



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl O.P. (MD)No.11245 of 2021

and

Crl M.P. (MD)Nos.5741 & 5742 of 2021

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Selvakumar

... Petitioner/Accused

Vs.

1.The Inspector of Police,
Karaikudi South Police Station,
Sivaganga District.
(Crime No.244/2016)

... 1st Respondent/Complainant

2.Maheswari

... 2nd Respondent/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in S.C.No.58 of 2018 on the file of the Fast Track Mahila Court, Sivagangai.

For Petitioner : Mr.R.M.Arun Swaminathan

For Respondents : Mr.T.Senthil Kumar

Additional Public Prosecutor for R.1

Mr.C.Prithvi Raj for R.2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.C.No.58 of 2018 on the file of the Fast Track Mahila Court, Sivagangai.

2.The petitioner is facing trial for the offence under Section 306 IPC. The deceased in the case is none other than the petitioner's wife. The defacto complainant is the petitioner's mother in law. The case of the prosecution is that marriage between the petitioner and deceased Kavitha took place some six years prior to the occurrence. The sister of the petitioner got married outside the community. This was opposed by the deceased. The petitioner was employed abroad and with the remittances made by him, the deceased Kavitha had constructed a house and was making arrangements to perform the house warming ceremony also. The petitioner has insisted that in the invitation, his sister's name should also be printed. There was a serious difference of opinion on this score. On 31.07.2016, the petitioner and the deceased kavitha chatted in Whatsapp. The issue regarding printing the name of the petitioner's sister in the invitation card came up for discussion and there was bitter exchange of words. Upset by the



same, the deceased committed suicide on 01.08.2016 at about 04.00 p.m. The defacto complainant lodged a complaint in this regard and the same was registered in Crime No.244 of 2016 on the file of Karaikudi South Police Station. The matter was investigated and culminated in the impugned prosecution.

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3.The learned Counsel for the petitioner would state that admittedly, during the relevant point of time the petitioner was employed in Singapore. The issue which triggered the occurrence was truly trivial. The petitioner and the deceased had chat only over Whatsapp. By no stretch of imagination, the petitioner would have intended that his wife should die. All that the petitioner was insisting was that his sister's name should also to be printed in the invitation card.

4.Even if the entire prosecution case is taken as true and at its face value, still the offence under Section 306 IPC is not at all attracted. To attract the said offence, certain fundamental ingredients will have to be fulfilled. The accused must have intended that the victim should die. The legal position has been laid down by the Honourable Supreme Court in the decision reported in **AIR 2019 SCC (Rajesh V. State of Haryana)**. In the said decision it was held as follows:

"8. Conviction under Section 306 of I.P.C . is not sustainable on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of accused, which led or compelled the person to commit suicide. In order to bring a case within the purview of Section 306 I.P.C, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 I.P.C. (See Amalendu Pal alias Jhantu V. State of West Bengal((2010) 1 SCC 707)."

5.Respectfully following the said decision, I hold that the elementary ingredient of the offence under Section 306 IPC is wholly absent in this case. Continuation of the impugned prosecution against the petitioner will constitute an abuse of legal process.

6.At this stage, the learned Counsel for the defacto complainant states that the visitation rights over her granddaughter can be protected. I called upon the petitioner's counsel to get instructions in this regard. The petitioner has filed an affidavit stating that the defacto complainant can see her



grandchild on the first Sunday of every month. The petitioner gives undertaking that he will adhere to the same. Recording the said undertaking, the impugned proceedings are quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mga/csm

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 Fast Track Mahila Judge,
Sivagangai.
- 2.The Inspector of Police,
Karaikudi South Police Station,
Sivaganga District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI O.P. (MD)No.11245 of 2021

and

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RS (09.12.2021) 3P 4C