



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.10.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P. (MD)Nos.11129, 12629 and 17536 of 2015 and
M.P. (MD)No.1,1,1,2 & 2 of 2015

CRL.O.P. (MD)No.11129 of 2015

Noordeen

... Petitioner/Accused No.6

Vs.

1. State rep. by,
The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.

... 1st Respondent/Complainant

2. Basha Begum

... 2nd Respondent/
Defacto complainant

3. The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.

... 3rd Respondent

(R-3 is impleaded vide order dated 04.09.2015
in M.P. (MD)No.3 of 2015)

PRAYER : Criminal Original petition filed under Section 482 of Cr.P.C., to call for the records in Crime No.207 of 2015 pending on the file of the Inspector of Police, Melapalayam police station, Tirunelveli District and quash the same.

CRL.O.P. (MD)No.12629 of 2015

Rafiq

... Petitioner/Accused No.1

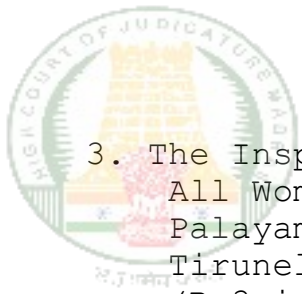
Vs.

1. State rep. by,
The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.

... 1st Respondent/Complainant

2. Basha Begum

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Defacto complainant



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CRL.O.P. (MD) No.17536 of 2015

1. V.A.S.Khaja Mohideen
2. V.A.K.Sulthan
3. S.K.Zarima
4. K.Gutha Mohammed

... Petitioners/Accused Nos.2 to 5

Vs.

1. State rep. by,
The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.
(Crime No.207 of 2015)

... 1st Respondent/Complainant

2. R.Basha Begum

... 2nd Respondent/
Defacto complainant

PRAYER : Criminal Original petition filed under Section 482 of Cr.P.C., to call for the records in Crime No.207 of 2015 pending on the file of the Inspector of Police, Melapalayam police station, Tirunelveli District and quash the same.

(in all Crl.O.Ps.)

For Petitioners : Mr.N.Mohideen Basha
in Crl.O.P.(MD) Nos.11129 &
12629 of 2015

Mr.R.Anand
in Crl.O.P. (MD) No.17536 of 2015

For R-1 & R-3 : Mr.A.Robinson,
Government Advocate (Crl. Side)

For R-2 : Mr.M.Sathiamoorthy



O R D E R

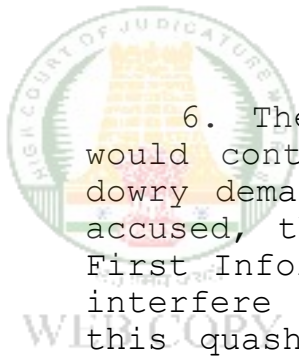
Heard the learned counsel on either side.

2. The petitioners are accused in crime No.207 of 2015 registered on the file of the Melapalayam police station, for the offences under Sections 294(b), 498(A) and 506(ii) of I.P.C.

3. One Basha Begum is shown as the second respondent in these criminal original petitions. The specific case of the defacto complainant is that she is a resident of Gnaniyarappa Big street in Melapalayam. Accused No.1 Rafiq is also a resident of the very same street. The specific allegation of the defacto complainant is that accused No.1 Rafiq was in love with her and that he had sexual intercourse with her in the year 2001 and that as a result she became pregnant. Since her pregnancy will come in the way of marriage, the conception was aborted on 27.04.2001 in a private hospital at Chennai. The defacto complainant would further claim that on 16.09.2002, the marriage was solemnized between her and accused No.1 Rafiq before the marriage Registrar in Palayamkottai in the presence of the witnesses. The defacto complainant states that accused No.1 thereafter left for overseas employment and returned in the year 2009. When the defacto complainant wanted to rejoin accused No.1, it was prevented by the other accused. Therefore, the defacto complainant lodged a complaint before the Deputy Commissioner of Police, Tirunelveli City, on 02.03.2009. Thereafter, she tried to seek resolution of the issue by moving the local Jamath. Accused No.5 who is the Jamath President prevented her from making complaint. The first accused once again left for overseas employment and returned in the year 2012. When the defacto complainant went back to accused No.1, again accused Nos.2 to 6 assaulted the defacto complainant. Accused No.1 after leaving India returned from his overseas employment in the year 2014. The first accused had clearly stated that when his parents were not in favour of the marriage, the defacto complainant cannot join him.

4. According to the defacto complainant, accused Nos.2 to 6 demanded a sum of Rs.50 Lakhs and 50 sovereigns of gold as dowry. Since the defacto complainant was abused and also criminally intimidated, she lodged a complaint before Melapalayam police station on 13.04.2015. Since no action was taken, she filed a private complaint under Section 156(3) of Cr.P.C. before the Judicial Magistrate, Tirunelveli. On direction being issued by the jurisdictional Magistrate, the impugned First Information Report came to be filed. To quash the same, this Criminal Original petitions have been filed by the these accused.

5. During the pendency of these original petitions, accused No.5 passed away.



6. The learned counsel appearing for the defacto complainant would contend that since the specific allegations of cruelty and dowry demand have been made by the defacto complainant against the accused, this Court will not be justified in quashing the impugned First Information Report. He also submitted that this Court cannot interfere with the investigation. He specifically highlighted that this quash petition has been filed at the very inception of the investigation.

7. I am not persuaded by the objections raised by the learned counsel appearing for the defacto complainant. As rightly pointed out by the learned counsel appearing for the accused, the defacto complainant herself wanted the case to be registered against the accused for the offences under Sections 498(A) of I.P.C. Section 498(A) of I.P.C. contemplates that only the husband or the relative of the husband of a woman, subjecting her to cruelty can be fastened with penal liability under the said provisions. Thus it is imperative on the part of the defacto complainant to show that accused No.1 is her husband.

8. The only material placed by the defacto complainant is the marriage certificate issued by the marriage Registrar, Palayamkottai dated 16.09.2002. This Court had a look at the said document. It is not in dispute that the parties namely, accused No.1 and the defacto complainant belong to Islamic religion. As they subscribed to the Islamic faith, their marriage will have to be necessarily solemnized in terms of the Mohammedan Law. Of course they can also register the marriage under the Special Marriage Act. In this case, it is not the case of the defacto complainant that their marriage was solemnized under the Special marriage Act. Therefore, this Court can even take note of the certificate dated 16.09.2002 issued by the marriage Registrar, Palayamkottai District is null and void. The learned counsel appearing for the accused in passing commented that the person who had acted as a marriage Registrar (M.C.Raj) in this case has a very chequered history and that he had issued several such bogus certificates. He is said to be no more. The certificate of marriage relied on by the defacto complainant is a bogus one on the very face of it.

9. That apart, the allegations of the defacto complainant are inherently improbable and absurd. She would claim that the first accused had physical relationship with her in the year 2001. If that be so, she need not have waited for a full eight years to lodge the impugned complaint before Deputy Commissioner of Police, Tirunelveli City. The petitioners' counsel would contend that this complaint was enquired into and closed.

10. The defacto complainant having knocked the doors of the police in March 2009, has chosen to wait for another six years to revive her case. In the meanwhile, the first accused had come back to his employment on at least four occasions. The exceptional



delay occasioned in this case, throws considerable doubt on the very genuineness of the complaint of the defacto complainant.

11. The defacto complainant as well as the petitioner as well as the accused hail from the very same street. They are neighbours. The defacto complainant would admit that the first accused Rafiq got married in the year 06.05.2001 itself to one Rizwanul Jannah. If that be so, the defacto complainant who was obviously aware of the said marriage would not have kept quiet. There is nothing on record to indicate that she took action between 2001 and 2009. Only for the first time, on 02.03.2009, she chose to move the Deputy Commissioner of Police, Tirunelveli City.

12. As already pointed out, the foundation for the impugned First Information Report can be only the status of the defacto complainant as the wife of the first accused. In as much as the said foundation has been shown as to be non-existent, the very registration of the impugned First Information Report can only be characterised as an abuse of legal process. Continuance of the impugned prosecution will not serve the ends of justice while quashing the same would do.

13. Accepting the contentions of the petitioners' counsel and rejecting the objections of the defacto complainant, the impugned proceedings stand quashed. The criminal original petitions stand allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
Melapalayam Police Station,
Tirunelveli City.
2. All Women Police Station,
Palayamkottai,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



+1cc to Mr.R.Anand,Advocate, SR.No. 93744

+2cc to Mr.N.Mohideen Basha,Advocate, SR.No. 94304

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