



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.17164 of 2016
and
M.P. (MD)Nos.8493 and 8494 of 2016

1.Joseph Charles

2.Arockiasamy

3.Baby Ajintha

4.Jeeva Fatima

5.Arul Christopher

6.Reeta

7.Jessi

... Petitioners/ Accused 1 to 7

Vs

1.State:

rep. by Inspector of Police,
All Women Police Station-South,
Madurai City.
(Crime No.8/2015).

... 1st Respondent/ Complainant

2.Sakthidevi

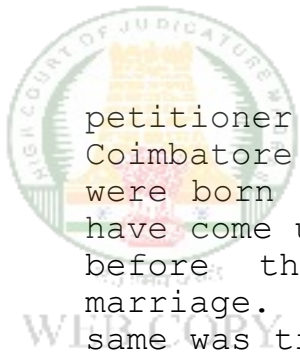
... 2nd Respondent/ Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for records pertaining to the C.C.No.22 of 2016, pending on the file of the learned Additional Mahila Court, Madurai and quash the proceedings as against the petitioners herein.

For Petitioners : Mr.S.R.Paul Sukumar
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

ORDER

The petitioners are facing trial in C.C.No.22 of 2016 on the file of the Additional Mahila Court, Madurai. The second respondent herein is the defacto complainant. The marriage between the first



petitioner and the defacto complainant took place on 23.08.2009 at Coimbatore as per Christian Rites and Customs. Two male children were born through the wedlock. The marital relationship appears to have come under strain. The first petitioner, therefore, filed IDOP before the Family Court, Coimbatore, seeking dissolution of marriage. At the instance of the defacto complainant herein, the same was transferred to the Family Court, Madurai and re-numbered as I.D.O.P.No.86 of 2014.

2.The specific allegation of the petitioner is that as a counter blast, the defacto complainant lodged a criminal complaint before the All Women Police Station, South, Madurai City and the same was registered as Crime No.8 of 2015. The matter was investigated and the police filed final report before the Court concerned. Cognizance of the offences under Sections 498A, 294(b) and 506(i) of IPC was taken and the case was taken on file in C.C.No.202 of 2016. To quash the same, this criminal original petition has been filed.

3.The defacto complainant has been served and her name is also printed in the cause list. But she has not chosen to enter appearance through counsel or in person.

4.The learned counsel appearing for the petitioners submitted that the offences under Sections 294(b) and 506(i) of IPC are not at all made out in this case. He placed reliance on the decisions reported in **1997 Criminal Law Journal 1623 (K.Jayaramanuj Vs. Janakraj)** and **2002 Criminal Law Journal 1420 (Saraswathi Vs. State)**.

5.As rightly pointed out by the petitioner's counsel, to prove the offence under Section 294(b) of IPC, mere utterance of obscene words are not sufficient. There must be a further proof to establish that it was to the annoyance of others.

6. It is seen that except making an allegation that the petitioners herein have used some abusive expressions, the defacto complainant has not stated anything more. Therefore, the offence under Sections 294(b) of IPC is not made out. Likewise, the offence of criminal intimidation would be attracted, only if the threat is a real and substantial one. In this case, the said ingredient is completely absent. Therefore, I am of the view that the offence under Section 506(i) of IPC is also not made out. Therefore, the impugned proceedings deserve to be quashed in respect of these two offences.

7.The learned counsel appearing for the petitioners would further state that the marriage between the first petitioner and the defacto complainant has already been dissolved, by order dated 19.11.2018, in I.D.O.P.No.86 of 2014 on the file of the Family Court, Madurai and that, the defacto complainant has not chosen to challenge the same. According to him, the decree of divorce has



become final. He would also point out that the defacto complainant is facing contempt proceedings as she has not complied with the Court's order with regard to permitting the first petitioner to have visitation rights in respect of the children.

8. Even though several persuasive submissions were made by the petitioner's counsel, I am of the view that they are rather factual in nature and that, therefore, they will have to be necessarily established only before the Court below in a regular trial. I leave open all the contentions of the petitioners as regards the offence under Section 498-A of IPC.

9. The petitioner's counsel pointed out that except A6-Reeta, who is no more, the other petitioners are based in Coimbatore. Two of them are senior citizens. They express certain difficulties in the matter of appearance. Therefore, the personal appearance of the petitioners, except A6-Reeta who is no more, is dispensed with.

10. The petitioner's counsel would further state that the next hearing date is 16.12.2019. The case is posted for furnishing the copies on the said date and on the date of questioning, the first petitioner alone-A1 has to appear. The other remaining accused can appear through Counsel who of-course will have to file a special vakalat. Even while answering the charges, the other accused can be represented by their Counsel. The first petitioner-A1 has to appear on 16.12.2019 for receiving the copies and for questioning under Section 238 of Cr.P.C. Of-course, all the petitioners will have to appear when they are questioned under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioners can be represented by their counsel.

11. With this direction, this criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station-South,
Madurai City.



2.The Additional Mahila Court, Madurai.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC TO Mr.S.R.Paul Sukumar, Advocate, Sr No.104337

Crl.O.P (MD) No.17164 of 2016

and

M.P. (MD) Nos.8493 and 8494 of 2016

10/12/2019

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