



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On : 03.12.2021

Orders Delivered On : 14.12.2021

CORAM:

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THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P(MD)Nos.5052 & 5243 of 2017

and

Crl.M.P(MD)Nos.3710,3711 & 3563 & 3564 of 2017

Crl.O.P(MD)No.5052 of 2017

- 1.Syed Abdul Wahab
- 2.Mubeen Taj
- 3.Thanzim Farhana
- 4.Syed Omar Sidiq

... Petitioners/Accused 3 to 6

Vs.

1. The Inspector of Police,
All Women Police Station South,
Thallakulam Police Station,
Madurai City.

... Respondent/Complainant

- 2.Fathiyathul Fathima

... Respondent/Defacto
Complainant

PRAYER: The Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.11 of 2017, on the file of the Additional Mahila Court, Madurai, quash the same.

For Petitioners	: Mr.N.Mohideen Basha
For R1	: Mr.A.Thiruvadikumar
	Additional Public Prosecutor
For R2	: Mr.R.Alagumani

Crl.O.P(MD)No.5243 of 2017

- 1.Mydheen Fathima @ Selvi
- 2.K.A.O.Mohammed Hussain

... Petitioners/Accused Nos.1 & 2

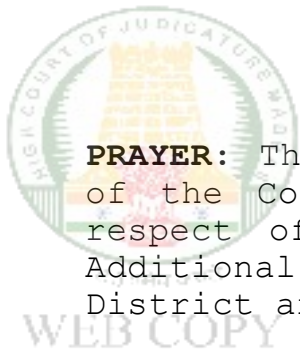
Vs.

1. State rep. by Sub-Inspector of Police,
All Women Police Station,
Thallakulam, Madurai City.
(Crime No.46 of 2015)

... RespondentNo.1/Complainant

- 2.Pathiyathul Fathima

... Respondent No.2/Defacto
Complainant



PRAYER: The Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of the case in C.C.No.11 of 2017 on the file of the Additional Mahila Judicial Magistrate Court, Madurai, Madurai District and to quash the same and as illegal, violation of law.

For Petitioners : Mr.G.Marimuthu
For R1 : Mr.A.Thiruvadikumar
Additional Public Prosecutor
For R2 : Mr.R.Alagumani

COMMON ORDER

These two petitions are filed to call for the records in C.C.No.11 of 2017, on the file of the Additional Mahila Court, Madurai and quash the same.

2.In C.C.No.11 of 2017, 6 accused were charge-sheeted. A1 and A2 for the offences under Sections 498(A), 403, 406, 506 (i) IPC, A3 for the offences under Section 406 and 506(i) IPC, A-4 for the offence under Sections 498-A, 403, 406 IPC, A5 for the offences under Sections 498(A) and 406 IPC and A-6 for the offences under Sections 406 and 506(i) IPC.

3. The defacto complainant (2nd respondent herein) Pathiyathul Fathima is the wife of Late.Byas Ahammed. The petitioners in Crl.O.P(MD)No.5243 of 2017 are her mother-in-law and father-in-law, A1 and A2 respectively in C.C.No.11 of 2017. The petitioners in Crl.O.P.(MD)No.5242 of 2017 are the brother, the first daughter, the second daughter and second son-in-law of the de-facto complainant's mother-in-law. They are arrayed as A3 to A6 in C.C.No.11 of 2017.

4. Thus, the entire family of her husband been arrayed as accused for the alleged offence of dowry harassment, breach of trust and criminal intimidation.

5. Referring the embellishment and contradictions in the de-facto complainant's first information and her Section 161 Cr.P.C. statement recorded by the prosecution, the learned Senior counsel pleaded for quash of the criminal case, which was initiated by the widow against the family members of her husband who died in a road accident on 04.11.2014. The falsity of the case that A5 and A6 were also part of dowry harassment get belied on the face of the record by implicating A5 and A6 because they are daughter and son-in-law of A1 and A2 even though their marriage was subsequent to her husband's death.



6. The second respondent has filed counter and had reiterated her complaint. The learned counsel for the second respondent would submit that the statements of the witnesses has made out *prima facie* case to try the petitioners for the offences mentioned. Therefore, the case cannot be quashed under Section 482 of Cr.P.C.

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7. This Court on perusal of the records finds that being a matrimonial dispute, several attempts were taken by this Court to strike at a settlement through Mediation but failed. In fact, a deed of compromise also entered between the de-facto complainant and her husband's parents, who are A1 and A2. This compromise failed, because, A1 and A2 were ready to settle their residential property in the name of the de-facto complainant minor children, reserving life interest with them. However, the de-facto complainant wanted the settlement *in praesenti*. It is also admitted by the counsel for the second respondent that during the mediation, a sum of Rs.1,00,000/- paid in cash to the second respondent. The Compromise Memo, dated 23.12.2020 signed by the petitioners in Crl.O.P.(MD)No.5243 of 2017 and the second respondent reads as below:-

"1. It is submitted that totally 6 accused in the case in C.C.No.11/2017 on the file of the Additional Mahila Judicial Magistrate Court, Madurai. The 2nd respondent herein is the De-facto complainant in the case. The petitioners/Accused 1 and 2 are none other than mother-in-law and father-in-law of the De-facto complainant. The 3rd Accused is younger brother of the 1st Accused. The Accused Nos.4 and 5 are daughters of the petitioners/accused 1 and 2. The Accused No.6 is the husband of the 5th Accused.

2. It is submitted that on 21.11.2010 the marriage took place between the de-facto complainant and Byas Ahammed in the Raja Muthiah Mandram, Madurai following Muslim rites and customs. It is stated that on 07.11.2011 the 2nd respondent gave birth a male child. The child name is Anick Sithick. On 04.11.2014 the petitioner's son and husband of the 2nd respondent Byas Ahammed met with an accident and died. On 01.12.2014 the 2nd respondent gave birth a female child. The child name Anika Samreen.

3. It is submitted that on 13.11.2015 the 1st respondent Police registered a case in Crime No.46/2015 under Sections 498 (A), 403, 406 and 506(i) IPC. The accused were released on Anticipatory Bail. It is stated that the petitioners/Accused 1 and 2 has filed a Quash Petition before the Hon'ble Court in Crl.O.P.No.5243/2017. The Accused No.3 to 6 has filed a Quash Petition in Crl.O.P.No.5052/2017.



4. It is submitted that the Hon'ble Court has refers the cases to the Mediation and Conciliation Centre, Madurai Bench of Madras High Court, Madurai to find out the possibility for settlement. In the mediation the Accused has paid a sum of Rs.1,00,000/- to the Defacto Complainant.

5. It is submitted that 2nd petitioner/Accused No.2 is the owner of the property situated in Town Survey Number 2.1.25/1, Sivakasi Town, Virudhunagar District. The total extent of the property is 720 square feet. On 11.07.1986 the 2nd petitioner has purchased the property/vacant land from erstwhile owner through sale deed vide document number 1730/1986 registered before the Sub-Registrar, Sivakasi. In the year 1989 the 2nd petitioner has constructed a building in it. The Ground Floor Door number is 105. The first floor contains three small houses. The Door numbers are 107, 109 and 111. The Petitioners/Accused is left the houses in the first floor for rent. They are receiving a sum of Rs.6000/- (Rs.2000/- each from the house) per month as a rent from the houses.

6. It is submitted that the petitioners/accused are blessed by 1 son (Fiaz Ahammed) and 2 daughters. They are ready and agree to provide/allot 50% share of the property to their grandson and grand daughter namely Anick Sithick and Anika Samreen. They are ready to execute a settlement deed in favour of the grand children in respect of the share. After the lift time it can be settled between the parties. The Accused No.4 to 6 also agrees to the settlement.

7. It is therefore prayed that this Hon'ble Court may be pleased to record the compromise reached between the petitioners/Accused 1 and 2 and 2nd respondent/de-facto complainant and quash the case in C.C.No.11/2017 on the file of the Additional Mahila Judicial Magistrate Court, Madurai and quash the same."

8. Having accepted Rs.1,00,000/- and agreed for the compromise, the second respondent has retracted fearing that the accused may not honour their promise in future and being governed by Muslim Law of inheritance, her children may not get share she expects.

9. In cases of this nature, Court can only try to help parties to settle dispute amicably, but if they fail to reproach, no order can be passed contrary to law. In this case, if we go by the statements of witnesses, *prima facie* case is made out and not a fit



case to quash under Section 482 Cr.P.C. In such circumstances, The parties are ordained to undergo the trial. Hence, both Criminal Original Petitions are dismissed.

10. The trial Court is directed to complete the trial within four months from the date of receipt of the order copy. Since parties are known to each other, identification of the accused not required. Therefore, the personal attendance of the accused may be dispensed if appropriate petition is filed.

11. In the result, Crl.O.P(MD)Nos.5052 of 2017 and 5243 of 2017 are dismissed with direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2021

Sub Assistant Registrar(CS)

am

To

2. The Additional Mahila Judge,
Madurai.

2. The Inspector of Police,
All Women Police Station South,
Thallakulam Police Station,
Madurai City.

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

+1 C.C. to M/s. G.M.LAW OFFICE, S.R.No.38883(F) Date 15.12.2021.

Crl.O.P(MD)Nos.5052 & 5243 of 2017

14.12.2021

USK (31.12.2021) 5P 5C