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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2021

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.7610 of 2017

and

Crl.M.P.Nos.5512 & 5513 of 2017

1. Sushmitha @ Payal Kumari
2. Praveen Kumar
3. Ramesh Chand

...Petitioners/Accused 1 to 3

Vs.

Senakraj Chordia

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.104 of 2016 on the file of the First Additional District Munsif cum Judicial Magistrate No.I, Ulundurpet and quash the same.

For Petitioners : Mr.B.Jawahar

For Respondent : Mr.N.Manokaran

O R D E R

The petitioners have filed this petition seeking to call for the entire records in C.C.No.104 of 2016, on the file of the First Additional District Munsif cum Judicial Magistrate No.I, Ulundurpet and quash the same.

2. The case of the petitioners is that the 1st petitioner and the respondent got married on 23.04.2014 and they were blessed with two sons. First son, viz., Ajay Veevyn was born on 31.05.2005 and second son, viz, Vijay Veevyn was born on 30.12.2009. However, right from the inception, the respondent has disliked the company of the 1st petitioner for no justifiable cause and the 1st petitioner has tolerated the cruelty committed by the respondent for sometime and however, the respondent has filed a petition for divorce in H.M.O.P.No.177 of 2013, on the file of the learned Principal Sub Judge, Villupuram. Further it is alleged by the petitioner that pending H.M.O.P.No.177 of



2013, she had filed a complaint dated 26.11.2013 before the Protection Officer, District Social Welfare Office, Cuddalore, alleging that she was subjected to harassment at the hands of the petitioner and the said petition was forwarded to the learned District Munsif Cum Judicial Magistrate, Parangipettai for necessary action. Accordingly, the said complaint filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005, was taken on file in CrI.M.P.No.5731 of 2013. While so, the 1st petitioner had filed another petition dated 10.01.2014 under Section 23 of the P.W.D.V.A Act, 2005, seeking custody of the first son S.K.Ajay Veevyn and the said petition was taken on file in C.M.P.No.130 of 2014 and after contest, it came to be allowed in favour of the 1st petitioner on 26.05.2015. Though the respondent and his family are well aware of the order passed, they declined to hand over the custody of the first son and thereby there was a quarrel in between them. Subsequent to that, the respondent has filed a private complaint before the Judicial Magistrate, Ulundurpet, and the same has been taken on file in C.C.No.104 of 2016. Challenging the same, the present petition is filed.

3. Though the above grounds have been raised by the learned counsel for the petitioners, however, this Court is of the opinion the issue is a triable issue and 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 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.

4. It is represented by the learned counsel appearing for the petitioners that this Court may issue a direction to the Trial Court to expedite the trial and complete the same as early as possible. He would further submit that the appearance of the petitioners before the Trial Court may be dispensed with.

5. Accordingly, this petition is disposed of directing the trial court to dispose of C.C. No.104/2016 as expeditiously as possible as per seniority of the case. The petitioners and respondent are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the request as made by the learned counsel for the petitioner, his appearance before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular



reason, the presence of the petitioners is necessary, the trial court, at its wisdom, shall direct their appearance on those days. Consequently, connected miscellaneous petitions, if any, are closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The First Additional District Munsif cum
Judicial Magistrate No.I,
Ulundurpet.
2. The Public Prosecutor (Crl side),
High Court, Madras.

+lcc to Mr.B.Jawahar, Advocate, S.R.No.48796
+lcc to Mr.N.Manokaran, Advocate, S.R.No.42213

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NSK 11/11/2021