



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P. (MD) .No.19458 of 2018

and

CRL.M.P. (MD) No.8835 of 2018

V.Karthikeyan

...Petitioner/Accused No.1

Vs.

1.State rep. by its

The Inspector of Police,
All Women Police Station,
Madurai City, Madurai.

(Crime No.2 of 2010)

...1st Respondent/Complainant

2.R.Santhanalakshmi

... 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 impugned charge sheet in P.R.C.No.23 of 2018 on the file of Honourable Judicial Magistrate, Additional Mahila Court, Madurai and quash the same.

For Petitioner

: Mr.M.Saravanan

For R1

: Mr.K.Suyambulinga Bharathi,

Government Advocate (Crl.Side)

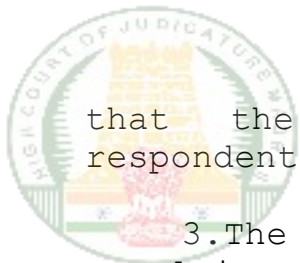
For R2

: Mr.S.Ramasamy

ORDER

This Criminal Original Petition has been filed to quash the proceeding in P.R.C.No.23 of 2018 on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai.

2.The learned counsel for the petitioner would submit that the petitioner and others have been charged for the offences punishable under Sections 498(A), 406, 315 and 506(ii) IPC. He further submitted that according to the case of the prosecution, the petitioner and other accused persons forced the second respondent to eat unknown medicines for aborting her pregnancy. Thereafter, the second respondent gave birth to a male child and he is hale and healthy and now 13 years old. He further submitted



that the boy now is in the custody of the second respondent/defacto complainant.

3.The learned counsel for the second respondent/defacto complainant submitted that there are materials to attract the offence as against all the accused persons. Insofar as the petitioner is concerned, he is arrayed as first accused, being the husband, along with other accused persons instigated the defacto complainant by consuming poison for aborting her pregnancy. Though they administered poison, she delivered a male baby and he is now hale and healthy and under the custody of the second respondent herein. Even then the first limit of the provision is clearly attracted the offence under Section 315 of IPC as against the petitioner and other accused.

4. The learned Government Advocate (Criminal Side) would submit that there are totally six accused in this case. On the complaint lodged by the second respondent the case has been registered and after completion of enquiry final report was filed for the offence under Sections 498(A), 406, 315 and 506(ii) IPC before the concerned Court. Insofar as the offence under Section 315 is concerned, there are prior material evidence to attract the offence. Therefore, he opposed this quash petition.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the official respondent.

6.It is seen that the respondent police after completion of enquiry filed the final report for the offences under Sections 498 (A), 406, 315 and 506(ii) IPC as against the accused persons. Now the petitioner suffice and submitted that only in respect of the offence under Section 315 IPC, he pointed out that according to the second respondent during her pregnancy, the petitioner and others administered Papaya and other unknown medicines to abort her pregnancy. Even then she delivered a male baby and now he is aged about 13 years.

7.In this regard the learned counsel relied upon the Section 315 of IPC, is extracted here under:

"315. Act done with intent to prevent child being born alive or to cause it to die after birth: Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the



mother, be punished with imprisonment of either description for a term which may extend to ten years or with fine, or with both."

To attract the offence under Section 315 IPC, who ever before birth of any child, it is seen that any action with the intention of thereby preventing child from being born alive. Now it is seen from the allegation is that the petitioner and others have administered the Papaya and unknown medicines. The allegation is vogue and fault and there is no scientific proof that the papaya is the medicine for abortion, in respect of other unknown medicine is concerned no name specifically mentioned. Therefore, the offence under Section 315 of IPC is not at all attracted as against the accused persons. Insofar as the other offences are concerned, there are material to attract those offences. The learned counsel for the petitioner restricted his submission only as against the offence under Section 315 of IPC.

8. In view of the above, this Court is inclined to allow this Criminal Original Petition in part. Therefore, the proceedings in P.R.C.No.23 of 2018, is quashed in respect of offence under Section 315 of IPC is concerned. Insofar as the other offences are concerned, this quash petition is dismissed.

9. The Judicial Magistrate, Additional Mahila Court, Madurai, is directed to proceed with the trial for offences under Sections 498(A), 406 and 506(ii) IPC in accordance with law and complete the trial within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (w)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Judicial Magistrate,
Additional Mahila Court, Madurai.
2. The Inspector of Police,
All Women Police Station,
Madurai City, Madurai.



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

+1 CC to M/s.B.SARAVANAN, Advocate (SR-88033[F] dated 20/09/2019)

+1 CC to M/s.S.RAMASAMY, Advocate (SR-88245[F] dated 20/09/2019)

das

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