



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.16348 of 2017

and

Crl.M.P(MD)Nos.10844 and 10845 of 2017

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1.Brindha

2.Ayyappan

: Petitioners / Accused Nos.3 & 5

Vs.

1.State represented by

Inspector of Police,
All Women Police Station,
Tiruchendur,
Tuticorin District.
[Crime No.6 of 2016]

: Respondent/ Complainant

2.Selvi

: Respondent /
Defacto complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.166 of 2017 on the file of the Judicial Magistrate, Tiruchendur, Tuticorin District and quash the same.

For Petitioners: Mr.V.Kathirvelu,
Senior Counsel for
Mr.K.Prabhu

For Respondent : Mr.R.Anandharaj,
No.1 Additional Public Prosecutor,

For Respondent : Mr.P.Gokulnath
No.2 Legal Associates

ORDER

This criminal original petition has been filed by accused Nos.3 and 5 in C.C.No.166 of 2017 on the file of the Judicial Magistrate, Tiruchendur, Tuticorin District to quash the proceedings in C.C.No.166 of 2017.

2.The *defacto* complainant was married to one Madasamy and was also having three children out of the wed lock and the said Madasamy deserted her. Thereafter the *defacto* complainant was residing at Tiruchendur and was working in a Government establishment. At that point of time accused No.1, Subramaniya Iyer, son of Ravichandra Iyer proposed to marry her and accordingly the marriage between them was solemnised in the year 1998. After the marriage the first



accused Subramaniya Iyer and other accused including the petitioners are alleged to have harassed and abused her. Therefore she lodged a complaint and the same was registered in Crime No.6 of 2016 on the file of the respondent Police on 02.02.2016. The respondent Police conducted an enquiry and filed a final report before the learned Judicial Magistrate, Tiruchendur on 15.10.2016 and the same was taken on file in C.C.No.166 of 2017. As against the final report, the petitioners / accused Nos.3 and 5, who are in-laws of the defacto complainant have filed the present quash petition.

3.Mr.V.Kathirvelu, learned Senior Counsel appearing for the petitioners / accused Nos. 3 and 5 by referring to the first information report and the statement of the defacto complainant, submits that even according to the defacto complainant, there was a marriage between herself and one Madasamy and this marriage was not dissolved in the manner known to law. The husband Madasamy is said to have deserted the defacto complainant and thereafter she married the first accused, when the earlier marriage was in force. However, final report has been filed in a mechanical manner as against the petitioners for the offence under Sections 498(A), 294(b), 494, 506 (2) and 109 IPC.

4.The learned Senior Counsel further submits that Section 498 (A) IPC can be invoked only as against husband and in-laws. Even assuming that there was a marriage between the defacto complainant and the first accused, that itself is voidable one, when the marriage of the defacto complainant with Madasamy is not dissolved in the manner known to law. Therefore, the charges under Sections 498(A) and 494 IPC are liable to be quashed.

5.The learned Senior Counsel also submits that as per the FIR there was an incident on 18.01.2016, when the defacto complainant went to her husband's house, the accused are alleged to have abused this defacto complainant with filthy words. But there is no specific overt act attributed against these petitioners/accused Nos.3 and 5 and the time of the incident is not mentioned. It is further alleged that on 21.01.2016 at about 2.00pm, when the defacto complainant was travelling in DP road along with her son, the accused came in an Innova Car bearing registration No.TN 69 and AR 6172 and her husband has abused her. For this incident also there is no specific overt act attributed against these petitioners. Therefore the charge under Sections 294(b) and 109 IPC are also liable to be quashed.

6.The learned Additional Public Prosecutor appearing for the State submitted that there are certain averments as against these petitioners and therefore the truth or otherwise of the same can be tested only during the trial before the trial Court.

7.The learned Legal Aid Counsel appearing for the second respondent submits that the petitioners along with the husband and



other accused have abused and harassed the defacto complainant and the petitioners shall prove their innocence during the trial.

8. Heard the learned Counsel on either side and perused the materials placed on record.

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9. It is seen from records that the defacto complainant has not preferred any complaint for the occurrences taken place on 18.01.2016 and on 21.01.2016 before the respondent Police. But she preferred a complaint before the learned Judicial Magistrate No.1, Tirunelveli in Cr.M.P.No.5733 of 2010, under Section 156(3) CrPC and the same was forwarded for enquiry by the learned Judicial Magistrate and accordingly a case was registered by the All Women Police Station, Tiruchendur in Crime No.6 of 2016 as against six accused including these petitioners on 02.02.2016.

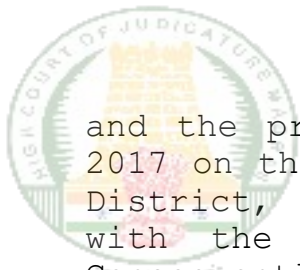
10. Even according to the defacto complainant, there was a marriage between herself and one Madamsamy prior to the alleged marriage with the first accused and that marriage was not dissolved in the manner known to law. Therefore the marriage of the defacto complainant with the first accused is voidable one. Therefore the charge under Section 494 IPC is not attracted as against these petitioners.

11. Though there is averment that the accused have harassed and abused the defacto complainant on 18.01.2016, there is no specific averment as against these petitioners and moreover, the time of the alleged occurrence is not mentioned. Further for the alleged occurrence on 21.01.2016 it is stated that the husband has abused and assaulted her and there is no specific overt act attributed as against these petitioners. Therefore in the absence of any specific overt act as against these petitioners, the charges under Section 498(A) IPC is not attracted.

12. Insofar as the charge under Section 506(ii) is concerned, if the defacto complainant felt the intimidation pursuant to the act of the accused on 18.01.2016 and 21.01.2016, she would have lodged the complaint before the concerned Police Station immediately. When this complainant has chosen to lodge the complaint after a considerable time, it has to be presumed that she has not felt the intimidation and therefore the charge under Section 506(ii) IPC is not sustainable.

13. Further insofar as the offence under Section 294(b) IPC is concerned, there is no specific averment that these petitioners have uttered filthy words, which annoyed any other person. Therefore the offence under Section 294(b) is also not made out.

14. In the light of the above discussion, the present quash petition is allowed as against these petitioners



and the proceedings as against these petitioners in C.C.No.166 of 2017 on the file of the Judicial Magistrate, Tiruchendur, Tuticorin District, are quashed. It is open to the trial Court to proceed with the trial, insofar as the other accused are concerned. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

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

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NSN(CO)
KB(13.06.2022) 4P 4C