



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2021

Delivered On: 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.2316 of 2019

and Crl.M.P.(MD).No.1237 of 2019

1.Radhakrishnan

2.Ayyavu

3.Lakshmi

... Petitioners/Accused Nos.1 to 3

Vs.

1.State represented through
The Inspector of Police,
All Women Police Station,
Melur, Madurai District.
(Crime No.46/2014)

... Respondent/Complainant

2.Murugeswari

... Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in connection with C.C.No.230 of 2018 before the learned Judicial Magistrate, Melur, Madurai and quash the same.

For Petitioner : Mr.S.Sukumar

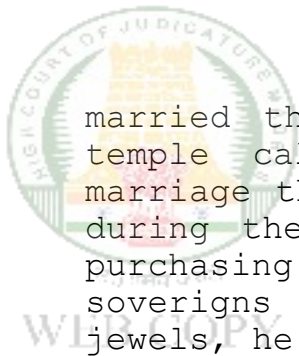
For Respondents : Mr.R.M.Anbunithi for R1
Additional Public Prosecutor

Ms.M.Rajeswari, Legal Aid counsel
for R2

ORDER

This petition is filed seeking quashment of C.C.No.230 of 2018 on the file of Judicial Magistrate, Melur, Madurai District.

2.The case of the prosecution is that the first petitioner is the son of the second and third petitioners herein. The second respondent is the wife of the first petitioner. On the basis of the complaint given by the second respondent herein case has been registered in Crime No.46 of 2014 for the offences punishable under Sections 498A, 406, 506 (ii) IPC. After completing the investigation final report was filed and cognizance was also taken in C.C.No.230 of 2018 for the offences punishable under Sections 498A, 406, 506 (ii) IPC. The second respondent has stated in her complaint that she

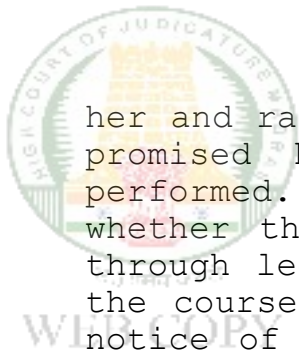


married the first petitioner on the promising made by him in a temple called Muthumariamman Koil in Kottakudi. After their marriage they lived as husband and wife in Thumbaipatti Village. So during the joint living the first petitioner for the purpose of purchasing a vehicle for running the same for hire, received 30 soverigns of gold jewels from her. By pledging the above said jewels, he purchased two vehicles and was earning by renting out the same. Later he also purchased TATA safari and for that also she arranged Rs.7.5 lakhs in 2012 also. She also handed over her 10 soverings gold jewels for performing marriage of his sister. Later he demanded money by selling the property which belongs to her. It was also sold for Rs.2.50 lakhs. Later she came to know that without her knowledge, the second and third petitioners arranged marriage for the first petitioner. When that was questioned, the first petitioner was not giving proper reply. When that was informed to the second and third petitioners, they also criminally intimidated her and induced the first petitioner to kill her. Even the complaint to the elders of the village did not yield any result. So on that basis she made the present complaint. Based on the complaint a case has been registered and final report was also filed and taken cognizance before the trial Court.

3. Seeking quashment of the above said proceedings, this petition has been filed mainly on the ground that the marriage between the first petitioner and second respondent was not true. Without proper verification of the facts, the case has been registered against them. The next ground is that even on the date of complaint the defacto complainant was aged about 36 and first petitioner was only 25 years old. So there was no valid marriage between them. At no point of time they lived as husband and wife. The first petitioner during the relevant time discontinued the garment business and during that period the second respondent, who is the defacto complainant was working as a tailor. After closing of the above said garment business, the defacto complainant and others tress passed into the cellphone shop of the petitioner and assaulted them. In respect of which a case has also been registered. On the earlier occasion she wrote a letter stating that the first petitioner cheated her and at that time she did not make any allegation with regard to the marriage.

4. Heard both sides. Since the second respondent did not appear, legal aid counsel was appointed to defend her case.

5. A counter has been filed by the first respondent refuting the allegations that has been made in the petition reiterating the very same averments made in the complaint and as well as the final report. As it is seen from the complaint and as well as the course of investigation, it is seen that a specific case of the second respondent is that the first petitioner married her 5 years prior to the date of complaint. She has further stated that she was married to some one some 10 years back, but within two years, he left



her and ran away from the house. At that time, the first petitioner promised her to marry and believing his words, marriage was performed. But, whether there was any valid marriage or not and whether the second respondent got divorce from her former husband through legal process is not clear on the records. Not even during the course of investigation those matters have been brought to the notice of Investigating Officer. There was simply stated that the first marriage did not long last and the former husband ran away from the house and so believing the words of the first petitioner they performed the marriage with the second respondent. This is projected by the counsel for the petitioner to the effect that there was no actual marriage between the first petitioner and second respondent herein; So there was no valid marriage; the question of harassment and misappropriation may not arise.

6. But from the perusal of the records, it is seen that it is the plea of the second respondent that promising words were given by the first petitioner, she started living with him and during the course of joint living she has handed over all her jewels to the first petitioner for purchasing several motor vehicles for running a hire business. Even if we consider that there is no proof as on date in record to show the valid marriage between the first petitioner and second respondent, materials have been collected to show that they were living jointly as husband and wife. Hence, even though 498A IPC may not be attracted to the facts and circumstances of the case, there is enough materials available to attract Section 406 IPC. Similarly, for attracting offences under Section 506(ii) IPC, there is a specific allegation to the effect that she was criminally intimidated by the first accused and petitioners.

7. The counsel for the petitioner then would rely upon the complaint given by the first petitioner against the second respondent and others regarding the alleged damage that has been done to his shop. It is dated 25.10.2013. In respect of which, a CSR receipt has also been given. Whether action was taken on the basis of the complaint or not is not clear on record. The truth of the information with regard to this fact is also will be found only in the course of trial proceedings. I am of the considered view that except for the offence punishable under Section 498A there are enough materials available to proceed against the petitioners under Sections 406 and 506(ii) IPC. With the above considered view, this Court is inclined to partly allow the petition. Final report under Section 498 A is quashed and so far as other offences 406 and 506 (ii) of IPC, the trial may proceed to its logical conclusion.

8. With this directions, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petition is closed.

9. Considering the oldness of the matter, there shall be a <https://hccservicescourts.gov.in/hccservices/> learned Judicial Magistrate, Melur, to expedite the



trial process and complete the same within a period of six months from the date of receipt of a copy of this order and disposed of the same on merits and compliance report must be submitted to the Registry.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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, Melur.
- 2.The Inspector of Police,
All Women Police Station,
Melur, Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

- 1.The Registrar(Judicial),
Madurai Bench of Madras High Court, Madurai.
 - 2.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.
- +1 CC to M/s.M.RAJESHWARI, Advocate (SR-32209[F] dated 22/10/2021)
- +1 CC to M/s.S.SUKUMAR, Advocate (SR-32322[F] dated 22/10/2021)

Crl.O.P.(MD).No.2316 of 2019
21.10.2021

RK/UV(09/11/2021) 4P 8C