



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.09.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) No.2836 of 2017

and Crl.M.P.Nos.2163 and 2164 of 2017

1.Umarani
2.Nagarajan
3.Balaji

... Petitioners/Accused 1 to 3

-VS-

1.The Sub Inspector of Police,
All Women Police Station,
Thanjavur District.

... Respondent/Complainant

2.Aarththi

... Respondents/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to the impugned final report dated 11.01.2017 in C.C.No.28 of 2017 on the file of the Judicial Magistrate, No.I, Thanjavur and quash the same.

For Petitioner : Mr.P.Vadivel

For Respondent : Mr.S.Chandrasekar for R1

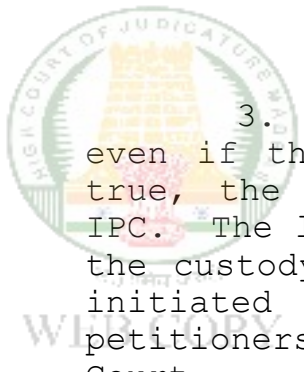
Additional Public Prosecutor

Mr.A.Arun Prasad for R2

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.28/2017 pending on the file of the Judicial Magistrate, No.I, Thanjavur.

2. The second respondent gave a complaint against the petitioners on the ground that there is a child out of the wedlock between the third petitioner and the second respondent and the petitioners are not allowing the second respondent to keep the child and sleep along with her. When this was questioned, the petitioners had abused her and therefore, according to the second respondent, the same amounts to harassment and therefore, an offence under Section 498(A) IPC. The first respondent police registered an FIR in Crime No.07/2016 against the petitioners for offence under Sections 498(A) and 109 IPC and after completion of the investigation, a final report came to be filed before the Judicial Magistrate, No.I, Thanjavur and the same was taken on file in C.C.No.28/2017.



3. The learned counsel for the petitioners submitted that even if the allegations made in the final report are taken to be true, the same will not attract the offence under Section 498(A) IPC. The learned counsel further submitted that the child is now in the custody of the second respondent and the second respondent has initiated criminal proceeding only with a view to harass the petitioners and the entire proceeding is an abuse of process of Court.

4. Per contra, the learned counsel appearing on behalf of the second respondent submitted that the petitioners do not have a right to prevent the second respondent from having custody of the child and they cannot prevent the second respondent from spending her time with the child. Such a conduct of the petitioners amounts to cruelty and it will even drive the woman to commit suicide. The learned counsel submitted that there are no grounds to interfere with the proceeding and the present petition is liable to be dismissed.

5. A careful reading of the final report along with the statement of witnesses shows that there is a one year old child out of the wedlock between the third petitioner and the second respondent. According to the second respondent, she is not permitted to play and spend time with the child and the child is always kept away from the second respondent. When this was questioned, the petitioners had scolded the second respondent and caused her mental agony. They had further stated that if she insisted for the child, she has to go back to her parents.

6. This Court has to now see whether the above case, even if it is taken as it is, will constitute an offence under Section 498 (A) IPC. The object of introducing Section 498 (A) IPC was to prevent the torture to a woman by her husband or by the relatives of the husband. The cruelty has been explained under Section 498 (A) IPC. The facts of the present case at the best can fall only under explanation 'a' to Section 498(A) IPC. That explanation specifically states that there must be a wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health. The explanation itself makes it clear that the cruelty can be mental or physical.

7. It is an admitted fact that the third petitioner is the father of the child and there is already matrimonial dispute between the parties. The explanation 'a' to Section 498(A) makes it clear that the conduct should be of such a nature to drive the woman to commit suicide. This would mean that the cruelty must be of an aggravated nature. Mere bickerings between the parties, which happen in the day-to-day life between a husband and wife, cannot be brought under explanation 'a' to Section 498(A) IPC. If there is a dispute regarding the custody of the child, the same has to be worked out



going to solve the problem.

8. In the considered view of this Court, even if the allegations made in the final report and the statement given by the witnesses are taken as it is, it does not constitute an offence under Section 498(A) IPC. The proceeding itself is an abuse of process of Court and requires interference by this Court in exercise of its jurisdiction under Section 482 Cr.P.C.

9. In the result, the proceeding in C.C.No. 28/2017 on the file of the Judicial Magistrate, No.I, Thanjavur is hereby quashed and accordingly, the criminal original petition is allowed. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

RR

To

1.The Judicial Magistrate, NO.I,
Thanjavur District

2.The Sub Inspector of Police,
All Women Police Station,
Thanjavur District.

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

+1CC TO MR.P.VADIVEL, Advocate Sr. No. 89927

Crl.O.P. (MD)No.2836 of 2017
and Crl.M.P.Nos.2163 & 2164 /2017
25.09.2019

KM(CO)

TR(21.10.2019) 3P 5C