



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2021

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.O.P.(MD).No.12513 of 2021

and Crl.M.P.(MD).No.6393 of 2021

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K.Silambarasan

... Petitioner

Vs.

1.State by

The Sub Inspector of Police,
All Women Police Station,
Musiri, Tiruchirappalli.

2.Mrs.Swathi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in split up C.C.No.64 of 2021, pending on the file of the learned Judicial Magistrate, Thuraiyur in Crime No.1 of 2018 on the file of first respondent police and quash the same.

For Petitioner : Mr.B.Dinesh Kumar
For Respondents : Mr.K.Sanjai Gandhi for R1
Government Advocate
(Crl. Side)

ORDER

(This Criminal Original petition is heard through video conference)

This criminal original petition has been filed to quash the proceedings in split up C.C.No.64 of 2021, pending on the file of the learned Judicial Magistrate, Thuraiyur.

2.The case of the prosecution is that the defacto complainant who is the second respondent lodged a complaint with the first respondent herein making the allegation to the effect that the marriage between herself and first accused was performed on 08.06.2016 and after their marriage she was harassed for each and every issue. Later they started to live separately in Karnataka. She was sent to parental home on the eve of Thalai Deepavali. At the request made by the parents she was permitted to visit her parents home to celebrate the Deepavali. Thereafter, also trouble continued and she was harassed even on petty issue. She was not taken to Bangalore by her husband. Later she went to Karnataka to live with the first accused. During that period demanding 25 sovereigns of jewels, her husband made harassment. So, she was taken to parental home by her father. At that time, the in-laws came to



her house and after making a promise, she was taken back. So because of that the first accused was not having cordial relationship with her. But the harassment continued by demanding 25 siverings more jewels. When this petitioner came to Bangalore, he also harassed the complainant stating that she must comply the order and direction of her husband and also abetted the first accused to divorce the complainant. Even her monthly salary was obtained by the first accused. On 25.05.2017, she was taken to her parental home by the first accused and left there stating that she should not return to Bangalore. After that there was a compromise, she was taken to Bangalore. During that period her father-in-law was also staying for some time. But her husband namely the first accused stayed in hotel. When this was questioned by her, she was assaulted. On 13.06.2017, she was taken to Bangalore after leaving her in Bangalore, the first accused went away without informing her. With these allegations she made a complaint, which was registered in Crime No.1 of 2018 under Section 498 (A) of IPC. Investigation was undertaken by the first respondent and final report has been filed along with connected materials, recorded statements of witnesses before the learned Judicial Magistrate, Thuraiyur, which was also taken on file in C.C.No.64 of 2021.

3.During the relevant time, this petitioner was staying in Dubai. But however, when the final report is filed his name has also been included. Since he did not appear before the trial Court, warrant was issued against him and the case was proceeded against the other accused in C.C.No.14 of 2019 and the case against this petitioner was splited as C.C.No.64 of 2021. Seeking quashment of the above said case, this petition is filed mainly on the ground that during the relevant period of the alleged occurrence this petitioner was stationed at Dubai for attending his work and he never involved in matrimonial dispute between the defacto complainant and his brother, who is the first accused in this matter.

4.The further contention is that in C.C.No.14 of 2019, after full trial the accused Nos.1 to 3 were acquitted. The very same benefit can be extended to this petitioner also. It appears that there was a compromise between the husband and wife. H.M.O.P.No.101 of 2019 filed by the first accused namely the husband also came to be allowed on 29.10.2020. A compromise muchalika has been executed between the husband and wife. The copy of the same is enclosed in the typed set of papers, wherein, it has been mentioned that in the presence of the elders they decided to dissolve their marriage through mutual consent. In the presence of them, she has also received her articles and jewels on 16.10.2020. It appears that in pursuance of the above said compromise, the second respondent gave evidence before the learned Judicial Magistrate, Thuraiyur in C.C.No.14 of 2019 to the effect that in view of the compromise reached between them, divorce was also granted and the complaint was



thereafter, did not support the prosecution case with regard to the harassment. The copy of the evidence given by the second respondent has also been produced before this Court, which has been treated as hostile by the prosecution. Similarly, other accused also did not support the prosecution case. On that ground it came to be decided.

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5.The learned counsel for the petitioner submits that since the co-accused has been acquitted in the parent case, the same benefit to be extended to him. It is a settled law that simply because the co-accused has been acquitted in the parent case, there is no Rule that other accused person has also been acquitted. But in the case of **Shri Sat Kumar Vs. State of Haryana** Judgment reported in **AIR 1974 SC 294** cautious note has been considered by the Hon'ble Supreme Court to the effect that only if the evidence is inseparable and indivisible from the parent case against the co-accused then the benefit of acquittal can be extended. By applying these principle, if we analyse the case, it is seen that the evidence in both the cases namely in parent case and as well as in this case are one and the same. Since the second respondent has not supported the prosecution case and has stated that no harassment as stated in the complaint took place, nothing is going to be served by directing the petitioner to undergo the trial process. So on the considered view that nothing is going to be served by keeping the matter pending. So the benefits of acquittal granted in favour of the co-accused can also be extended to this petitioner and accordingly, the case in C.C.No.64 of 2021 pending on the file of the Judicial Magistrate, Thuraiyur is liable to be quashed and accordingly, quashed.

6.This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

Sub Assistant Registrar(CS)

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,
Thuraiyur.



2.The Sub Inspector of Police,
All Women Police Station,
Musiri,
Tiruchirappalli.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RS (20.09.2021) 4P 4C