



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.8275 of 2018

and

Crl.M.P.(MD)No.3721 of 2018

1.S.Subathra
2.S.Sudhakaran
3.S.Latha
4.S.Saravanasiva

... Petitioners

-vs-

K.Palanikumar

... Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the case in C.C.No.53 of 2018 on the file of the Judicial Magistrate, Vadipatti and quash the same.

For Petitioner : Mr.C.Jawahar Ravindran

O R D E R

The petitioners herein are facing trial in C.C.No.53 of 2018 on the file of the learned Judicial Magistrate, Vadipatti, for the offences under Sections 494, 294(b) and 506(i) of IPC. It is a private complaint instituted by the respondent herein. To quash the same, this Criminal Original Petition has been filed.

2.Eventhough, the respondent has been served and his name is printed in the cause list, there is no appearance nor representation on his behalf.

3.The learned counsel for the petitioners reiterated the contentions set out in the memorandum of grounds. It is seen that the marriage between the first petitioner and the complainant took place on 05.07.2012. On 17.04.2013, a male child was born through the wedlock. The relationship between the parties had come under strain. Palanikumar and Subathra decided to go their separate ways. Therefore, they entered into a marriage dissolution deed dated 28.09.2015. It is to be noted that the marriage between the parties was not dissolved in the manner known to law.

4. Even though realizing the same, the first petitioner herein



subsequently filed H.M.O.P.No.296 of 2017 before the Sub Court, Melur under Section 13(i)(a) of the Hindu Marriage Act for dissolving their marriage. In the meanwhile, the respondent herein filed G.W.O.P.No.38 of 2016 seeking custody and guardianship rights over the child. When the first petitioner came to attend the Court hearing, the respondent herein was shocked to note that the first petitioner was pregnant. He there upon filed a complaint before the All Women Police Station, Samayanallur on 03.07.2017.

5.When an enquiry was held in that regard on the next day after the complaint came out, the petitioners are said to have abused him in filthy language and also criminally intimidated him. The complainant would also claim that he was physically assaulted. With these allegations, the impugned private complaint was filed and the same was taken up on file for the offences under Sections 120(b), 294(b), 323, 494, 495, 497 and 506(i) of IPC.

6.I must make it clear at the very outset that the marriage between the first petitioner and the complainant / respondent herein cannot be said to have been dissolved by the marriage dissolution deed dated 28.09.2015. Admittedly, the parties are Hindus and therefore they ought to have filed H.M.O.P., for getting the marriage dissolved. In fact, as already pointed out, the first petitioner has filed H.M.O.P.No.296 of 2017 before the Sub Court, Melur and it is said to be pending. The learned counsel for the petitioner is not clear as to its current status.

7.Now the question that arises for my consideration as to whether the offences alleged by the respondent herein have actually been made out. As regard the offences of bigamy, I can straightaway note that the so-called second husband of the first petitioner has not been impleaded as an accused. The second respondent is quite vague about the identity of the said character. If the complainant alleges bigamy on the part of the first petitioner herein, the burden of proof lies entirely on the complainant to come out with the details. He has not stated as to where and when and at what time the second marriage of the first petitioner took place and with whom. Those details are delightfully absent in the complaint.

8.Therefore, I have no difficulty in coming to the conclusion that the elementary ingredients of the offence of bigamy are absent in this case.

9.The next allegation made against the petitioners herein is under Section 294(b) of IPC. Section 294(b) of IPC will be attracted if obscene words are used in or near any public place. Except the self serving testimony of the complaint, there is



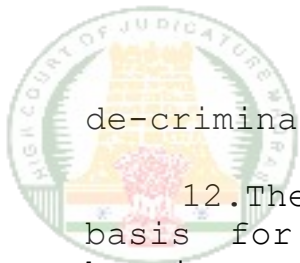
absolutely no other material. As rightly pointed out by the learned counsel for the petitioners even in their sworn statement, the complainant had not spelt out as to what was actually uttered by the petitioners herein. Only in paragraph -9 of the complaint, some expressions are attributed to the first petitioner herein.

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10.Next comes the offence under Section 506(i) of IPC. It has already been held that unless the accused have held out a real and substantial threat, the offence cannot be said to be attracted. The Madras High Court in the decision reported in **(1988) L.W. (Crl.) 178 (Noble Mohandass V. State)** held as follows:-

"7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws.3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does not exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out."

11.Against the petitioners 2 to 4, the complainant would allege the offence under Section 323 of IPC. Again, the materials in support of the offence, are absolutely absent. The complainant does not appear to have suffered any injury or admitted in the hospital. No medical evidence as such is forthcoming. Along with the complaint, all that the complainant had enclosed are only some of the complaints given before the police authorities. The complaint was not lodged immediately after the occurrence. He has not explained the reasons for the delay. The first petitioner being a woman cannot be guilty of the offence of adultery. In any event, the Hon'ble Supreme Court in the decision reported in **(2019) 3 SCC 39** in the case of **Joseph Shine Vs. Union of India** has



de-criminalised Section 497 of IPC.

12. Therefore, I am of the view that there is no prima facie basis for in any of the allegations made by the complainant herein. The first petitioner is the wife of the complainant, second and third petitioners are parents-in-law, the fourth petitioner is the brother-in-law of the complainant. The elementary ingredients of the offences are wholly absent. After agreeing to let the first petitioner go her separate ways, the complainant herein is continuing to pursue her.

13. I am of the view that continuance of the impugned proceedings amounts to an abuse of legal process. Therefore, C.C.No.53 of 2018 on the file of the Judicial Magistrate, Vadipatti, is quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar (CS)

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To

The Judicial Magistrate, Vadipatti, Madurai District.

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