

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

Crl.O.P.No.6369 of 2016

and

Crl.M.P No.3293, 3294 of 2016

- 1.Mohamed Kayasudheen
- 2.Abdul Munaff
- 3.Mumtaj Begam
- 4.Tajmal Hussain
- 5.Khadar Hussain
- 6.Irfana Begam
- 7.Shehanaz Begum

....Petitioners

Vs.

1. State, Rep. By
The Inspector of Police,
Guduvancheri Police Station,
Kanchipuram District
Crime No.871 of 2014
2. B.Abdul Seriff
(2nd respondent was impleaded
as per the order of this Court dated
13.04.2016 in Crl.M.P No.4290 of 2016
in Crl.O.P No.6369 of 2016)

.. Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, praying to call for the records pertaining to the proceedings in P.R.C No.10 of 2015 on the file of the Judicial Magistrate No.II, (Addl. Mahila Court), Chengalpet and quash the same.

For Petitioners : Mr.A.Palaniappan
For Respondents : Mr.S.Karthikeyan -R1
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash proceedings in P.R.C No.10 of 2015 on the file of the Judicial Magistrate No.II, (Addl. Mahila Court), Chengalpet.

2. According to the petitioners, the de-facto complainant being the wife of the first petitioner got married to him on 27.05.2015 as per the Islamic rites and customs. The second petitioner is father-in-law and third petitioner is mother-in-law of the de-facto complainant. The fourth and fifth petitioners are brothers of the first petitioner. The sixth and seventh petitioners are wife of fourth and fifth petitioners. The petitioners have been charged for the offences under Sections 147, 148, 149, 498(A), 307, 506(ii) of IPC and the same is pending in P.R.C No.10 of 2015 on the file of the Judicial Magistrate No.II (Addl. Mahila Court), Chengalpet.

3. The allegation against the petitioners is that on 10.09.2014, as per the instruction of A1, about 10.00 p.m, the de-facto complainant came to the petitioner's house and A1 demanded Rs.24 lakhs and radiated her and her parents. Her parents went away. A1 told her to die and went away. On 11.09.2014, at about 6.30 a.m, A2 and A3 attacked with deadly weapon by cutting her neck and back, A4 and A5 kicked her on her abdomen, A7 slapped her, A6 hit her head on the wall and also A2 to A4 threatened her, A2 and A3 poured kerosene on her. The entire allegation against the petitioners are false and baseless. The de-facto complainant left the matrimonial home within a month from the date of marriage and now, she is residing with her parents. There is no chance of reunion and eventhough panchayat has been held between the first petitioner and the de-facto complainant, she did not come to the petitioners' house stating that she needs some time at lease six months for coming back to the matrimonial home. That being the case, on 10.09.2014, the de-facto complainant along with her family members entered into the house of the petitioners and attacked them and some were injured and taken to the hospital and also gave a complaint on 11.09.2014 to the respondent police along with medical certificate, but the respondent police failed to register a case against the de-facto complainant. In the complaint, it has been stated that A2 and A3 attacked the de-facto complainant with sharp edged weapon, others kicked on her and slashed her, but as per the statement of the doctor, no cut injuries found on the de-facto complainant. Further, it is stated that the de-facto complainant was attacked by four persons, but in the FIR she has implicated 7 persons in which A1 was not at all present in the scene of occurrence. The entire allegations are false and only in order to harass the petitioner, a false case has been foisted against the petitioners. Unless the charge sheet is quashed, the petitioners will be put to great loss and hardship. Hence the present petition has been filed.

4. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent.

5. On a perusal of the records, 15 witnesses have been cited on the side of the prosecution. As per the charges sheet, there are totally seven accused and all are residing in the same address. The petitioners have been implicated for the offences under Sections 147, 148, 149, 498(A), 307, 506(ii) of IPC. According to the petitioners, no such incident was occurred. In the charge sheet, it has been stated as follows:

The marriage between Heera and A1 was solemnized on 27.05.2012 as per Islamic rites and customs. During the time of marriage the complainant gifted his daughter Heera with 50 sovereigns of gold jewels Rs.50,000/- worth of silver articles and utensils. The couple lived at 25, Godhavary Nagar, Urapakkam. The said A1 used to visit Bangalore to do work. The said A1 used to visit the matrimonial home once in a month alone. After ten days of marriage, A1 harassed her and subjected her to cruelty to get 30 lakhs from her father for purchasing house. A2 and A3 insisted her to give her gold ornaments to do business and Heera refused to abide by their demand A1 sold the ten sovereigns of gold from the gold given to him by the parents of Heera. The said A1 allegedly had illicit sexual relationship with other women. The jamath of Pattabiram settled the matter and Urapakkam. Jamath assured change on the part of A1, A1 never changed and took her from parent house or lived separately with her and child in Chennai.

In the course of the same transaction on 10.09.2014, as per the instruction of A1 at about 10.00 hours, the said Heera came to Urapakkam along with her parent and her mother's elder sister. A1 demanded 24 lakhs and ridiculed her and her parent. Her parent left. A1 told her to die and went away.

In the course of the same transaction on 11.09.2014 at about 06.30 hours at her matrimonial house in Godhavary Nagar, Urapakkam, A2 and A3 attempted the life by means of a sharp edged weapon by cutting her on her hands neck and back. A4 and A5 kicked her on her abdomen. A7 slapped her. A6 hit her head on the wall. A2 to A7 exhorted "if you are left alone there is possibility of escaping" and their assembly became unlawful assembly. A2 to A7 appears to have committed offence punishable under Sections 147. A2, A3 poured kerosene on her to kill and A5 to A7

acted in prosecution of the common object. Hence, A1 to A7 appears to have committed offence punishable under Section 498-A IPC. A2 and A3 appears to have committed offence punishable u/s.148, 307 IPC. A4 to A7 appears to have committed offence punishable u/s.307 r/w 149 IPC. A1 to A7 criminally intimidated her and hence, they appear to have committed offence punishable u/s.506(ii) IPC.

6. According to the complaint, it is seen that there was sexual harassment made by the first petitioner herein and he had illicit relationship with another woman. It is also stated that A2 and A3 attempted the life by means of a sharp edged weapon by cutting her hands, neck and back. All the grounds cannot be raised in this quash petition. All the matters are factual in nature and evidence have to be let in by both the parties concerned and this court cannot go into the details of the same and pass an order by quashing the said petition.

7. The learned counsel for the petitioner would submit that now the case is pending for committal in P.R.C No.10 of 2015 on the file of the Judicial Magistrate No.II, Additional Mahila Court, Chengalpet and it has not been committed to the Sessions Court and the same is pending from 2016 onwards. Hence, this Court may direct the trial Court to expedite the trial.

8. To bring a case under Section 482 of Cr.P.C, the guidelines have been issued by the Apex Court in the case of Parbatbhai Aahir Alias Parbatbhai Bhimsinhbhai v. State of Gujarat and another reported in (2017) 9 Supreme Court Cases 641 following the Bajanlal case and it has been held as follows:

11. Section 482 is prefaced with an overriding provision. The statute saves the inherent power of the High Court, as a superior court, to make such order as are necessary (i) to prevent an abuse of the process of any court; or (ii) otherwise to secure the ends of justice. In Gian Singh a Bench of three learned Judges of this Court adverted to the body of precedent on the subject and laid down guiding principles which the High Court should consider in determining as to whether to quash an FIR or complaint in the exercise of the inherent jurisdiction. The considerations which must weigh with the High Court are: (SCC pp.342-43, para 61)

"61... the power of the High Court in quashing a criminal proceeding or FIR or complaint in exercise of its inherent jurisdiction is distinct and different from the power given to a

criminal court for compounding the offences under Section 320 of the Code. Inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guideline engrafted in such power viz., (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In what cases power to quash the criminal proceeding or complaint or FIR may be exercised where the offender and the victim have settled their dispute would depend on the facts and circumstances of each case and no category can be prescribed. However, before exercise of such power, the High Court must have due regard to the nature and gravity of the crime. Heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc., cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society. Similarly, any compromise between the victim and the offender in relation to the offences under special statutes like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc.; cannot provide for any basis for quashing criminal proceedings involving such offences. But the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offences arising out of matrimony relating to dowry etc., or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. In other words, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would

tantamount to abuse of the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings".

Accordingly, the High Court must consider whether it would be unfair or contrary to the interest of justice to continue with the criminal proceeding or continuation of the criminal proceeding would tantamount to abuse of the wrongdoer and whether to secure the ends of justice, it is appropriate that the criminal case is put to an end and if the answer to the above question(s) is in the affirmative, the High Court shall be well within its jurisdiction to quash the criminal proceedings.

9. The grounds raised by the counsel for the petitioners are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioners to raise all the grounds before the Court below and the same shall be considered on its own merits and in accordance with law. This Court is not inclined to interfere with the proceedings pending before the Court below.

10. The learned counsel for the petitioners requested this Court to dispense with the presence of the petitioners 2 and 3. Taking into consideration, the facts and circumstances of the case, the presence of the petitioners 2 and 3 is dispensed with and they shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioners 2 & 3 shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgment.

11. In the result, this Criminal Original Petition stands disposed of. However, the Court below is directed to complete the proceedings within a period of four weeks from the date of receipt of a copy of this order. Thereafter, the learned Sessions Judge shall complete the trial within a period of eight months. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

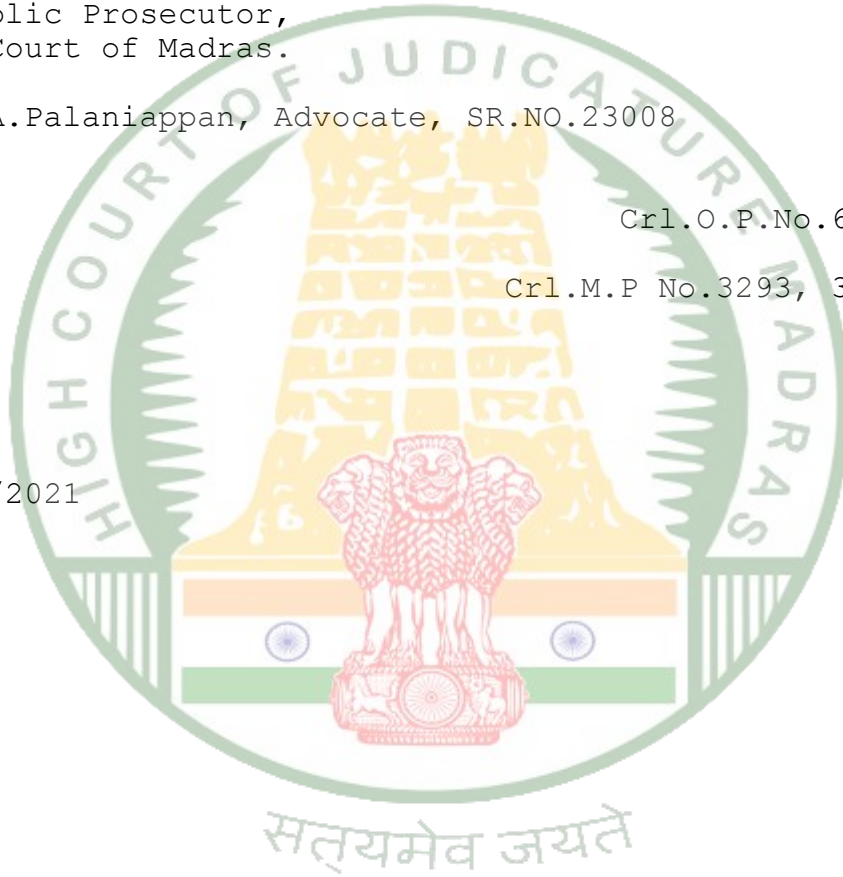
1. The Judicial Magistrate No.II,
(Addl. Mahila Court), Chengalpet
2. The Inspector of Police,
Guduvancheri Police Station,
Kanchipuram District
3. The Public Prosecutor,
High Court of Madras.

+1cc M/s.A.Palaniappan, Advocate, SR.NO.23008

Crl.O.P.No.6369 of 2016
and

Crl.M.P No.3293, 3294 of 2016

RR(co)
SRG 13/07/2021



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