



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.22945 of 2016

and

Crl.M.P.(MD)Nos.12043 and 12044 of 2016

1.F.Sahaya Stalin
2.F.Jeba Britto Darvin
3.Maria Sulochana Bai

...Petitioners/Accused Nos.1,3 & 4

-Vs-

P.Jessi

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records pursuant to the C.C.No.76 of 2015 on the file of the Judicial Magistrate No.II, Nagercoil and quash the same insofar as the petitioners are concerned and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

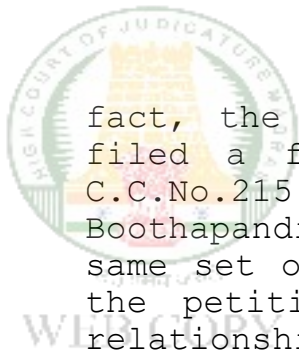
For Petitioners : Mr.G.Thalaimutharasu

For Respondent : Mr.B.Jeyakumar

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.76 of 2015 on the file of the Judicial Magistrate No.II, Nagercoil, as against the petitioners.

2.The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as A1, A3 and A4. The first accused got married with the respondent on 21.12.1997. Out of their wedlock, they gave birth to two sons. When their marriage is very much existence, the defacto complainant came to know that the first accused again married on 05.12.2012 with one Jegadeeswari and all the accused persons were attended the marriage. He further submitted that the respondent lodged a complaint before the Inspector of Police, All Women Police Station, Nagercoil for the very same set of allegations. Based on her complaint, FIR has been registered in Cr.No.6 of 2016 for the offences punishable under Sections 494, 498(A) and 406 IPC as against the petitioners. In

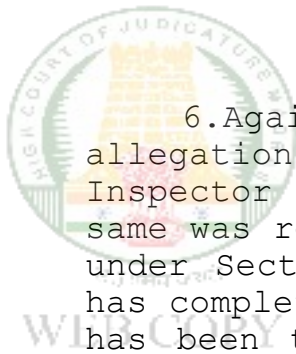


fact, the Inspector of Police has completed the enquiry and also filed a final report and the same has been taken on file in C.C.No.215 of 2016 on the file of the learned Judicial Magistrate, Boothapandi and it is pending for trial. Therefore, for the very same set of allegations there can not be two complaints as against the petitioners. He further submitted that due to constrained relationship between the first accused and the respondent, the first accused filed a divorce petition in I.D.O.P.No.509 of 2014 on the file of the learned District Judge, Kanyakumari at Nagercoil and it is pending for adjudication. Suppressing the said fact, the respondent lodged the impugned private complaint with false frivolous allegations as against the petitioners. In fact, the said complaint was lodged only for the reasons that the first accused already lodged a complaint as against the brother of the respondent herein before the Inspector of Police, K.K.Nagar, Trichy and the same was registered in Crime No.947 of 2012 for the offences punishable under Sections 447 and 427 IPC. Therefore, only for the vengeance as against the petitioners false and frivolous complaint has been foisted as against the petitioners. Hence, he prayed to quash the same.

3.The learned counsel appearing for the respondent would submit that the first accused got married another woman, when the first marriage is very well in existence with the respondent and as such he committed the offence punishable under Sections 494 and 496 IPC. In fact, others were also abetted the crime and they are liable to punishable under Sections 494 r/w 109 IPC. Therefore, the learned Magistrate has rightly taken cognizance and issued summons to the petitioners. He further submitted that in respect of FIR in Crime No.6 of 2016, since the Inspector of Police, All Women Police Station, Nagercoil charged the petitioners for the offences punishable under Sections 498(A), 406 and 494 IPC, now it is pending for trial.

4.Heard Mr.G.Thalaimutharasu, learned counsel appearing for the petitioners and Mr.B.Jeyakumar, learned counsel appearing for the respondent.

5.It is seen that there are totally six accused, in which the petitioners are arrayed as A1, A3 and A4. The first accused got married with the respondent herein on 21.12.1997 and also gave birth to two male children. While being so, the first accused again got married with one Jegadheeswari, D/o.Dharmalinga Gurukkal on 05.12.2012. Therefore, the respondent lodged a complaint for the offence punishable under Sections 494 r/w 109 IPC and 496 IPC. After recording sworn statement, the learned Judicial Magistrate has taken cognizance for the offence punishable under Sections 494 and 496 IPC as against the first accused and for the offence under Sections 494 r/w 109 IPC as against the accused Nos.2 to 6.



6.Again for the very same set of allegations and also other allegations the respondent lodged a police complaint before the Inspector of Police, All Women Police Station, Nagercoil and the same was registered in Crime No.6 of 2016 for the offence punishable under Sections 498(A), 406 and 494 IPC. The investigation officer has completed the enquiry and also filed a final report and the same has been taken on file in C.C.No.215 of 2016 on the file of the learned Judicial Magistrate, Boothapandi and it is pending for trial, in which all the petitioners are accused.

7.Admittedly for the very same set of allegations, there are two complaints, in which two calendar cases are pending for trial. Therefore, for very same set of allegations as against the very same accused persons, two trial cannot be permissible and it cannot be sustained. Subsequent to the private complaint, the investigation officer charged the petitioners for the offence punishable under Sections 494 IPC also. Therefore, the impugned complaint cannot be sustained as against the petitioners and the same is liable to be quashed.

8.Accordingly, the Criminal Original Petition is allowed and the proceedings in C.C.No.76 of 2015 on the file of the learned Judicial Magistrate No.II, Nagercoil is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar

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 Judicial Magistrate No.II,
Nagercoil, Kanyakumari District.

+1CC TO Mr.B.Jeyakumar, Advocate, Sr No.25040

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