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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 25.03.2021

Delivered on : 21.05.2021

CORAM

THE HONOURABLE **Mr. JUSTICE G.ILANGO VAN**

Crl.O.P.(MD)No.16685 of 2017

and

Crl.M.P(MD) Nos.11013 and 11014 of 2017

1.Deivanai
2.Gandhimathi
3.Murugesan
4.Kaliyammal

... Petitioners/Accused
Nos.5,6,10 & 11

Vs.

1. The State rep. By
The Inspector of Police,
All Women Police Station,
Paramakudi,
Ramanathapuram District.

... Respondent No.1/Complainant

2.Selvi

... Respondent No.2/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to C.C.No.17 of 2016 on the file of the learned Judicial Magistrate, Mudhukulathur, Ramanathapuram District and quash the same insofar as it relates to the petitioners.

For Petitioners : Mr.K.Rajeshwaran

For R-1 : Mr.M.Ganesan
Government Advocate (Crl. Side)

For R-2 : Mr.K.Cehngizkhan

ORDER

This petition has been filed to quash the C.C.No.17 of 2016 on the file of the learned Judicial Magistrate, Mudhukulathur, Ramanathapuram District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The brief facts are as follows:

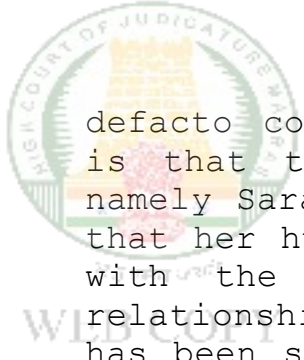
The second respondent herein is the defacto complainant. She lodged a complaint with the first respondent police with the following allegations. She belongs to Maravar community. She and the fourth accused, who belongs to some other community loved each other, when they were working at Thiruppur. They also got married. They got two male Child. One among them is insane. She is now residing with her-in-laws in Therkukakoor. The fourth accused developed illegal intimacy with one Theivanai and Gandhimathi and started harassing the defacto complainant and also was staying away from the house. This was informed to her in-laws, but in turn they assaulted her. In the police enquiry, she was advised to live with her husband. But, the in-laws and other persons are refusing her to entry into the house. They also demanded more dowry. On 14.02.2015 at about 11.00 a.m.. her mother-in-law assaulted her and drove her away from the house. The fourth accused, who came to that place also assaulted her with a stone. Her brother-in-law also abused her in filthy language. She was taken to hospital through ambulance. With these allegations, she made a complaint before the first respondent police, who visited her in the hospital and recorded the statement, which was registered in Crime No.7 of 2015 under Sections 498 A, 297, 294 (b) and 336 IPC. On the basis of the complaint, investigation was undertaken, statement of the witnesses were recorded and after completing the investigation, final report was filed against the accused making allegations that they have committed offence under Sections 498A, 497, 294 (b), 323 and 324 r/w 109 IPC.

3.Challenging the final report, seeking quashment of the same, this petition is filed by four accused persons, mainly on the ground that the fourth petitioner is the brother-in-law of the first petitioner's husband and they have not directly related to the fourth accused and had living with the family peacefully. As per the allegations in the final report, the petitioners 2 and 3 have not alleged to have uttered any filthy language against the second respondent.

4.Heard both sides.

5.The simple question, which arises for consideration in this petition is that whether any of the allegations as mentioned in the final report are attracted against these petitioners.

6.The petitioners are arrayed as accused Nos.5, 6, 10 and 11 in the final report. The allegation against the accused Nos.5 and 6, who are the petitioners 1 and 2 herein, is that they abused the



defacto complainant in filthy language and the second allegation is that they are living in adultery with the fourth accused, namely Saravanan. The defacto complainant stated in her complaint that her husband, namely fourth accused developed illegal intimacy with the first and second petitioners and started physical relationship also. But the offence under Section 497 of I.P.C., has been struck down by the Hon'ble Supreme Court of India in the case of **Joseph Shine Vs Union of India in W.P. No.194 of 2017** and so, it is no more an offence punishable under the Indian Penal Code.

7.The next allegation is that, they abused the defacto compliant in filthy language. But where, when and how they abused the defacto complainant has not been clearly mentioned in the final report. When the defacto complainant questioned the petitioners 1 and 2 about their relationship with her husband, they abused her in filthy language stating that the fourth accused is their uncle's son. To attract the offence under section 294(b) of I.P.C., the following ingredients must be satisfied "*the offence would have been taken place in or near any public place*". But neither in the complaint nor in the final report and during the course of investigation, the defacto complainant has not stated anything about the place of occurrence. So the ingredients of the offence under Section 294(b) of I.P.C., is also not attracted and the final report filed as against these petitioners 1 and 2 is liable to be quashed.

8.The complaint with regard to other petitioners namely, accused Nos.10 and 11 is that they have also abused the defacto complainant in filthy language and they are also liable to be punished under Section 294(b) I.P.C. In the final report, it has been stated that when the illegal intimacy of her husband was intimated to these petitioners, who are the parents of the petitioners 1 and 2, they have scolded the defacto complainant. But the petitioners 3 and 4 are in no way connected with the dispute between the defacto complainant and her husband. Neither in the complaint nor in the final report and in the statement recorded during the course of investigation, the defacto complainant has specifically stated the place, in which, the petitioners 3 and 4 abused her in filthy language. What applies to the petitioners 1 and 2 regarding the allegation under Section 294 (b) of I.P.C., squarely applies to these petitioners also. In the absence any proper ingredients of the offence under section 294(b) of IPC, the final report filed against these petitioners, is liable to be quashed on the ground that it is an abuse of process of law.

9.In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.17 of 2016, on the file of the



learned Judicial Magistrate, Muthukulathur, stands quashed against these petitioners. The trial Court is directed to proceed against the rest of the accused, without being induced by any of the observations made by this Court in this petition. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Vacation Officer (CS-III)

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/ /2021

Sub Assistant Registrar (CS)

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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, Mudhukulathur,
Ramanathapuram District
2. The Inspector of Police,
All Women Polic Station,
Paramakudi,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.RAJESHWARAN, Advocate (SR-18606[F] dated 25/05/2021)

order made in
Cr1.O.P. (MD) No.16685 of 2017
21.05.2021