



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM

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

CRL.O.P. (MD) .No.17752 of 2018

and

CRL.M.P (MD) Nos.7867 and 7868 of 2018

1.G.Shanmugapriya
2.V.Kamal @ Hariharan
3.S.Ghanasekar

... Petitioners/Accused Nos.1 to 3
Vs.

1.State rep.by the
The Inspector of Police,
Chinnalapatti Police Station,
Dindigul District.
In Crime No.250 of 2015.

..1st Respondent/Complainant

2.K.Ramasamy ...2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge filed in P.R.C.No.41 of 2018 before the learned Judicial Magistrate No.III, Dindigul and quash the same.

For Petitioners : Mr.Subash Babu

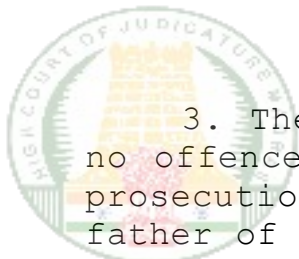
For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Criminal Side)

For R2 : Mr.S.Anandha Rajagopal

ORDER

The Criminal Original Petition has been filed to quash the proceeding in P.R.C.No.41 of 2018 on the file of the learned Judicial Magistrate No.III, Dindigul and taken cognizance for the offence punishable under Sections 294(b), 352, 364(b), 506(i) IPC r/w 109 IPC.

2. The case of the prosecution is that on 29.05.2018, the second respondent lodged a complaint before the respondent police stating that the victim boy said to have been abducted by the petitioners on 10.04.2015.



3. The learned counsel for the petitioners would submit that no offence made out as against the petitioners as alleged by the prosecution, since the third petitioner is none other than the father of the alleged victim boy. The first petitioner is the wife of the third petitioner. He also submitted that the third petitioner got married the second respondent's daughter, namely, Shobana on 05.09.2008, out of their wedlock, they blessed with one male child. Unfortunately, due to illness the wife of the third petitioner died in the month of August 2010. Thereafter, the third petitioner got married the first petitioner with the consent of second respondent in the year 2012. Thereafter, the second respondent/defacto complainant requested the third petitioner to hand over the custody of the minor boy in the name of love and affection. Only on his request, the minor boy was handed over to the second respondent. After that the minor boy wants to stay with his father. Hence, the third petitioner requested the second respondent to hand over the son to his custody, but the second respondent has not accepted his request. But, the minor wish to joint with his father and he demanded to take him from the defacto complainant. Therefore, the defacto complainant himself handed over the custody of the boy to the third petitioner. After lapse of two months, the defacto complainant lodged a complaint as against the petitioners alleging that the minor boy was abducted by the petitioners.

4.The first respondent without even considering the above facts and circumstances, mechanically registered the case for the aforesaid offences and also completed the investigation and filed a final report and the same is pending for committal in PRC.No.41 of 2018 on the file of the learned Judicial Magistrate No.III, Dindigul.

5.The learned counsel for the second respondent submitted that he is grand father of the minor victim, he wants his grand son from the third petitioner. He also submitted that the third petitioner married his daughter and after birth of child, under suspicious circumstances his daughter died in the year 2010. Thereafter, in the year 2012, the third petitioner got married with the first petitioner in the year 2012. All the petitioners connived with each other kidnapped the minor boy. Therefore, he opposed this petition.

6.The learned counsel Government Advocate (Criminal Side) appearing for the first respondent submitted that the case is under trial in PRC. No.41 of 2018 on the file of the learned Judicial Magistrate No.III, Dindigul. Though the victim is the son of the third petitioner, without consent of the second respondent the petitioners have kidnapped the victim and as such the ingredients of the offences are clearly attracted as against them.



Therefore, there are evidence to attract the offence as against all the accused persons. Further the case is pending for committal and at this stage this petition cannot be quashed.

7. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) for the respondent.

8. There are totally three accused in this case. The petitioners arrayed as A1 to A3. They have been charged for the offences punishable under Sections 294(b), 352, 364(b), 506(ii) IPC r/w 109 IPC and the same was taken cognizance by the learned Judicial Magistrate No.III, Dindigul in PRC.No.41 of 2018.

9. The first petitioner is the wife of the third petitioner and the second petitioner is the sister of the third petitioner herein. The second respondent is the defacto complainant, who is the father in law of the third petitioner. The third petitioner got married with the daughter of the second respondent in the year 2008, due to wedlock they have blessed one male child. Thereafter, she died in the year 2012 due to illness.

10. Thereafter, the third petitioner got second marriage in the year 2014. There was a dispute between the third petitioner and the second respondent with regard to the custody of the minor boy. In such circumstances, the second respondent has filed habeas Corpus petition in H.C.P.No.797 of 2015, and the same was dismissed. Now the victim boy is in the custody of the third petitioner and has been given good studies. He has been taken care of the first petitioner herein. That apart the third petitioner also filed a guardian original petition in GWOP.No.228 of 2016 to declare him as a legal guardian and the same was allowed by the learned Principal District Court, Erode.

11. The third respondent is a legal guardian for the victim. Therefore, the child, who has been taken by his own father, would not amount to make an offence of kidnapping offence under Section 364(b) is not made out. Insofar as the Sections 294(b) and 506(i) IPC are concerned no ingredients and material evidences are available to attract those offences. It is also seen from the statements of witnesses that no one has spoken about the allegations to attract those offences.

12. Further more, now the victim boy is in the custody of his own father/third petitioner and has been provided with good education and good life style.

13. Considering the facts and circumstances of the case, this Criminal Original Petition is allowed and the proceeding in P.R.C.No.41 of 2018 on the file of the learned Judicial Magistrate



WEB COPY

CRL.O.P.(MD).No.17752 of 2018

No.III, Dindigul, is quashed. Consequently, connected miscellaneous petition are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

das

To

1.The Judicial Magistrate No.III, Dindigul.

2.The Inspector of Police,
Chinnalapatti Police Station,
Dindigul District.

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

+1 CC to M/s.A .CHANDRA KUMAR, Advocate (SR-86848[F] dated
16/09/2019)

CRL.O.P. (MD) .No.17752 of 2018

and

CRL.M.P (MD) Nos.7867 and of 2018

16.09.2019

KM/(04.10.2019) 4P 5C