating a drama as if the jewel was lost. This petitioner is said to have made an SMS insisting the deceased to give a pledge before Pandi Muneeswarar Temple. Apart from this allegation, there is yet another allegation that after the child birth, she along with other accused have demanded a sum of Rs.1,00,000/-, as dowry.



7. Admittedly, this petitioner, who is the sister of the second accused / mother-in-law of the deceased is living separately, away from the other accused. The investigation agency, in their final report, has referred the address of the accused 1 & 2 as Gandhi Ground Street, Umachikulam and the address of this petitioner / 3rd accused as Thirunagar. It appears they have not even verified the residence and the address is shown simply as Thirunagar.

8. Be that as it may, the allegation against this petitioner is that after the missing of the jewel, she made an SMS to the deceased Preetha to give a pledge before Pandi Muneeswarar Temple. But, the investigation agency neither recovered the phone nor collected the SMS details from the service providers. With regard to the other allegation that along with the other accused, she also demanded a sum of Rs.1,00,000/- as dowry, there is no specific averment as to when this demand was made by this petitioner.

9. There is no reference about this demand of dowry and the SMS in the first information report. During the inquest, the Revenue Divisional Officer has examined five witnesses, out of which, three witnesses have stated that there was no dowry demand, however, two witnesses have stated that they came to know about the dowry demand through the parents of the deceased. Based on this split opinion (3:2), the Revenue Divisional Officer has submitted a report that it is case of dowry death and based on that, the respondent Police has altered the offence from Section 174 Cr.P.C. to Section 304(B) IPC. During the Revenue Divisional Officer's enquiry, a reference is made as if this petitioner, her husband and her son, namely, Karthick, have disturbed the deceased over phone with regard to the missing of jewel and an SMS was also made on 03.11.2010. On the same set of evidence, the investigation agency though it fit not to add the petitioner's husband and her son as an accused, but arrayed this petitioner alone as an accused, without even verifying whether any such SMS was actually made and from whose number the SMS was made and its contents. With this bald allegation, this Court is of the view that it is not proper to allow the proceedings as against this petitioner.

10. Therefore, this Court is inclined to allow this petition and accordingly, this criminal original petition is allowed and the final report in S.C.No.43 of 2016 on the file of the learned District and Sessions Judge, (Mahila Court), Madurai (Mahalir Neethimandram), is quashed insofar as the petitioner is concerned. The case was registered in the year 2011 and the final report was also filed in the year 2014 and committed to the Court of Sessions in the year 2016. Due to the pendency of this petition, the case is still pending and therefore, the trial Court is directed to proceed with the trial in S.C.No.43 of 2016, insofar as the other accused are concerned, uninfluenced by any of the findings rendered by this Court in this petition and shall conclude the same as expeditiously as possible. In any event, not later than six months from the date



of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

TM/gk

To

1.The District and Sessions Judge, (Mahila Court),
Madurai.

2.The Deputy Superintendent of Police,
Samayanallur Police Station,
Samayanallur Division,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.N.ANANTHAPADMANABAN, Advocate (SR-61604[F] dated
22/04/2019)

+1 CC to M/s.C.VAKEESWARAN, Advocate (SR-61605[F] dated
22/04/2019)

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JMN(28.01.2020) 4P : 6C