

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.9172 of 2019 and
CrI.MP.Nos.4853 & 9520 of 2019

1.G.K.Loganathan
2.T.Sasikala

... Petitioners/Accused 1 & 2

Vs.

1.State Rep by,
The Inspector of Police,
H2, Guduvancherry Police Station,
Kanchipuram 603 202 ...1st Respondent/Complainant

2.Tamil amuthan ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in pursuant to the charge sheet PRC.No.12 of 2019 in FIR.No.506 of 2018 on the file of the first respondent filed before Hon'ble Additional Mahila Court at Chengalpattu and quash the same insofar as the petitioners concerned.

For Petitioner : Mr.Prabakaran
Senior Counsel
for Mr.J.Arokhia Raj

For Respondents
For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor
For R2 : Mr.D.Selvam,
for Mr.V.Parthiban

ORDER

This Criminal Original Petition has been filed to quash the proceedings in PRC.No.12 of 2019 in FIR.No.506 of 2018 on the file of the first respondent filed before Additional Mahila Court at Chengalpattu insofar as the petitioners are concerned.

2. The case of the prosecution is that on 06.07.2018, at about 9.00 a.m. the petitioners scolded the mother of the second respondent with filthy languages and also pulled her by her saree. They also attacked her with hands. Hence, his mother fell down, and she was also suffering with fits. Immediately, she was taken to a private hospital. Hence, the first respondent initially registered a case for the offences under Section 294(b), 323 and 506(i) of IPC and

Section 4 of Prohibition of Harassment of Women Act, 2002. Thereafter on 08.08.2018, she was again admitted in the hospital and she died due to injury sustained on her head. Therefore, charges were altered to the offences under Sections 294(b), 304(ii), 506(i) of IPC and Section 4 of Prohibition of Harassment of Woman Act, 2002 and the same is pending for committal in PRC.No.12 of 2019 on the file of the Additional Mahila Court, Chengalpattu.

3. Mr.Prabakaran, the learned Senior Counsel appearing for the petitioners submitted that the petitioners are arrayed as A1 and A2. On the complaint lodged by the second respondent, the first respondent registered a case in Cr.No.506 of 2018 alleging that on 06.07.2018, at about 9.00 a.m. the petitioners scolded the second respondent's mother with filthy languages and also pulled her by her saree. They also attacked her with hands. Hence, his mother fell down and she was also suffering with fits. Immediately, she was taken to a private hospital. Hence, the first respondent initially registered a case for the offences under Section 294(b), 323 and 506(i) of IPC and Section 4 of Prohibition of Harassment of Woman Act, 2002. Thereafter on 08.08.2018, she was admitted in the hospital and she died due to injury sustained on her head. Therefore, charges were altered to the offences under Sections 294(b), 304(ii), 506(i) of IPC and Section 4 of Prohibition of Harassment of Women Act, 2002 and the same is pending for committal in PRC.No.12 of 2019.

3.1 The learned Senior Counsel further submitted that no prima facie of the case has been made out as against the petitioners to attract the offences under Section 304(ii) of IPC. The mother of the second respondent died due to natural health issues since she was suffering from Probable Intracranial Hemorrhage due to Glioblastoma - Right Parietal Lobe (Brain Tumor). There is absolutely no evidence to the effect that the deceased died only due to injuries sustained by her on the date of alleged occurrence, namely on 06.07.2018. The defacto complainant did not even whisper about the injuries sustained by her and the accident register shows that 'attacked by known persons by hands' and no injury found on her head. Admittedly, there was a wordy quarrel between the petitioners and the deceased on 06.07.2018, due to which she had been treated by the Parvathy Ortho Hospital Private Limited till 11.07.2018 due to her other complaints. She had a history of complaints of abnormal movements of upper limbs and face. She was also known case of DM/CAD not on treatment. Finally, diagnosed by the hospital that the deceased was suffering from Right High Parietal S.L.L. (Tuberculoma tumour), namely brain tumour.

3.2 He further submitted that in fact, for the very same occurrence, the petitioners lodged a complaint before the first respondent and the same was registered in Cr.No.504 of 2018 for the offences under Sections 147, 448, 294(b), 427, 506(ii) of IPC against the second respondent herein. Only to the counter blast of the complaint lodged by

the petitioners, the present complaint has been lodged with false and frivolous allegations. Further, no one has spoken about the injuries sustained by the deceased on the date of occurrence, namely on 06.07.2018. She was admitted for some other complaints and thereafter on 11.07.2018, she was discharged from the hospital. Again, she was taken to hospital on 08.08.2018 in unconscious state and thereafter, she died. Therefore, absolutely no evidence to show that only on the injury sustained by her on 06.07.2018, she died. Therefore, the offence under Section 304 (ii) IPC is not at all made out as against the petitioners and prayed for quashment of the entire proceedings in Cr.No.506 of 2018.

4. Per contra, Mr.D.Selvam, the learned Counsel for the second respondent / defacto complainant submitted that on 06.07.2018, the petitioners attacked his mother by hands and also pulled her by saree, due to which she fell down and her head hit on the wall, therefore she sustained grievous injuries on her head, and she was also suffering from fits due to head injury. Though she was discharged from the hospital on 11.07.2018, again she was admitted in the hospital on 08.08.2018 for the head injury sustained by her. Unfortunately, the treatment failed and she died. Only because of the injury sustained on 06.07.2018, his mother died and as such the first respondent rightly altered the FIR as under Sections 294(b), 304(ii), 506(i) of IPC and Section 4 of Prohibition of Harassment of Woman Act, 2002. Moreover, the grounds raised by the petitioners have to be gone into by way of fulfledged trial, and it cannot be considered here before this Court under Section 482 Cr.P.C. As such, he prayed for dismissal of the quash petition.

5. Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent police would submit that after completion of investigation obtained legal opinion from the Legal Officer and filed final report for the offences under Sections 294(b), 304(ii), 506(i) of IPC and Section 4 of Prohibition of Harassment of Women Act, 2002. He further submitted that there was a quarrel between the petitioners and the second respondent's family, in which the deceased sustained injury. Immediately, she was taken to hospital and though she was discharged on 11.07.2018, again she was admitted in the hospital on 08.08.2018. Due to the injury sustained by her on head, she died on 08.08.2018. Therefore, there are materials to attract the offences under Section 304 (ii) IPC as against the petitioners and prayed for dismissal of the quash petition.

6. Heard Mr.Prabakaran, Senior Counsel appearing for the petitioners, Mr.D.Selvam, learned counsel appearing for the second respondent, and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police.

7. It is seen that there are totally two accused, in which the petitioners are arrayed as A1 and A2. They are husband and wife. The case of the prosecution is that on 06.07.2018, when the petitioners obstructed water, when it was questioned by the mother of the second respondent herein, the petitioners scolded her and abused her with filthy languages and also attacked with their hands by pulling her saree, due to which the mother of the second respondent fell down and suffering from fits. Immediately she was taken to hospital. On the complaint lodged by the second respondent, FIR was registered in Cr.No.506 of 2018 for the offences under Section 294(b), 323, 506(i) IPC and Section 4 of Prohibition of Harassment of Woman Act, 2002. The mother of the second respondent was taken to Parvathy Ortho Hospital Private Limited and she was admitted as in-patient. The accident register was recorded as known persons attacked her by hands.

8. On perusal of the discharge summary, she was admitted with abnormal movements of upper limbs and face, and finally diagnosed with Right High Parietal S.L.L.(Tuberculoma tumour). It is a brain tumour. Thereafter, she undergone surgery and discharged from hospital on 11.07.2018. According to the case of the prosecution, on the date of occurrence, the petitioners attacked the mother of the second respondent herein only by hands and they also pulled her by saree. Therefore, she fell down and she was suffering from fits. There is absolutely no mentioning about the head injury and no one has spoken about the injuries sustained by the victim. She was very much conscious while admitting into the hospital and had taken treatment till 11.07.2018. No statement was recorded from the victim. While being so, again she was admitted into the hospital on 08.08.2018 at about 10.32 a.m. In fact, she was brought to hospital in unconscious state and declared died at about 10.45 a.m. The cause of death is mentioned as Probable Intracranial Hemorrhage due to Glioblastoma - Right Parietal Lobe (Brain Tumor). Therefore, there is absolutely no chain links to connect the petitioners for the cause of death of the deceased.

9. That apart, on 06.07.2018, at about 09.00 a.m. the petitioners were attacked and were also threatened by the second respondent and others. Thereafter, the mother of the second respondent had an acute stroke due to sustaining brain tumour and while taking her to hospital, the second respondent and his relatives came to the petitioners' house and attacked them. Therefore, the petitioners lodged complaint to the first respondent against the second respondent. On the complaint, the first respondent registered a case in Cr.No.504 of 2018 for the offences under Section 147, 448, 294(b), 427, 506(ii) IPC against the second respondent herein. In fact, the second respondent is a habitual offender and he involved in several cases in Cr.No.599 of 2016 culminated in SC.No.200 of 2017 and Cr.No.603 of 2016 culminated in SC.No.80 of 2017, and Cr.No.604 of 2016 culminated in CC.No.245 of 2016.

Therefore, after registering FIR as against the second respondent, the present complaint has been lodged and the same has been registered in Cr.No.506 of 2018 as against the petitioners.

10. On perusal of discharge summary, she was suffering from brain tumour and she had undergone surgery, therefore the petitioners are no way connected with the death of the deceased, namely the mother of the second respondent herein. It is also seen from the statement recorded from the witness that no one has spoken about the injury sustained by the deceased on her head on the occurrence. Therefore, there is absolutely no ingredients and materials to attract the offences under Sections 294(b), 304(ii), 506(i) of IPC and Section 4 of Prohibition of Harassment of Women Act, 2002 against the petitioners as alleged by the prosecution. The entire proceedings are nothing but clear abuse of process of court as such the petitioners need not go for ordeal trial.

11. In view of the above discussion, this Criminal Original Petition is allowed and the charge sheet PRC.No.12 of 2019 in FIR.No.506 of 2018 on the file of the first respondent filed before the Additional Mahila Court at Chengalpattu, is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(ADI MDU)

//True copy//

Sub Assistant Registrar

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To

1. The Additional Mahila Court
at Chengalpattu
2. The Inspector of Police,
H2, Guduvancherry Police Station,
Kanchipuram 603 202
3. The Public Prosecutor,
High Court of Madras.

Cr1.O.P.No.9172 of 2019

VSN II(CO)
GMY(27/07/2020)