



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2019
CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.7958 of 2015

and

MP(MD)No.1 of 2015

1.C.Murugesh
2.P.Chockalingam
3.C.Azhagu
4.C.Kalaiarasi

... Petitioners / Accused 1 to 4

Vs.

1. The State of Tamil Nadu,
Rep.by the Inspector of Police,
Thirukkostiyor Police Station,
Sivagangai District.
(Crime No.67 of 2013)

... 1st respondent / Complainant

2. S.Shanthi

... 2nd respondent /Defacto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the First Information Report in Crime No.67 of 2013, dated 22.06.2013 registered U/s. 363 of IPC and subsequently altered into under section 147, 120 (b), 341, 363, 368, r/w 109 of IPC on the file of the respondent No.1 in Crime No. 67 of 2013 dated 22.06.2013 on the file of the respondent No.1 and quash the same.

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

ORDER

The petitioners are A1 to A4 in Crime No.67 of 2013 on the file of the first respondent police station for the offences under Sections 363 of IPC and subsequently altered into under section 147, 120 (b), 341, 363, 368, r/w 109 of IPC.

2.The case of the defacto complainant is that she got married to the first petitioner Murugesh on 22.08.2004. Two children were born through the said wedlock. According to her, the first accused with the aid of the other accused kidnapped the children on 13.02.2013. Hence, the impugned FIR came to be registered. To quash the same, this O.P has been filed.



3.The learned counsel appearing for the petitioners would point out that the first petitioner had already obtained an exparte order against defacto complainant as early as in the year 2014 and that the same has not been set aside in the manner known to law as on date. The learned counsel appearing for the petitioners would also point out that the issue regarding custody has since attained finality. The Hon'ble Supreme Court in ***Special Leave to Appeal (Crl.) No.9234 of 2014 dated 25.07.2016*** had ordered that the children can continue to be with the first petitioner herein and that the defacto complainant will have visitation rights. In fact, the first petitioner had been granted the right of custody of the children since 17.11.2014. It is not to be forgotten that the first petitioner is the natural guardian of the children. Therefore, he cannot be accused of kidnapping his own children.

4.In this view of the matter, the very registration of the impugned FIR can only be charecterised as an abuse of legal process. The same stands quashed. This criminal original petition stands allowed. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

The Inspector of Police,
Thirukkostiyor Police Station,
Sivagangai District.

+1 CC to Mr.T. LAJAPATHI ROY, Advocate (SR-91081[F] dated 03/10/2019)

Crl OP(MD)No.7958 of 2015

and

MP(MD)No.1 of 2015

01.10.2019

skm

MK (31.10.2019) 2P 3C