



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Date : 10/09/2019

PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

CRL OP(MD). No.8675 of 2014 and
M.P.(MD)Nos.1 and 2 of 2014

1. Syed Mohamed Ibrahim,
S/o.Kadher Batcha, 1/69 Al Ameen Nagar,
8th Main Road, K.Pudur, Madurai.

2. Noorjahan Beevi,
W/o.Kadher Batcha, 1/69 Al Ameen Nagar,
8th Main Road, K.Pudur, Madurai.

3. Kadher Batcha,
S/o.Mohamed Ibrahim, 1/69 Al Ameen
Nagar, 8th Main Road, K.Pudur, Madurai.

4. Ajmeer Kaja,
S/o.Kadher Batcha, 1/69 Al Ameen Nagar,
8th Main Road, K.Pudur, Madurai.

... Petitioners/Accused Nos.1 to 4

Vs

1. The State rep by
Inspector of Police,
All Women Police Station, Theni
Cr.No.17/2013.

... Respondent/Complainant

2. Jennathul Sulbia,
W/o.Jahir Hussain, Vagampulai Street,
Thenkarai, Periyakulam, Theni Dist.

...2nd Respondent/Defacto Complainant

PRAYER :-

Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records relating to the Charge Sheet in C.C.NO.619/2013 on the file of the Judicial Magistrate, Theni and as illegal in so far as the petitioners are



concerned.

For Petitioners : Mr.J.Sulthan Basha,
for M/s.Ajmal Associates.

For R-1 : Mr.A.Robinson,
Government Advocate (Crl.Side).

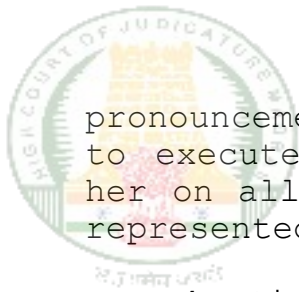
For R-2 : Mr.R.Karunanithi

ORDER : The Court made the following order :-

The defacto complainant is the wife of the first petitioner herein. The marriage between them was solemnized on 27.09.2010. The marital relationship came under strain. The first petitioner is said to have sent Talak notice to the defacto complainant.

2. Be that as it may, the second respondent lodged an information with All Women Police Station, Theni, alleging the commission of cruelty on the part of the first petitioner herein. The matter was investigated and final report was filed before the Judicial Magistrate, Theni. Cognizance of the offences under Sections 406, 498(A), 494, 294(b) and 506(i) of I.P.C., and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and Section 4 of the Dowry Prohibition Act was taken in C.C.No.619 of 2013. In this case as many as seven persons were named as accused. Accused No.5 is said to be the second wife of the first accused, while accused Nos.6 and 7 are the parents of accused No.5. Since contracting second marriage by a male Muslim cannot be an offence attracting Section 494 of I.P.C, the proceedings stand totally quashed in so far as accused Nos.5 to 7 are concerned. Likewise, the petitioners herein also cannot be fastened with the charge under Section 494 of I.P.C. But then, there are *prima facie* averments against the first petitioner and the second petitioner in respect of other offences. Therefore, the petitioner's counsel submitted that petitioners 1 and 2 would not press this petition and that they would rather face the trial and establish their innocence.

3. However, I am of the view that there are no materials against petitioners 3 and 4 herein. Therefore this Criminal Original petition is allowed in toto as far as Kadher Batcha/third petitioner and Ajmeer Kaja/fourth petitioner are concerned. Syed Mohamed Ibrahim/first petitioner and Noorjahan Beevi/second petitioner will have to face the trial in C.C.No.619 of 2013 on the file of the Judicial Magistrate, Theni, for all the charges except Section 494 of I.P.C. Taking note of the age and background of Noorjahan Beevi/second petitioner, her personal appearance is dispensed with. She will have to appear in person before the Court below only at the time of answering the charge, answering the



pronouncement of Judgment. The second petitioner of course will have to execute a special Vakalat authorising her counsel to represent her on all hearing dates. In other words, Noorjahan Beevi can be represented through her counsel.

4. Since C.C. is of the year 2013, the learned trial Judge is directed to conclude the entire trial within a period of four months from the date of receipt of a copy of this order. The Criminal Original petition stands partly allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

TO

1. The Judicial Magistrate,
Theni.
2. The Inspector of Police,
All Women Police Station, Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to M/S.AJMAL ASSOCIATES , Advocate SR.No.86318

+1 cc to Mr.R.Karunanithi , Advocate SR.No.86370

pmu

ORDER

IN

CRL OP(MD) No.8675 of 2014 and

M.P.(MD) Nos.1 and 2 of 2014

Date : 10/09/2019

KM/ (27.09.2019) 3P 6C