



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.16407 of 2014  
and  
Cr1 MP(MD)No.1 of 2014

1.P.R.Manikandan

2.R.Rajammal

3.R.Balaguruswamy

4.R.Rajendran

5.B.Subha

6.R.Rajeswari

7.A.Packialakshmi

... Petitioners / Accused 1-7

Vs.

1.R.Swathika Devi

... Respondent /  
Defacto Complainant

2.State, rep.by

The Inspector of Police,  
Thirunagar Police Station,  
Madurai District.  
Cr.No.225 of 2014

... Respondent / Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to Crime No.225 of 2014 on the file of the respondent police, and to quash the same.

For Petitioner : Mr.T.Selvam

For Respondents : Mr.T.R.Jeyapalam for R1

Mr.A.Robinson,  
Government Advocate (crl.side) for R2

**ORDER**

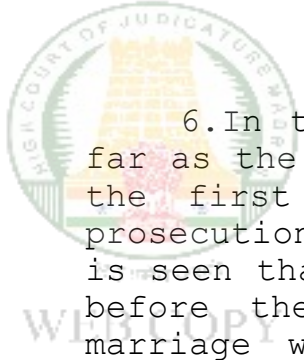
The first petitioner P.R.Manikandan got married to one R.Swathika Devi on 24.05.2010. They separated from each other in the year 2012. Swathika Devi was pregnant at the time of separation. A male child was born on 02.10.2012. Swathika Devi gave a complaint against her husband and in-laws in the year 2013. This appears to have enraged the first petitioner. The first petitioner had trespassed into the house of the defacto complainant and after assaulting her mother, had said to have forcibly taken away the child. In this regard, Crime No.225 of 2014 was registered on the file of the Thirunagar Police Station for the offences under Sections 452, 323, 363 and 109 IPC. To quash the same, this criminal original petition has been filed.

2.Heard the learned counsel on either side.

3.The learned counsel appearing for the petitioners submitted that the impugned FIR has to be quashed. He submitted that a father of a child cannot be charged with the offence of kidnapping his own child and that inclusion of the said offence under Section 363 of IPC is clearly not maintainable.

4.Before discussing the matter further, I may straightaway note that filing of this FIR against the petitioners 2 to 7 appears to be wholly unjustified. The second petitioner Rajammal is the mother of the first petitioner. The third petitioner and the fourth petitioner are the brothers of the first petitioner. The fifth petitioner is the wife of the third petitioner. The sixth petitioner is the wife of the fourth petitioner. Packialakshmi, the seventh petitioner is the sister in law. The cause of action for registering the impugned FIR is for the act of trespassing and taking away the child which can be attributed only to the first petitioner herein. Therefore, the impugned FIR deserves to be quashed insofar as the other accused are concerned.

5.The first petitioner though the father of the child in question could not have entered the house which belongs to the mother of the defacto complainant. This is all the more so because of the relationship between the first petitioner and the defacto complainant had already come under strain. They had separated in the year 2012 itself. The complaint was lodged by the defacto complainant against the first petitioner in May 2013. Therefore, in this background, the act of forcible taking if true, cannot be condoned. Whatever the rights which the petitioner may have had against the child could have only been exercised through a legal process. The petitioner cannot take the law in his own hands. Of course, this is only a prima facie conclusion rendered by this Court based on a reading of the impugned FIR. Merely because such an observation has been made by this Court, this will not be put against the petitioner.



6. In this view of the matter, this petition stands allowed as far as the petitioners 2 to 7 are concerned and dismissed as far as the first petitioner is concerned. Accordingly, the impugned prosecution is quashed as far as the petitioners 2 to 7 herein. It is seen that the defacto complainant had filed HMOP No.918 of 2015 before the Family Court, Madurai seeking dissolution of her marriage with the first petitioner herein and in the said O.P Swathika Devi had taken out two I.As. One is for return of article and other is for return of her certificates. The defacto complainant is said to be working in a private hospital. Her career and future are critically depending on the outcome of these two interlocutory applications. It is seen that even though a direction has been given for the conclusion of the said case, it is still not yet concluded. The learned counsel appearing for the defacto complainant would clearly blame the first petitioner for the dragging on the case. Be that as it may, without going further into the merits of the case, I direct the Family Court Judge, Madurai to conclude the enquiry in I.A Nos.378 of 2017 and I.A No.511 of 2016 and also the trial in HMOP No.918 of 2015 and conclude the same positively within a period of three months from the date of receipt of a copy of this order. The learned Family Court Judge, Madurai is directed to submit a compliance report to the Registry.

7. With this direction, this criminal original petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Family Court Judge, Madurai.
2. The Inspector of Police, Thirunagar Police Station, Madurai District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.T.R.JEYAPALAM, Advocate ( SR-86468[F] dt.13/09/2019 )

+1 CC to M/s.T. SELVAM, Advocate ( SR-86757[F] dated 16/09/2019 )

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