



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 24.02.2021

DATE ON WHICH PRONOUNCED : 29.03.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.14494 of 2017

and

Crl MP (MD)No.9656 of 2017

1.Muthuraj
2.Geetha
3.Palanichamy
4.Rajeswari
5.Theivendran
6.P.Nagaraj

... Petitioners/Accused Nos.1 to 6

Vs.

1.State; The Deputy Superintendent of Police,
Nilakottai Sub Division,
Nilakottai.

2.The Inspector of Police,
All Women Police Station,
Nilakottai.
Cr.No.2 of 2015

... Respondents 1 & 2/Complainants

3.Makkal Thilagam @ Selvi

... 3rd Respondent/Defacto
Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in P.R.C.No.16 of 2015 on the file of the Judicial Magistrate, Nilakottai, and quash the same in respect of the petitioners concerned.

For Petitioners	: Mr.T.A.EBENEZER,
For R1 & R2	: Mr.M.Ganesan, Government Advocate (Crl.Side)
For R3	: No Appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in P.R.C.No.16 of 2015 on the file of the Judicial Magistrate, Nilakottai.



2. The case of the prosecution before the Trial Court:-

The defacto complainant belongs to Scheduled Tribe. The accused Nos. 1 to 6 belongs to upper caste namely, Hindu Yadhava. The seventh accused belongs to Schedule Tribe. The defacto complainant was married to one Saravanan some 19 years back. Through the marriage, the defacto complainant had a child by name, Durga Devi. Because of the dispute between her husband and the defacto complainant, they got divorce in the presence of the elders in the village. Subsequent to that, the defacto complainant was married to the first accused herein on 05.04.2013. At the time of marriage, the defacto complainant gave a sum of Rs.2 lakhs for purchasing Auto to the first accused and apart from that, Rs.50,000/- was also paid for arranging a mortgaged property for residence. But, that amount was misused by the first accused. So, both started residing in the new house at Silukkuvarpatti. The first accused used to visit Madurai and engaged in hiring auto. Right from the date of marriage, the first accused, started to harass the defacto complainant stating that, she is only the second wife of him and also demanded Rs.1 lakh and 10 sovereigns of gold jewels. Further stating that if the demand is not met with, he would kill the child and her also. The first accused pledged the auto with the seventh accused for a sum of Rs.30,000/-. The seventh accused threatened the defacto complainant that if she does not pay the said amount, he would kill her and compelled her to come to Madurai. On that occasion, he obtained her signatures in blank papers and documents.

3. This was intimated by the defacto complainant to the second accused and the fourth accused. Instead of warning the first accused, they supported him and also assaulted the defacto complainant. The accused Nos. 5 and 6 joined together and all the six accused demanded the defacto complainant to bring a sum of Rs.1 lakh and 10 sovereigns of gold jewels. They also abused her in filthy language by calling her by her caste.

4. Based on the complaint given by the defacto complainant, the Inspector of Police, All Women Police Station, Nolakottai, took up the investigation. After collecting materials and examining the witnesses, finally she filed a final report against all the seven accused persons alleging that they have committed the offence punishable under Section 498(A), 294 (b), 323, 420 and 506(i) r/w Section 4 of TNPH Act and Section 3 (1) (r) (s) of SCST Act, 2014.

5. Seeking the quashment of the charge sheet, the petitioners, who were arrayed as accused Nos.1 to 6 have filed this petition mainly on the ground that the marriage between the defacto complainant and the first petitioner is not valid since the defacto complainant was not legally divorced by her husband. So, the



relationship, between the first petitioner and the defacto complainant is not that of husband and wife. Setting the very the same allegations, D.V.O.P.No.4 of 2016 was filed by the defacto complainant, on the file of the Judicial Magistrate, Nilakottai.

6. Heard both sides.

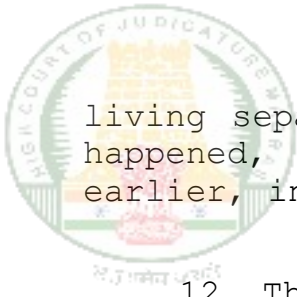
7. Perusal of records shows that the defacto complainant was originally married to one Saravanan and according to her, there was a customary divorce between her and the said Saravanan. Subsequent to that, she married the first petitioner herein, on 05.04.2013. According to the petitioners, the said divorce is not valid under law and so, the alleged marriage took place between the first petitioner herein and the defacto complainant is not valid under law. So, the offence under Section 498(A) and Section 4 of TNPH Act, will not lie. But, whether there was any marriage, after the customary divorce, between the first petitioner herein and the defacto complainant, is a matter for consideration during trial. That factual aspects cannot be gone into in this petition. Whether the divorce, dated 10.05.2008 is valid or not is also a matter for consideration either before the Trial Court or before the Civil Court. So, the contention on the part of the petitioners that, on the ground of invalidity of marriage, the charge sheet, must be quashed, cannot be accepted.

8. Whether there was any demand of dowry and harassment by the first petitioner herein, is a matter for consideration during trial. Materials have been collected by the Investigating Officer show that there was a demand of dowry and harassment. The veracity of the statements, recorded by the Investigating Officer during investigation, can be tested only by way of cross examination in the trial proceedings. So, the contention on the part of the petitioners that no harassment of demand of dowry took place is a matter for consideration. Only during the trial. Further, the disputed facts cannot be discussed in this petition.

9. But, however, DVOP filed by the defacto complainant against six persons were disposed of by this Court in Crl.OP(MD)No.4978 of 2017 dated 17.10.2019 observing that the the petitioners 2 to 6 were residing separately and the defacto complainant was living with her husband, namely, the first petitioner herein. So, no domestic violence can be attributed as against the petitioners 2 to 6. Moreover, it is also observed that only the general allegations were made and no specific averments were attributed against the petitioners 2 to 6. On that ground D.V.O.P.No.4 of 2016 was quashed so far as the petitioners 2 to 6 are concerned.

10. According to the petitioners, the very same order is binding upon this Court since it is already observed to the effect that the allegations are only general in nature and not specific.

11. Perusal of the complaint in this petition as well the averments made by the defacto complainant in D.V.O.P.No.4 of 2016 shows that they are one and the same. So, when there is an



living separately, the question of domestic violence could not have happened, can have equal force in this petition also. As mentioned earlier, in both the petitions, allegations are one and the same.

12. The only offence that has been left out to see whether it is attracted or not under Section 3 (1) (r) (s) of SCST (Prevention of Atrocities) Act, 1989. The above said Act is extracted here under:-

"(r) Intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

(s) abuses any member of a Scheduled Caste or a Scheduled Tribe by caste name in any place within public view;"

13. The main ingredients of this offence is that it must take place in the public view. Reading of the final report shows that the occurrence alleged to have taken place in the house of the second petitioner. So, the offence under Section 3 (2) (r) (s) is not attracted against the petitioners 2 to 6.

14. In the result, the petition is partly allowed and the charge sheet pending against the petitioners 2 to 6, on the file of the Judicial Magistrate, Nilakottai, in P.R.C.No.16 of 2015 stands quashed insofar as the petitioners 2 to 6 are concerned. Insofar as the first petitioner is concerned, the petition stands dismissed and the Trial Court may proceed with the trial proceedings in accordance with law against the first petitioner, without being influenced by any of the observations of this Court. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-1)

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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,
Nilakottai.
2. The Deputy Superintendent of Police,
Nilakottai Sub Division,
Nilakottai.
3. The Inspector of Police,
All Women Police Station,
Nilakottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.14494 of 2017
and
Crl MP (MD)No.9656 of 2017
29.3.2021

das
AM/29/04/2021/5P/5C