



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2019

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P. (MD) No.14771 Of 2015 and
M.P. (MD) Nos.1 and 2 of 2015

1. Kumar
2. MGR @ Erraiyan ... Petitioners/Accused Nos.1 and 2

Vs.

1. The State through,
The Inspector of Police,
M.Rettiyapatty police station,
Aruppukottai Taluk,
Virudhunagar District. ... Respondent/ Complainant

2. Periyabalu @ Balu ... Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in S.C.No.106 of 2015 on the file of Mahila Court(Fast Track), Srivilliputhur at Virudhunagar and to quash the same as far as the petitioners.

For Petitioners	: Mr.G.Mariappan
For R-1	: Mr.A.Robinson, Government Advocate(Criminal Side)
For R-2	: Mr.P.Ganapathi Subramanian

* * *

O R D E R

The petitioners are figuring as accused Nos.1 and 2 in S.C.No.106 of 2015 on the file of the Mahila Court(Fast Track), Srivilliputhur.

2. The second respondent herein is the defacto complainant. The first petitioner is the son, while the second petitioner is the father. The case of the prosecution is that the first petitioner is the husband of the deceased Kalpana Devi. The second petitioner is the father-in-law. The deceased and the first



petitioner fell in love with each other and thereafter, their marriage was arranged by the respective families and the marriage took place in the year 2011. A child was born through the wedlock. It appears that the first petitioner developed suspicion over the character of Kalpana Devi. The first petitioner is said to have beaten and physically harassed and caused cruelty to Kalpana Devi.

3. The learned counsel appearing for the defacto complainant would point out that instead of pulling up his son, the second petitioner had supported his son. Unable to bear the marital cruelty, Kalpana Devi left the matrimonial home. On 30.10.2014, the accused went to the house of the deceased and pacified her and brought her back. But then, thereafter cruelty continued. Unable to bear the torture any longer, Kalpana Devi committed suicide.

4. In this regard, the father of Kalpana Devi lodged a complaint before M.Rettiyapatti police station, leading to registration of Crime No.162 of 2014. Initially the case was registered under Section 174 of Cr.P.C. Later, it was altered into one under Section 306 of I.P.C. After the investigation, final report was filed and cognizance of the offence under Section 306 of I.P.C. was taken. The case was taken on file in S.C.No.106 of 2015. To quash the same, the criminal original petition came to be filed.

5. Even at the outset, the petitioners' counsel on instructions states that he would withdraw this petition as regards the first petitioner Kumar, the husband of the deceased Kalpana Devi. Kumar should face the trial and establish his innocence before the Court below. He would also state that the first petitioner will not take advantage of the order that may be passed in this criminal original petition and that this order will not refer to in the proceedings before the Court below. This undertaking given by the petitioners' counsel is placed on record.

6. It is not in dispute that the second petitioner is only the father-in-law of the deceased.

7. I went through the contents of the averments recorded under Section 161 of Cr.P.C. It is seen that the primary allegations are only against the first petitioner Kumar. It is seen that he is said to have caused cruelty and torture to the deceased. This second petitioner appears to have turned a blind eye to what was happening.

8. To attract the offence under Section 306 of I.P.C., certain basic ingredients will have to be fulfilled. The accused must have intended that the victim should die. The Hon'ble Supreme



Court in the recent decision reported AIR (2019) SC 478 (Rajesh V. State of Haryana) has held as follows:-

"7. It is necessary to refer to Section 306 I.P.C. and Section 107 I.P.C. which reads as under:

WEB COPY

306. Abetment of suicide - If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

107. Abetment of a thing - A person abets the doing of a thing, who -

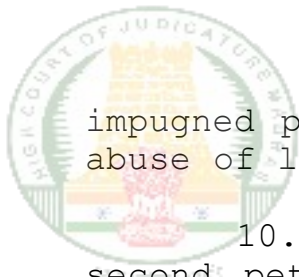
First - Instigates any person to do that thing; or

Secondly - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly - Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1 - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

8. Conviction under Section 306 of I.P.C. is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 I.P.C., there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 I.P.C. (See Amalendu Pal alias Jhantu V. State of West Bengal (2010) 1 SCC 707).



impugned prosecution against the second petitioner can only be an abuse of legal process.

10. The impugned prosecution stands quashed as regards the second petitioner is concerned. The criminal original petition stands partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

To:

1. The Judge,
Mahila Court (Fast Track),
Srivilliputhur at Virudhunagar.
2. The Inspector of Police,
M.Rettiyapatty police station,
Aruppukottai Taluk,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-104732[F] dated 12/12/2019)

Order made in
CRL.O.P. (MD) No.14771 Of 2015 and
M.P. (MD) Nos.1 and 2 of 2015
12.12.2019

SRS/ 04.06.2020/ 5P/5C