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CrI.O.P.No.15210 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.11.2022

Pronounced on : 25.11.2022
CORAM

THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

CrI.O.P.No.15210 of 2019

1.S.O.Bala Saravanan
2.Orrappan
3.Unnamalaiammal
4.Thiruvengkatam
5.M.C.Jothi
6.Sudha

... Petitioners

Vs.

1.State Rep.by
The Inspector of Police,
All Women Police Station,
Thiruthani,
Tiruvallur District.

2.Salammal @ Maithili

... Respondents

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records and quash the proceedings in C.C.No.122 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Pallipattu, Thiruvallur District.

For Petitioners : Mr.L.Dhamodharan
For R1 : Mr.N.S.Suganthan



Crl.O.P.No.15210 of 2019

Government Advocate (Crl.Side)

For R2 : No appearance

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C., to quash the complaint given by the *de facto* complainant against her husband and in-laws, who are the petitioners herein.

2. According to the complaint, the *de facto* complainant married the 1st petitioner on 25.06.2009. The 1st petitioner is a teacher working in Chennai. The marital home was set up at her husband's home at Ammaiyaar Kuppam village, Pallipattu Taluk, Thiruvallur District. On 18.10.2010 a female child was born to her. After delivery, she was with her parents for 5 months and then went to her matrimonial home with the child. She and her child was not cared by the in-laws. When that was informed to her husband, he did not show interest to redress her grievance, but only asked her to adjust with her mother-in-law. Her father-in-law started demanding additional dowry of 10 sovereigns of gold and cash of Rs.20,00,000/- and started to abuse her, calling her singularly and once tried to misbehave with her. Her husband did not



CrI.O.P.No.15210 of 2019

take care to come down from Chennai and console her. Therefore, to avoid starvation, she left the matrimonial home and went to her parents house, when the child was 7 months old. After few months, since none from the husband family came to call her, she along with her parents and relatives went to her matrimonial home, but she was denied entry. After one month, she went to the school, where her husband is working and reported the matter to the Head Master. The Head Master called the 1st petitioner and counseled him, but the 1st petitioner did not take her back to the matrimonial fold. Later, the 1st petitioner has filed petition for divorce before the Sub Court, Thiruthani in H.M.O.P.No.19 of 2012.

3. While fact being so, pending divorce petition, she heard that the 1st petitioner has solemnized marriage with one Shanthi illegally on 18.06.2014. Hearing that on 20.06.2014, she along with her parents went to the matrimonial home and questioned them. Her father-in-law, the 2nd petitioner herein alone was in the home at that time. He abused them. Hence, the complaint. On completion of investigation, Final Report has been filed against these petitioners for offences under Sections 498 A, 506(ii), 294(b) I.P.C., and Section 4 of Dowry Prohibition Act, 1961.



CrI.O.P.No.15210 of 2019

WEB COPY

4. The learned counsel for the petitioners would submit that even according to the *de facto* complainant, she lived with the 1st petitioner only for 1 ½ years. She went to her maternal home, when she was at advance stage of pregnancy. After the child birth refused to return to the matrimonial home. She deserted her husband during the month of February 2010 and had not inclined to join her husband. She was not interested in the marriage and used to tell that only on compulsion, she agreed to marry the 1st petitioner. In the said circumstances, she deserted the matrimonial home without any reason. Hence, the 1st petitioner has initiated the divorce proceedings before the Sub Court, Thiruthani in the month of April 2012. In the said divorce proceedings, the *de facto* complainant participated and filed counter, in which, she has not whispered anything about dowry demand and alleged cruelty. While fact being so, on 20.06.2014, 2 years after initiating the divorce proceedings, when the 2nd petitioner was alone in the home, the *de facto* complainant and her family members came to his house and brutally attacked the 2nd petitioner. In this regard, the 2nd petitioner gave a complaint to the



CrI.O.P.No.15210 of 2019

WEB COPY

R.K.Pet Police and same has been taken for enquiry in C.S.R.No.158 of 2014 dated 21.06.2014. To counter blast this complaint, the impugned complaint has been lodged by the 2nd respondent/*de facto* complainant making all imaginary allegations, for the first time after 4 years of separation.

5. The learned counsel for the petitioners would submit that on reading of the First Information Report and the statements of the witnesses recorded during the course of investigation clearly show that, the *de facto* complainant, who left the matrimonial home during the month of February 2010 while she was pregnant, had never returned to the matrimonial home. Her alleged visit to the matrimonial home 5 months after the child birth and not allowed to enter is an imaginary event. After divorce proceedings initiated in the year 2012, the *de facto* complainant had made no attempt for reunion or visit the matrimonial home. To create nuisance, the parents and the relatives of the *de facto* complainant came to the house of the petitioners, when the 2nd petitioner was alone in the home and picked quarrel and abused in obscene



CrI.O.P.No.15210 of 2019

WEB COPY

language stating that the complaint is malicious prosecution to harass the husband and in-laws knowing fully well that divorce proceedings has been initiated against her accusing cruelty and desertion.

6. The learned counsel for the petitioners would further submit that the divorce petition in H.M.O.P.No.19 of 2012 has reached its logical end. The petition has been allowed and the marriage stands dissolved. The police has completed the investigation and filed Final Report on 31.03.2018, which the learned Judicial Magistrate, Pallipattu, has taken on file in C.C.No.122 of 2018. The material relied by the prosecution reveals that the complaint of cruelty and dowry demand came to be registered on 10.10.2014 and Final Report submitted to the Court on 31.03.2018. The trial Court taken cognizance for offence under Sections 498 A, 506(ii), 294(b) and Section 4 of Dowry Prohibition Act, 1961.

7. The *de facto* complainant candidly admits that she is not living with the 1st petitioner after the child birth in the year 2010. There is no reason for her to visit the house of her husband, on 20.06.2014 after



CrI.O.P.No.15210 of 2019

knowing well that her husband has already initiated divorce proceedings and pending. Furthermore, her husband is living in Chennai and not in Ammaiyar Kuppam. The visit to her father-in-law's house along with her relatives on 20.06.2014 at 7.00 p.m., is a motivated visit and that is reflected in the C.S.R., given by the 2nd petitioner in R.K.Pet police station on the next day i.e., on 21.06.2014. Though several things are alleged in the complaint filed in the year 2014, the counter to the divorce petition filed few years prior to that, there is no whisper about dowry harassment or indecent proposal alleged to have been made by the 2nd petitioner (her father-in-law). This complaint which is given 2 years after instituting divorce petition and 8 years after separation is clearly a fictitious complaint to counter blast the complaint given by the 2nd petitioner against her relatives for trespass and use of filthy language.

8. Hence this Court has no hesitation to entertain this petition which has filed to quash the malicious prosecution. Accordingly, this Criminal Original Petition is allowed. The proceedings in C.C.No.122 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Pallipattu, Thiruvallur District is hereby quashed.



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CrI.O.P.No.15210 of 2019

25.11.2022

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Index: Yes/No

Speaking Order/Non Speaking Order

To

1.The District Munsif cum Judicial Magistrate, Pallipattu, Thiruvallur District.

2.The Inspector of Police,
All Women Police Station,
Thiruthani,
Tiruvallur District.

3.The Public Prosecutor,
High Court of Madras, Chennai.



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Crl.O.P.No.15210 of 2019

Dr.G.JAYACHANDRAN, J.

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Delivery Order made in
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25.11.2022