



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP (MD) Nos.15843 & 20499 of 2014

and

MP (MD) Nos.1 & 1 of 2014

Crl OP (MD) No.15843 of 2014 :

1.V.Karthikeyan

2.K.Vijayarajan @ Santhanam

3.V.Padmavathy

... Petitioners / A1 to A3

Vs.

1.The Inspector of Police,
All Women's Police Station,
Tirupparankundram,
Madurai (Rural).

... Respondent / Complainant

3.Narmatha Nachiar

... Respondent / Defacto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned FIR in Crime No.13/13 on the file of the Inspector of Police, All Women Police Station, Tirupparankundram, Madurai and quash the same.

For Petitioners : Mr.K.R.Laxman

For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1

Mr.D.Sadiq Raja for R2

Crl OP (MD) No.20499 of 2014 :

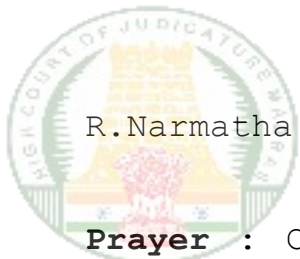
1.V.Karthikeyan

2.K.Vijayarajan @ Santhanam

3.V.Padmavathy

... Petitioners / A1 to A3

Vs.



R.Narmatha Nachiar

... Respondent / Defacto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned Domestic Violence Petition in M.C No.11 of 2014 (DVA No.5256 of 2012) on the file of the Additional Mahila Judge, Madurai and quash the same.

For Petitioners : Mr.K.R.Laxman

For Respondent : Mr.D.Sadiq Raja

COMMON ORDER

These criminal original petitions have been filed to quash the FIR registered at the instance of the second respondent herein and the proceedings filed by her under the provisions of Protection of Women from Domestic Violence Act, 2005.

2.The first petitioner Karthikeyan got married to the second respondent on 20.08.2004. A girl child was born through the said wedlock in the year 2006. The relationship between the parties came under strain. According to the accused, the second respondent was living separately since 2009. It is not in dispute that Karthikeyan filed HMOP No.234 of 2012 on the file of the Sub Court, Melur on 29.05.2012. Summons were served on the defacto complainant sometime in May 2012. The impugned FIR came to be lodged only on 06.02.2013. It was registered as Crime No.100 of 2013 on the file of the Omachikulam Police Station. Later, it was transferred to AWPS, Thirupparankundram as Crime No.13 of 2013 for the offences under Sections 498 A, 406 and Section 4 of Dowry Prohibition Act and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The defacto complainant also filed MC No.11 of 2014 (DVA No.5256 of 2012) on the file of the Additional Mahila Court, Madurai against her husband and parents in law.

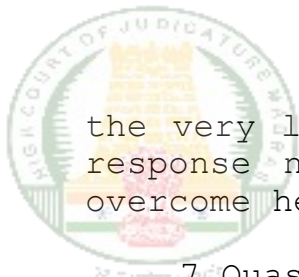
3.The contention of the petitioner's counsel is that lodging of FIR is a clear counter blast to the husband having instituted a divorce O.P. He also would point out that a Scorpio car was gifted on the occasion of the marriage and that the same was taken back by the defacto complainant. The said car appears to have been involved in an accident in the year 2012. The car did not have insurance coverage during the relevant time. MCOP was filed by the claimants. Since the defacto complainant was shown as the registered owner in the records, she was made as a party in the MCOP proceedings and she had been served with notice. In order to overcome her liability, she has chosen to lodge the present FIR as if the car was throughout in the custody and possession of Karthikeyan, the first petitioner herein.



4. Per contra, the learned counsel appearing for the defacto complainant as well as the learned Government Counsel would submit that the quash petition has been filed immediately after the registration of the FIR. The learned counsel for the defacto complainant drew my attention to the decision of the Hon'ble Supreme Court reported in 1992 Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal) and contended that since there are prima facie materials against the petitioner, this Court should allow the investigation to take off and not frustrate the same at the very inception. He placed reliance on the report given by the Protection Officer, Madurai which prima facie indicates the commission of cruelty by the petitioners herein.

5. When the learned counsel for the accused wanted to rely on the judgment of this Court confirming the decree of divorce, the counsel for the defacto complainant submitted that the said order was passed only very recently and that the defacto complainant intends to move the Hon'ble Supreme Court by filing SLP. His firm contention is that the inherent powers of this Court do not deserve to be invoked in this case.

6. I carefully considered the rival contentions and perused the materials on record. The dates would speak for themselves. The marriage between the parties took place in the year 2004. Child was born in the year 2006. The parties appear to have separated in the year 2011. What is beyond dispute is that the first petitioner Thiru. Karthikeyan filed HMOP No. 234 of 2012 before the Sub Court, Melur on 29.05.2012. Only after receiving the summons in the said HMOP, the defacto complainant filed DVA No. 5256 of 2012. The impugned FIR was admittedly registered only in February 2013. I carefully went through the contents of the FIR. The entire thrust appears to be more regarding the Scorpio car than anything else. Of course, the defacto complainant had stated that she was subjected to dowry demand and cruelty. But then, the burden of song is primarily on the scorpio car. From this, one can come to the conclusion that the registration of the FIR was more a fallout of the accident involving the said car. In fact, in the FIR itself, there is a clear mention about the said accident and filing of the MCOP by the claimants. It is true that an FIR is not an encyclopedia. But then, this principle can be applied only when the information lodged is immediately after the occurrence. But, in this case, the FIR itself came to be lodged some eight months after the occurrence. The divorce petition was filed by the husband. Therefore, the fact that the FIR is blissfully silent and vague with regard to the dates and particulars, is a fact, that will have to be necessarily taken note of by this Court. There is not even a single line in the said FIR as to how money was demanded by the accused as dowry and when the dates on which the said demand was made. The defacto complainant has also not set out as to how she was being cruelly treated. Therefore, I can come to the safe conclusion that



the very lodging of this FIR is a mere counter blast. It is in response not only to the filing of HMOP but also an attempt to overcome her liability in the said MCOP proceedings.

7. Quashing the impugned FIR alone would serve the ends of justice. In this view of the matter, the FIR impugned in Crl OP(MD) No.15843 of 2014 stands quashed and Crl OP(MD) No.15843 of 2014 stands allowed. As regards Crl OP(MD) No.20499 of 2014, the defacto complainant seeks several reliefs against the petitioner. She is seeking maintenance not only for herself but also for the child. She also claims that jewellerys and other articles yet to be returned. I am of the view that this is a matter for enquiry. The petitioners in Crl OP(MD) No.20499 of 2014 will have to establish their defence before the court below. Crl OP(MD) No.20499 of 2014 stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
All Women's Police Station, Tirupparankundram,
Madurai (Rural).
2. The Additional Mahila Court Judge, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2CC TO MR.K.R.LAXMAN, Advocate Sr. No.89172 & 89173

+2CC TO MR.TCS.THILLAINAYAGAM, Advocate Sr. No. 88931 & 88932

Crl OP(MD) Nos.15843 & 20499 of 2014
and

MP(MD) Nos.1 & 1 of 2014

23.09.2019

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