



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)Nos.4864 & 6702 of 2016

and

Cr1 MP(MD)Nos.2417, 2418, 3368 & 3369 of 2016

Karuppusamy
Thirumalaisamy
Thirumathi

... Petitioners / Accused Nos.2 to 4
in Cr1 OP(MD)No.4864 of 2016

Arumugam

...Petitioner / Accused No.1
in Cr1 OP(MD)No.6702 of 2016

1. State, rep.by
The Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai City.

... 1st respondent / Complainant

2.K.Sivalakshmi

... 2nd respondent / defacto complainant

Common Prayer : Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C No.85 of 2015 on the file of the Additional Mahila Court, (Magisterial Level), Madurai and quash the same as against the petitioners herein.

In both cases

For Petitioners : Mr.P.T.Ramesh Raja
For Respondents : Mr.A.Robinson,
Government Advocate (crl.side) for R1
Mr.P.Mahendran for R2

COMMON ORDER

The petitioners are facing trial in C.C No.85 of 2015 on the file of the Additional Mahila Court (Magisterial Level), Madurai for the offences under Sections 498 A, 323 IPC and Section 4 of the Tamil Nadu Dowry Prohibition Act.

2.The first accused is the husband of the defacto complainant. The second accused is the father in law. The third and fourth accused are the brother in law and sister in law. The marriage between the first accused and the defacto complainant had taken place on 08.06.2011 at Palani. A female child Lakshitha was born. The relationship between the parties had come under strain leading to registration of Crime No.1 of 2015 on the file of the AWPS, Madurai City. The case was investigated and final report was filed



and the same was also taken on file in C.C No.85 of 2015 on the file of the Additional Mahila Court (Magisterial Level), Madurai. To quash the same, these criminal original petitions have been filed.

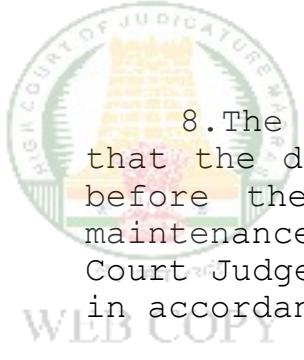
3. The first accused Arumugam is the petitioner in CrI OP(MD) No.6702 of 2016 while the in-laws are the petitioners in CrI OP(MD) No.4864 of 2016. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds. He points out that the allegation of the defacto complainant as set out in her statement recorded under Section 161 of Cr.PC is that Al Arumugam had issued divorce notice on 08.11.2014. After receiving the same, when the defacto complainant, her mother and others spoke to the accused, the accused herein had stated that if additional dowry as demanded is not given, the defacto complainant will not be taken back.

4. The petitioners' counsel took me to the reply notice dated 02.12.2014 issued by the defacto complainant. In the reply notice, it has been stated that the first accused had agreed to take the defacto complainant to Dubai and contrary to his assurance, he did not do so. None of the allegations that are subject matter of the impugned prosecution find mention in the said reply notice dated 02.12.2014. The petitioners' counsel also contended that HMOP No.372 of 2016 filed by Al Arumugam before the Principal Sub Court, Madurai was allowed and the marriage between the parties was dissolved on 06.07.2017. He would also place reliance on an unreported decision of this Court made in CrI OP No.26759 of 2015 dated 10.07.2019. He would submit that the reply notice was marked as an exhibit in HMOP No.372 of 2015 and that it is an unimpeachable document and this court would be justified in looking into the same.

5. Even though the contentions of the petitioners' counsel are rather attractive, I am not in a position to accept the same. The Hon'ble Supreme Court in the decision reported in **2019 Cri LJ 4513 (Chilakamarthi Venkateswarlu and Ors. vs. State of Andhra Pradesh and Ors)** held as follows :

"15. In exercising jurisdiction Under Section 482 it is not permissible for the Court to act as if it were a trial Court. The Court is only to be prima facie satisfied about existence of sufficient ground for proceeding against the Accused. For that limited purpose, the Court can evaluate materials and documents on record, but it cannot appreciate the evidence to conclude whether the materials produced are sufficient or not for convicting the Accused.

16. The High Court should not, in exercise of jurisdiction Under Section 482, embark upon an enquiry into whether the evidence is reliable or not, or whether on a reasonable appreciation of the evidence the allegations are not sustainable, for this is the function of the trial Judge. This proposition finds support from the judgment of this Court in Zandu Pharmaceutical Works



8.The learned counsel for the defacto complainant would submit that the defacto complainant has already filed a maintenance case before the Family Court, Madurai in M.C No.83 of 2016 seeking maintenance for herself and the female child. The learned Family Court Judge shall dispose of the said maintenance case on merits and in accordance with law as expeditiously as possible.

9.Considering the facts and circumstances of the case, the personal appearance of the petitioners is dispensed with. The learned Trial Judge shall not insist the personal appearance of the petitioners unless it is necessary or imperative. Of course, they will have to appear on three occasions, namely, for answering the charges, examination under Section 313 of Cr.PC and at the time of pronouncement of judgment. On all other occasions, the petitioners shall be represented by their counsel. It is made clear that the court below shall appreciate the evidence of the petitioners totally uninfluenced by any of the observations made in this order. The dismissal of these petitions will not have any bearing on the merits of the matter.

10.The criminal original petitions stand dismissed. Consequently, connected miscellaneous petitions are also stand dismissed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Additional Mahila Court Judge, (Magisterial Level), Madurai

2.The Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai City.

+2 CC to Mr.P.T.RAMESHRAJA, Advocate (SR-58[F] dated 02/01/2020)

+1 CC to Mr.P.MAHENDRAN, Advocate (SR-235[F] dated 03/01/2020)

Cr1 OP(MD)Nos.4864 & 6702 of 2016

and

Cr1 MP(MD)Nos.2417, 2418, 3368 & 3369 of 2016

02.01.2020