



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.5712 of 2017

and

Crl.M.P. (MD) Nos.3986 & 3987 of 2017

1) A.Sethuraman
2) S.Pandiammal
3) A.Radhakrishnan ... Petitioners/ Accused 2 to 4
vs.

1) State Rep. by
The Inspector of Police,
All Women police Station,
Samayanallur,
Madurai District.
(Crime No.10 of 2008) ... R-1/Complainant

2) A.Sathya ...R-2/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records from the lower court to quash all the further proceedings in S.C.No.168/2011 pending on the file of the Additional District and Sessions Judge (Mahaleer Neethimandram), Madurai and quash the same.

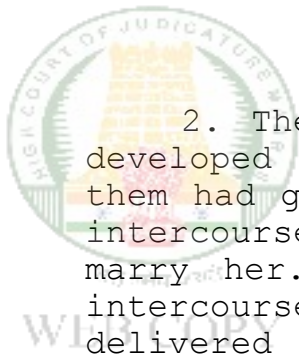
For Petitioner : Mr.T.K.Gopalan

For R-1 : Mr.S.chandrasekar,
Additional Public Prosecutor

For R-2 : No Appearance

O R D E R

This Criminal Original Petition has been filed challenging the proceedings pending in S.C.No.168/2011 on the file of the learned Additional District and Sessions Judge (Mahaleer Neethimandram), Madurai.



2. The case of the prosecution is that the second respondent developed a relationship with one Jeevagapandian (A-1) and both of them had gone to Coimbatore and it is stated that A-1 had physical intercourse with the second respondent by giving false promise to marry her. Even thereafter, they were regularly having physical intercourse and as a result of the same, the second respondent delivered a male child on 28.11.2008. Both of them were living together and this was objected by the petitioners who are the father, mother and paternal uncle of A-1. Thereafter, she is said to have left to Kerala and A-1 also stopped contacts with the *de facto* complainant.

3. Based on the complaint given by the second respondent, an F.I.R. came to be registered in Crime No.10 of 2008 for an offense under Sections 420 and 506(i) of I.P.C. On completion of the investigation, a final report came to be filed before the Court below and the same was taken on file for an offense under Sections 414, 376 and 506(i) of I.P.C. as against A-1 and for an offense under Sections 417, 376 r/w 109 of I.P.C. against the petitioners.

4. The learned counsel for the petitioners submitted that A-1 continued to live with the *de facto* complainant and ultimately he died of cancer. The petitioners had nothing to do with the relationship between A-1 and the second respondent and they have been roped in as accused persons only to harass them. The learned counsel further submitted that in order to constitute the offence of abatement, there must be some positive act attributed against the petitioners. There is absolutely no material to attribute anything against the petitioners except the general allegation made against them to the effect that they objected to the relationship of the second respondent with A-1 and she was sent to Kerala. Therefore, the learned counsel submitted that the criminal proceedings as against the petitioners requires interference of this Court.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the petitioners were aware about the relationship between A-1 and the *de facto* complainant. After the *de facto* complainant had delivered a baby, these accused persons along with A-1 had driven out the *de facto* complainant and had taken her to Kerala and thereafter, A-1 stopped having any contact with the *de facto* complainant. The learned Additional Public Prosecutor further submitted that the petitioners will have to undergo trial in this case and the fact as to whether they have asserted the crime will get revealed only during the course of the trial.

6. This Court has carefully considered the submissions made on either side and the materials available on record.



7. It is the categorical case of the prosecution that A-1 developed a relationship with the *de facto* complainant in the year 2007. They both had gone to Coimbatore and it is stated that A-1 made a false promise to the *de facto* complainant and both of them had physical intercourse. This relationship continued and the *de facto* complainant delivered a male child on 28.11.2008. Till this stage, even according to the prosecution, no role has been played by the petitioners. Therefore, it is not known how the petitioners can be roped in for the offence of abatement to commit the offence under Sections 417 & 376 of I.P.C. The entry of the petitioners in the prosecution story comes only after the second respondent had delivered a child. At that point of time, they had questioned the relationship and she was sent to Kerala and A-1 stopped having any contacts with the *de facto* complainant. Unfortunately in this case, A-1 has died due to cancer and the petitioners against whom there is not even a *prima facie* material, are now made to face the criminal prosecution.

8. The continuation of the proceedings against the petitioners is an abuse of process of Court and the same requires interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. In the result, this Criminal Original Petition is allowed and the proceedings in S.C.No.168 of 2011 pending on the file of the learned Additional District and Sessions Judge (Mahaleer Neethimandram), Madurai is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1) The learned Additional District and
Sessions Judge (Mahaleer Neethimandram),
Madurai
- 2) The Inspector of Police,
All Women police Station,
Samayanallur,
Madurai District.



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

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-100780[F] dated 22/11/2019)

Order made in

Crl.O.P. (MD) .No.5712 of 2017

Dated:

22.11.2019

pm (CO)

TR (06.01.2020) 4P 5C