



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2020

PRONOUNCED ON : 26.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22963 of 2016
and
CRL MP.No.10758 & 10759 of 2016

1.Thilagavathy
2.Rajkumar
3.Balamurugan
4.Vijayakumar
5.Rajendran

...Petitioners / A1 to A5

Vs.

1. The State by Inspector of Police,
Virddhachalam Police Station,
Cuddalore District
(Crime No.340 of 2011)

...1st Respondent/Complainant

2. Venkatesan

...2nd Respondent /
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to Call for the records pending on the file of the learned Judicial Magistrate No.1, Virddhachalam in S.T.C.No.480 of 2015, and quash the Criminal Proceeding pending on the file of the Judicial Magistrate No.I, Virddhachalam in S.T.C.No.480 of 2015.

For Petitioner : Mr.V.Paarthiban

For Respondent -1 : Mr.K.Prabakar, ublic Prosecutor

For Respondent -2 : Mr.A.Aswin Kumar,Legal-Aid Counsel

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in S.T.C.No.480 of 2015, pending on the file of the Judicial Magistrate No.I, Virddhachalam.

2. The case of prosecution, in nutshell, is as follows:-



The 1st petitioner is the wife of the 2nd respondent and the petitioners 2 to 5 are the brothers of the 1st petitioner. The marriage between the 1st petitioner and the 2nd respondent was solemnized on 31.10.1994. There was difference of opinion between the 1st petitioner and the defacto complainant On 10.04.2011, the 1st petitioner along with other accused restrained the 2nd respondent, scolded, threatened, slapped and kicked him. Hence, the 2nd respondent made a complaint to the 1st respondent, which was registered in Crime No.340 of 2011, for the offences under Sections 147, 341, 294(b), 323, and 506(i) of IPC. After investigation, the first respondent filed a charge sheet, for the offences under Sections 147, 341, 294(b), 352, and 506(i) of IPC, before the learned Judicial Magistrate No.1, Viruddhachalam, which was taken on file in S.T.C.No.480 of 2015. The learned Magistrate having taken cognizance of the offence, issued summons to the accused.

3. The learned counsel appearing for the petitioners would submit that the 1st petitioner is the wife of the 2nd respondent / defacto complainant. The marriage between the 1st petitioner and the 2nd respondent was solemnized on 31.10.1994. There was some difference of opinion between the 1st petitioner and the defacto complainant and now they are living separately. Based on the complaint given by the 2nd respondent, the case in Crime No.340 of 2011, has been registered, final report filed, which was taken on file in S.T.C.No.480 of 2015, by the learned Judicial Magistrate No.1, Viruddhachalam and issued summons to the petitioners. It was contended that without any appreciation of the major contradictions appeared in the statements of the list of witnesses, the learned Magistrate taken cognizance of the case and issued summons to the accused. Further, the averments made in the First Information Report and the Statements will not show any commission of the offence and recorded the statements of the witnesses, which is totally against the First Information Report given by the 2nd respondent. Further, there was a delay of 22 days in lodging the complaint and the prosecution did not explain the same and it creates serious doubts on the case of the prosecution. Further submitted that he was informed that the 2nd respondent passed away on 17.07.2020, but it could not be confirmed. Hence, the petitioners are before this Court for the aforesaid relief.

4. Finding that no one appeared for the 2nd respondent / defacto complainant despite service of notice, name printed in cause list for quite some time, this Court, appoints Mr. A.Aswin Kumar, as Legal-Aid Counsel for the 2nd respondent.

5. The learned Legal Aid Counsel appearing for the 2nd respondent / defacto complainant would submit that inasmuch as after investigation, the 1st respondent Police filed final



report, which has been taken cognizance and issued summons and it is for trial Court to consider the pleas of the accused. The error in date of occurrence is only clerical, delay and minor inconsistency can be considered during trial, but at this stage, it is too early on the part of the accused in challenging the proceedings. Hence, the learned legal aid counsel prayed for dismissal of the petition. Further, the learned counsel, in support of his contentions, relied on the Judgment of the Hon'ble Apex Court in Md. Allauddin Khan Vs. The State of Bihar & Others reported in (2019 (6) SCC 107).

6. The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the 1st respondent registered a case, based on the complaint given by the 2nd respondent / defacto complainant in Crime No.340 of 2011, for the offences under Sections 147, 341, 294(b), 323, and 506(i) of IPC. After investigation, the first respondent laid a charge sheet, for the offences under Sections 147, 341, 294(b), 352, and 506(i) of IPC, before the learned Judicial Magistrate No.1, Viruddhachalam, which was taken on file in S.T.C.No.480 of 2015. The learned Magistrate has taken cognizance of the offence and issued summons to the accused. It is too premature on the part of the accused to challenge the proceedings. Hence, the learned Additional Public Prosecutor prayed for dismissal of the petition filed by the petitioners.

7. I have heard the learned counsels appearing on either side and perused the materials available on record.

8. It is seen that the occurrence is said to have taken place on 10.04.2011 @ 8.00 p.m., but the complaint has been lodged only on 02.05.2011, no explanation for the delay. This delay assumes significance for the reason, the defacto complainant and the petitioners are closely related in-laws, already there is some dispute, hatred between them. The first petitioner is the estranged wife and other petitioners are brothers-in-law. The first petitioner and the defacto complainant are living separately. Further, in the complaint the defacto complainant had stated that no injury sustained by him and no one were present in the scene of occurrence and hence, none witnessed the occurrence. The assault narrated in the complaint and the overt act attributed to each of the petitioner are contrary to the injuries sustained. Further, L.W.2 - Tamilselvan and L.W.3 - Vetri are projected as eye-witnesses. From their statement it is seen that their statement was recorded on 03.05.2011, in their statement both specifically state that the date of occurrence is on 02.05.2011, which cut the root of the case. Other witnesses L.W.4 & L.W.5 are witnesses for observation Mahazar and rough sketch, from the scene of occurrence no seizure made, L.W.6 is the Head constable, who received the



complaint, registered FIR; L.W.7 is the Investigation Officer. Thus, from the materials and statement, on taking it uncontroverted, then also it is seen no case made out against the accused. In view of the same, this case would squarely fall under the guidelines of Bhajan Lal's Case. In view of the same, finding the case highly improbable filed to spite vengeance, further continuing with the prosecution of the case would amount to abuse of process of the Court, this Court is inclined to quash the proceedings.

9. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.480 of 2015, pending on the file of the Judicial Magistrate No.I, Virddhachalam, is quashed. Consequently, the connected miscellaneous petitions are closed.

10. The service rendered by Mr.A.Aswin Kumar, legal-aid counsel, is appreciated for the sincere efforts taken to put forth the case and defending second respondent.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

MPK

To

1. The Judicial Magistrate No.1,
Virddhachalam.
2. The Inspector of Police,
Virddhachalam Police Station,
Cuddalore District
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.V.Parthiban, Advocate, S.R.No.20448

Cr1.O.P.No.22963 of 2016

VSN-II (CO)
RGA (09/08/2021)