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Crl.O.P.(MD).No.23825 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:02.12.2020

CORAM

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

Crl.O.P.(MD).No.23825 of 2016

and

Crl.M.P.(MD).No.12592 and 12593 of 2016

- 1.Packiyam
- 2.Ukkirapandi
- 3.Karuppasamy
- 4.Marimuthu
- 5.Ramu
- 6.Muthumari
- 7.Ganesan
- 8.Annalakshmi
- 9.Sekar
- 10.Pasupathi

... Petitioners

Vs

- 1.The State rep.by
The Inspector of Police,
All Women Police Station,
Kamudhi,
Ramanathapuram District.
(In Crime No.1 of 2012)

- 2.Murugavalli

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the Charge Sheet in C.C.No.137 of 2016 on the file of the Judicial Magistrate, Kamudhi and quash the same as illegal.

For Petitioners : Mr.C.Mayil Vahana Rajendran
for M/s.P.Banu Prasath

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

For R2 : Mr.J.Chakkaravarthy

ORDER

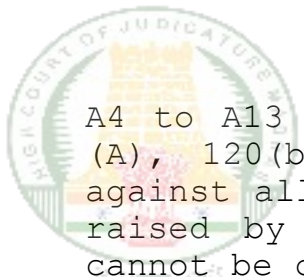
This criminal original petition has been filed to quash the proceedings in C.C.No.137 of 2016 on the file of the Judicial Magistrate, Kamudhi, as against the petitioners.



2.The learned Counsel appearing for the petitioners submitted that totally there are thirteen accused in this case, in which, the petitioners have been arrayed as A4 to A13. He further submitted that according to the defacto complainant the first accused already got married the defacto complainant and the marriage is still existing, the first accused is having illegal intimacy with the second accused and got married with the help of the other accused viz., A3 to A11. Out of their wedlock, they were blessed with one female child. While being so, all the accused persons have demanded more dowry from the second respondent/defacto complainant to live with the first accused. Hence, the charges as against the petitioners. He further submitted that insofar as the petitioners are concerned, they are close relatives of A2, who got married with the first accused. Subsequent to the first marriage with the defacto complainant. He further submitted that insofar as A3 is concerned, he is the father of A2 and FIR in Crime No.1 of 2012 itself was quashed by this Court in Crl.O.P.(MD).No.19067 of 2012 and the petitioners are also standing in the similar putting, since complaint lodged by the defacto complainant before the learned Judicial Magistrate, Kamudhi under Section 156(3) Cr.P.C., and the same was forwarded to the first respondent Police. Therefore, there is absolutely no materials to proceed against the petitioners. Hence, they prayed for quashment of entire proceedings.

3.Per contra, the learned counsel appearing for the second respondent submitted that the first accused got married with the second respondent on 17.02.2008 and out of their wedlock, they were blessed with one male child. Thereafter, the first accused with the help of all other accused persons got married with the second accused and she also gave birth to female child. He further submitted that on the complaint lodged by the second respondent as well as the father of the second accused, the Inspector of Police, Kamudhi Police Station, has registered two cases in Crime Nos.115 and 121 of 2010. Thereafter, the father of the second accused has filed a Habeas Corpus Petition before this Court in H.C.P.(MD). No.422 of 2012 and the Accused No.1 and 2 were appeared before this Court and categorically admitted that they got married with the help of the other accused persons and also gave birth to one female child. Therefore, all the accused persons have committed offence under Section 494 of IPC and thereafter they have also demanded dowry from the defacto complainant. If the second respondent wanted to live with the first accused, the second respondent has to give more dowry. Therefore, all the petitioners are having specific overt act to attract offence under Sections 494, 498(A), 120(b) and 109 of IPC. Hence, he prayed for dismissal of this petition.

4.The learned Government Advocate (Crl. Side) appearing for the first respondent Police submitted that totally there are thirteen accused in this case, in which, the petitioners have been arrayed as



A4 to A13 and the charges for the offence under Sections 494, 498 (A), 120(b) and 109 of IPC and there is specific overt act as against all the petitioners. He further submitted that the points raised by the petitioners are disputed question of fact and it cannot be considered under Section 482 of Cr.P.C., and points raised only before the trial Court and hence, he prayed for dismissal of quash petition.

5. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (criminal side) appearing for the first respondent and the learned counsel appearing for the second respondent.

6. On perusal of the materials available on records, it is seen that totally there are thirteen accused in this case, in which, the petitioners have been arrayed as A4 to A13. Earlier the first accused got married the second respondent on 17.02.2008 and gave birth to male child. Thereafter, the first accused is having illegal intimacy with the second accused and they eloped. Therefore, the second respondent as well as the third accused viz., the father of the second accused have lodged complaint and both the complaints were registered in Crime Nos.115 and 121 of 2010 for the offence under Section 363 of IPC on the file of the Inspector of Police, Kamudhi Police Station. Thereafter, the third accused viz., the father of the second accused has filed a Habeas Corpus Petition before this Court in H.C.P.(MD).No.422 of 2012 and the Accused No.1 and 2 were appeared before this Court and categorically admitted that they got married with the help of the other accused persons and also gave birth to one female child. That apart, the third accused has already filed quash petition before this Court and this Court quashed the FIR in Crime No.1 of 2012 by order dated 21.07.2015, in Crl.O.P.(MD).No.19067 of 2012, in which, paragraph No.6 is extracted hereunder:

"6. Despite the fact that the case has been registered in the year 2012, absolutely there is no progress has been made as per the submission of the learned Government Advocate (Crl. Side). The petitioner is only father of A2. There is absolutely nothing to implicate the petitioner for the alleged offence. The exercise of power under Section 156(3) Cr.P.C., is a judicial one. Though it is pre-cognizance stage, the Judicial Magistrate has to apply his mind before issuing the direction. Though there is no material to support the statement respondent No.2 has married subsequently for the second time, perhaps that is the reason why she has not come forward to resist the same despite notice has been served on him. In view of the above, this Court is inclined to allow this petition."



7.The petitioners are none other than the relatives of A2. According to the prosecution, after the second marriage of the first accused with the second accused, the second respondent again wants to reunion with the first accused and thereafter, the petitioners are close relatives of A1 and demanded dowry for their happy living. Admittedly all the petitioners are relative of the second accused, except this allegations and there is no specific overt act as against the petitioners herein. On perusal of the orders passed by this Court in H.C.P.(MD).No.422 of 2012 revealed that the second accused and the first accused eloped and got married in the temple. Out of their wedlock, they were blessed with female child. Accordingly, the petitioners have absolutely no knowledge about their marriage and there is no evidence to show that the the demanded dowry from the second respondent to allow her to live with the first accused. It is pertinent to note that the petitioners are being the relatives of the second accused and they would not have demanded dowry from the second respondent to live with the first accused. Therefore, the present complaint is nothing but clear abuse of process of law. Further, the petitioners are also standing in the same putting and the third accused had taken a stand before this Court in Crl.O.P.(MD).No.19067 of 2012.

8.In view of the above discussion, this criminal original petition is allowed and the private complaint in C.C.No.137 of 2016 on the file of the Judicial Magistrate, Kamudhi is quashed as against the petitioners. However, the trial Court is directed to proceed the trial as against A1 and A2 and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RIT Act)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsg

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:

- 1.The Judicial Magistrate,
Kamudhi, Ramnad District.
- 2.The Inspector of Police,
All Women Police Station,
Kamudhi,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.P.Banu Prasath, Advocate Sr.No.23757

Crl.O.P.(MD).No.23825 of 2016
and
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02.12.2020

PM (CO)
NR (09/02/2021) 5P : 5C