



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP (MD)No.10466 of 2020

and

Crl.M.P. (MD)Nos.4796 and 4798 of 2020

1.Sumathi, W/o.Thangaraj  
2.Selvam, S/o.Karuthakannan

... Petitioners/  
Accused Nos.3&4/Accused Nos.3 & 4

Vs.

1.The State Rep. by  
The Sub-Inspector of Police,  
Koodalpudur Police Station,  
Koodalpudur,  
Madurai,  
Madurai District.  
(Crime No.758 of 2019)

...1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/  
Complainant

2.Nirmala Jeevan, W/o.Navajeevan ...2<sup>nd</sup> Respondent/  
2<sup>nd</sup> Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in connection with C.C.No.1404 of 2019, on the file of the Additional Mahila Court, Madurai, Madurai District, in relation to Crime No.758 of 2019, on the file of the Sub-Inspector of Police, Koodalpudur Police Station, Koodalpudur, Madurai District and quash the same in respect of the petitioners herein as devoid of merits and illegal forthwith.

For Petitioners : Mr.S.Palani Velayutham  
For R1 : Mr.A.P.G.Ohm Chairma Prabhu  
Government Advocate (Crl. side)

#### ORDER

This Criminal Original Petition has been filed to call for the records in connection with C.C.No.1404 of 2019, on the file of the Additional Mahila Court, Madurai, Madurai District, in relation to Crime No.758 of 2019, on the file of the Sub-Inspector of Police, Koodalpudur Police Station, Koodalpudur, Madurai District.



2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. side) appearing for the first respondent Police.

3. The learned counsel appearing for the petitioners would submit that the final report, which was filed against the petitioners, does not disclose any material ingredients with regard to the offences as alleged against the petitioners. The case of the prosecution is that, the first accused alone is said to have beaten the husband of the second respondent/de-facto complainant and the second accused is also said to have threatened the second respondent/de-facto complainant. Insofar as the petitioners are concerned, there was no specific overt act attributed against them. Further, with a view to grab the property owned by the petitioners, the second respondent/de-facto complainant at the instance of the first respondent Police and their henchmen attempted to take over the possession of the lands contrary to the settled principles. Resultantly, a false case has been foisted against the petitioners and therefore, the charge sheet filed against the petitioners is liable to be quashed.

4. Per contra, the learned Government Advocate (Crl. side) appearing for the first respondent Police, on instructions, would submit that the averments found in the First Information Report as well as in the 161 Cr.P.C. statements given by the witnesses would clearly disclose the fact that during the time of occurrence, the petitioners had also abused the second respondent/de-facto complainant by using filthy language and further, they made a life threat.

5. Upon considering the said submissions with the relevant records, it seems that in the charge sheet filed by the first respondent Police, the Investigation Officer came to the positive conclusion as during the time of occurrence, the petitioners along with two other accused had committed an offence, which is punishable under Sections 294(b), 323, 506(ii) and 34 I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

6. Further, a perusal of the First Information Report, which is the earliest document for the alleged occurrence, would reveal that the second respondent/de-facto complainant had clearly made allegations against the petitioners as during the time of occurrence, they abused her with filthy language and also made a life threat. The witnesses examined on the side of the prosecution as L.W.1 to L.W.4 had also stated the same version before the Investigation Officer. Therefore, it cannot be said that there is no overt act attributed against the petitioners.



7. At this juncture, it is necessary and useful to see the judgment of our Hon'ble Apex Court in the case of **Sau. Kamal Shivaji Pokarnekar Vs. The State of Maharashtra and others** [Criminal Appeal No.255 of 2019, dated 12.02.2019], wherein it has been held as follows:-

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9. .... A perusal of the complaint discloses that prima facie offences that are alleged against the respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. ....'

8. Further, in **Ajay Kumar Das Vs. State of Jharkand and others** reported in **2011 (12) SCC 319**, our Hon'ble Apex Court has held that genuineness of the allegations/charge is an issue to be tried and the Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure cannot delve into such factual controversy so as to quash the proceedings.

9. Now, applying the principles laid down by our Hon'ble Apex Court in above referred judgments to the case on hand, this Court is of the view that the allegations levelled against the petitioners are all factual issues. The genuineness of the said allegations has to be decided only during the time of trial before the Trial Court. Therefore, in the said circumstances, the Petition filed by the petitioner, is devoid of merits and the same is liable to be dismissed. Accordingly, it is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Writs)

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/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

The Sub-Inspector of Police,  
Koodalpudur Police Station,  
Koodalpudur,  
Madurai,  
Madurai District.

COPY TO

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

CRL OP (MD) No.10466 of 2020  
28.09.2020

SRK(CO)

TR(07.10.2020) 4P 3C