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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P. (MD)No.3226 of 2018

and

CrI.M.P. (MD).Nos.1507 and 1508 of 2018

Sivaperumal

... Petitioner /Accused

-Vs-

1.Valli

... 1st Respondent/complainant

2.The State Represented by,
The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.

...2nd Respondent/Defacto
Complainant

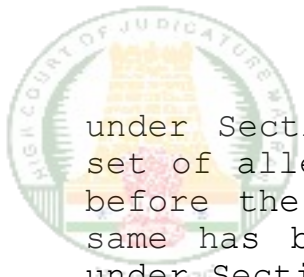
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the Charge in C.C.No.02 of 2017 pending before the Judicial Magistrate Vedasanthur, Dindigul District, under Section 494, 498(A) and 506(i) of IPC and quash the same.

For Petitioner	: Mr.K.Krishna
For 1 st Respondent	: Mr.S.Prabha for S.Gokul Raj
For 2 nd Respondent	: Mr.K.Suyambulinga Bharathi Government Advocate(crl.side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.02 of 2017 on the file of the Judicial Magistrate, Vedasanthur, Dindigul District.

2.The learned counsel appearing for the petitioner would submit that the petitioner got married with the first respondent on 18.06.2006, due to misunderstanding between them, she got separated. He further submitted that the first respondent has also filed a petition seeking relief of restitution of Conjugal rights in H.M.O.P.No.46 of 2015 before the Sub Court, Vedeasanthur. The said petition was allowed and the petitioner appeared before the said Court and ready to live with the first respondent. Even though the first respondent has not come forward to live with the petitioner. While being so, the first respondent lodged a complaint with a false allegations and the same has been registered on the file of the second respondent in Crime No.12 of 2017 for the offences punishable

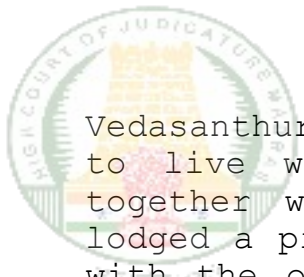


under Sections 498(A) of IPC. Thereafter again with the very same set of allegations, the first respondent lodged a private complaint before the very same Magistrate in Cr.M.P.No.3467 of 2016 and the same has been taken on file in C.C.No.2 of 2017 for the offence under Sections 494, 498(A) and 506(i) of IPC. Therefore, on the very same set of allegations, they could not frame two charges as against the petitioner. It amounts to lodging of two allegations which abuse of process of Court and therefore, he sought for quashment of entire proceedings.

3.Per contra, the learned Government Advocate (Crl. Side) appearing for the second respondent police has submitted that on the complaint lodged by the first respondent, a case has been registered against the petitioner in Crime No.12 of 2017 for the offence under Section 498 IPC on 06.05.2017. After concluding the investigation, charge sheet has been filed and it was taken on file in C.C.No.289 of 2017 on the file of the Judicial Magistrate, Veda sandhur. In so far as the private complaint is concerned, the first respondent lodged a complaint before the Judicial Magistrate, Veda sandhur in Cr.M.P.No.3467 of 2016 and the same has been taken on cognizance in C.C.No.2 of 2017 for the offences under Sections 494, 498(A) and 506 (i) IPC. He further submitted that under Section 210 Cr.P.C there is absolutely no bar for the defacto complainant to lodge two complaint and it can be simultaneously tried by the trial Court and also relied upon the judgment of the Honourable Supreme court of India held in Crl.A.No.1830 of 2010 dated 22.09.2010.

4.The learned Counsel appearing for the first respondent would submit that the petitioner got married with the first respondent in the year 2003. Thereafter, due to cruelty, she was driven out from the matrimonial home. Immediately, she has filed petition seeking relief of restitution of Conjugal rights in H.M.O.P.No.46 of 2015 before the Sub Court, Veda sandhur in which the petitioner appeared before the said Court and undertook to live with the first respondent but, he has not come forward to live with the first respondent. Therefore, she lodged a complaint before the second respondent and the same has been registered in Crime No.12 of 2017 on 06.05.2017 for the offences under Section 498(A) IPC. He further submitted that the first respondent was constrained to lodge a private complaint in Cr.M.P.No.3467 of 2016 and the same has been taken on file in C.C.No.2 of 2017 for the offence under Sections 494, 498(A) and 506(i) of IPC as against the accused persons since the petitioner got married with the another women. Therefore, the petitioner filed the present petition only for dragging the issue but, nothing else therefore, dismissal of this petition.

5.The petitioner is an accused and he got married with the first respondent in the year 2003. Thereafter there was misunderstanding between them and as such they got separated. The first respondent filed a petition seeking restitution of conjugal rights in H.M.O.P.No.46 of 2015 on the file of the Sub Court,



Vedasanthur. Pendency of this petition, the petitioner undertakes to live with the first respondent. Even then he did not join together with the first respondent and on other allegations she lodged a private complaint alleging that the petitioner got married with the other accused. Therefore, he lodged a private complaint before the Judicial Magistrate, Vedasanthur in Cr.M.P.No.3467 of 2016, after recording evidence the learned judicial Magistrate taken cognizance in C.C.No.2 of 2017 for the offence under Section 494, 498(A) and 506(i) IPC as against the accused persons. In so far as the other complaint is concerned, she lodged a complaint before the second respondent and the same has been registered in Crime No.12 of 2017 for the offence under Section 498(A) of IPC as against the petitioner. Now, the second respondent completed the investigation and file a final report and it has been taken cognizance in C.C.No.289 of 2019 on the file of the Judicial Magistrate, Vedasanthur, for the offence under Section 498(A) IPC.

6.The learned Government Advocate (Crl. Side) has also relied upon the judgment of the Honourable Supreme court of India held in Crl.A.No.1830 of 2010, dated 22.09.2010, wherein Para 22, 23, 24, 25 are as follows:

"22.Section 210 Cr.P.C. Provides the procedure to be followed when there is a complaint case and police investigation in respect of the same offence. Sub-Section (1) of Section 210 provides that when in a case instituted otherwise than on a police report, namely, a complaint case, the Magistrate is informed during the course of inquiry or trial that an investigation by the police is in progress in relation to the offence which is the subject matter of inquiry or trial held by him, the Magistrate is required to stay the proceedings of such inquiry or trial and to call for a report on the matter from the police Officer conducting the investigation. Sub Section (2) provides that if a report is made by the Investigation Officer under Section 173 and on such report cognizance of any offence is taken by the Magistrate against any person, who is an accused in a complaint case, the Magistrate shall inquire into or try the two cases together, as if both the cases had been instituted on a police report. Sub Section (3) provides that if the police report does not relate to any accused in the complaint case, or if the Magistrate does not take cognizance of any offence on a police report, he shall proceed with the inquiry or trial which was stayed by him, in accordance with the provisions of the code.



23.Although, it will appear from the above that under Section 210 Cr.P.C., the Magistrate may try the two cases arising out of a police report and a private complaint together, the same, in our view, contemplates a situation where having taken cognizance of an offence in respect of an accused in a complaint case, in a separate police investigation such a person is again made an accused, then the Magistrate may inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report. That, however, is not the fact situation in the instant case, since the accused are different in the two separate proceedings and the situation has, in fact, arisen where prejudice in all possibility is likely to be caused in a single trial where a person is both an accused and a witness in view of the two separate proceedings out of which the trial arises. In our view, this is a case where the decision in Harjinder Singh's case (supra) would be more apposite. In the said case, the question of Article 20(2) of the Constitution, as well as Section 300 Cr.P.C., relating to double jeopardy was considered. A similar situation has arisen in this case where the version in the complaint case and the police report are totally different, though, arising out of the same incident. In our view, this is a case where the two trials should be held simultaneously but not as a single trial.

24.The facts of the case also warrant that the two trials should be conducted by the same Presiding Officer in order to avoid conflict of decisions. As was observed in Harjinder Singh's case (Supra) clubbing and consolidating the two cases, one a police challan and the other on a complaint, if the prosecution versions in the two cases are materially different, contradictory and mutually exclusive, should not be consolidated but should be tried together with the evidence in the two cases being recorded separately, so that both the cases could be disposed of simultaneously.

25.Although, the High Court has relied on the provisions of Section 210 of the Code in directing that the two cases be clubbed together, in our view, the fact situation does not really attract the provisions contemplated in the said section. On the other hand, as indicated hereinabove, the trial Court, in the unusual facts of the case, is



required to hear the two cases together, though separately, and take evidence separately, except in respect of all witnesses who would not be affected either by the provisions of Article 20(2) of the Constitution or Section 300 Cr.P.C."

7.The Honourable Supreme Court of India has held that under Section 210 Cr.P.C the Magistrate may try the two cases arising out of a police report and a private complaint together. In the case on hand on the complaint lodged by the first respondent before the Magistrate under the circumstances taken cognizance for the offence under Section 494 and 506(I) IPC. In so far as the other complaint lodged before the second respondent and the same has been registered under Section 498(A) IPC in Crime No.12 of 2017 and now charges laid and the same has been taken on file in C.C.No.289 of 2019. Therefore, the above judgment relied upon by the learned Government Advocate (Crl. Side) is squarely applied to this case.

8.In view of the above discussion, this petition cannot be considered and it is liable to be dismissed.

9.Accordingly, this criminal original petition is dismissed. However, the trial Court is directed to conduct trial separately and take evidence separately except in respect of all witnesses who would not be affected either by the provisions of Article 20(2) of the Constitution or Section 300 Cr.P.C., and to complete the investigation within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Crl.M.P.(MD). Nos.1507 and 1508 of 2018 are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate,
Vedasanthur,
Dindigul District.

2.The Inspector of Police,
All Women Police Station,
Vadamadurai,
Dindigul District.



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

+1 CC to Mr.K.KRISHNA, Advocate (SR-88444[F] dated 23/09/2019)

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