



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 08.04.2022	Orders Pronounced On 27.05.2022
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Crl.O.P.No.8274 of 2017

1.Murugan
2.Saravanan

... Petitioners

Vs.

1.State by
Inspector of Police,
All Women Police Station,
Pennagaram.

2.K.Umadevi ... Respondents
[R2 impleaded as per order dated 07.06.2017
made in Crl.M.P.No.6912 of 2017]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.29 of 2016 on the file of the learned Judicial Magistrate, Palacode and quash the same.

For Petitioners : Mr.R.Senthil Kumar
for
Mr.R.Sundara Kamesh

For First Respondent : Mr.A.Damodaran
Additional Public Prosecutor

For Second Respondent : Mr.C.Gunasekaran
for Mr.Abrar Md.Abdullah



ORDER

The petitioner/accused in C.C.No.29 of 2016 on the file of the learned Judicial Magistrate, Palacode facing trial for the offence under Sections 294(b), 323, 506(i) IPC and Section 4 of Tamil Nadu Prevention of Women Harassment Act filed this quash petition.

2.The petitioners along with his brother Suresh are facing trial in C.C.No.29 of 2016 on the file of the learned Judicial Magistrate, Palacode.

3.The gist of the case is that on 01.11.2015, the petitioners brother Suresh abused, assaulted and threatened the defacto complainant, his estranged wife. As far as the petitioners are concerned, they have joined with their brother and abused her, caused shame and embarrassment in public. The defacto complainant and the petitioner's brother/Al had love affair with each other and got married against her parents wish. Out of their wedlock, they have two children, one girl child named Ponmalar aged eight years and one boy named Vishwa aged four years, both of them are studying in Kamalam International School, Dharmapuri. The defacto complainant is employed as English Teacher in Government High School, P.Gollapatti, Dharmapuri District. The petitioners' brother is employed in Railway Protection Force [RPF]. The complaint is that the second respondent/defacto complainant was living happily for some time with her husband, her husband an employee in RPF was also conducting local chit, for which he used the bank account of the defacto complainant for his chit transactions. After the defacto complainant got employed as Teacher, her husband became suspicious and was always keeping watching over her, following her and constantly abusing her. He will verify the defacto complainant's mobile phone, question her for each and every contact, thus she was humiliated. When the defacto complainant objected the same, she was assaulted and abused. Considering the welfare of the children, she put up with her husband. Her bank ATM card was in the possession of her husband and he was making all the transactions and withdrew her salary, utilized for his needs and she was under constant vigil, causing great humiliation.

4.Unable to bear any further, the defacto complainant left the matrimonial home, went to his uncle's house along with her children. The defacto complainant was brought up by her uncle and aunt from her tender age since they had no children.



The defacto complainant's sister-in-law took her to Soothsayer and some poojas were held. The defacto complainant became apprehensive in the manner the petitioners and their family members were treating her. The defacto complainant apprehended that her children will be forcibly taken away, hence after her separation from her husband she was dropping and picking them from School. One day, when she was taking her children to School, the petitioners along with their brother Suresh restrained her in the middle of the road and took away the children and her mobile phone was also forcibly taken. The defacto complainant was forced to accompany them to their house where the petitioner's family members further abused, threatened, her phone details verified, she was questioned and treated very badly. Thereafter, she went to her parents house at Mallupatti. The marriage of the defacto complainant's brother was fixed on 25.10.2015, for which her husband Suresh had come to participate and he was staying there. On 01.11.2015 at about 3.30 p.m., her husband attempted to take away both the children which was objected and resisted by the defacto complainant and her father, who were abused, assaulted and got injured. Thereafter, they went to the Government Hospital, Dharmapuri and took treatment. On 03.11.2015, when the defacto complainant was sitting in a bus in Palacode Bus stand, her husband came there, starred at her and threatened her.

5.The defacto complainant unable to bear the threat and harassment by her husband and the petitioners, lodged a complaint seeking protection for herself and her two children. The complaint was received by the respondent police, who registered FIR, visited the scene of occurrence, examined the defacto complainant, her uncle, aunt, recorded their statement, prepared observation mahazar and rough sketch in the presence of the witnesses and filed a final report on 04.02.2016 before the learned Judicial Magistrate, Palacode and the same was taken on file in C.C.No.29 of 2016. In the meanwhile, the defacto complainant lodged a complaint to the Superintendent of Police on 23.08.2016 which was forwarded to the respondent police, who filed a petition under Section 173(8) Cr.P.C., examined further witnesses and filed, further report after examining one Ganesan/her uncle, Lakshmi/her aunt, who are present at the time of her estranged husband assaulting her and one Samundi who also witnessed the assault. Recording their statement, additional report was filed on 21.10.2016.

6.The contention of the petitioners is that the petitioners are brothers of defacto complainant's estranged husband Suresh. The defacto complainant and the petitioners'



brother Suresh were in love with each other for sometime, initially their marriage was not accepted by the defacto complainant's family members, both of them eloped and got married. The petitioners' brother is working in the Railway Protection Force, he supported the defacto complainant to continue her education, to appear for the competitive examination and she was selected as Teacher in the Government High School. After her employment, her attitude, behaviour and conduct changed. Prior to it, they were happy and they have two children. Thereafter, the defacto complainant developed lot of contacts, she was constantly in the mobile which caused heart burns between the petitioners' brother and the defacto complainant, due to which there was regular fight. Despite the objections from the petitioners' family members, the defacto complainant continued her way of life and her relationships. Suddenly without informing anybody, she took her children and left to her uncle's place. It is further submitted that the defacto complainant's uncle brought her back, advised both the petitioners' brother and the defacto complainant and they were together for sometime. At that time, she refused to speak to anybody in the family and she was on her own. Finally, again she took her children and went to her parents place, the defacto complainant's brother was getting married on 25.10.2015. For the marriage, the petitioners' brother participated, at that time he stayed in defacto complainant's parents house, a few days thereafter, when the petitioners' brother called her back to his house, she refused to come and picked up quarrel and created a drama as though the petitioners' brother attempted to take away the children forcibly, with some self inflicted injury, the defacto complainant and her father got admitted in the hospital, created medical record and thereafter lodged a complaint against the petitioners and their brother.

7. On going through the statement of witnesses, namely, the defacto complainant, her uncle, her aunt, neighbours and others, even after further investigation, none of the witnesses stated anything about the petitioners presence or any overt act against them. It was the defacto complainant's motivated statement which makes some reference to the petitioners and that reference is also bald without any details and particulars. It is further submitted that the defacto complainant after leaving the matrimonial home, filed a divorce petition in H.M.O.P.No.113 of 2015 before the Sub Court, Dharmapuri, later it was transferred to the Family Court, Dharmapuri and renumbered as H.M.O.P.No.153 of 2016. The Family Court, Dharmapuri by judgment dated 20.03.2017 granted divorce to the defacto complainant. Thereafter, the petitioners' brother Suresh filed



C.M.A.No.1437 of 2017 before this Court. In the meanwhile, the defacto complainant filed H.C.P.No.641 of 2016 complaining that her minor daughter and son was illegally kidnapped and detained by the petitioners' brother Suresh on 16.03.2016 from the School. During the pendency of the H.C.P., the petitioners' brother appeared along with his daughter before this Court and this Court referred the matter to Mediation. Since the Mediation failed and found that there is no illegal detention of minor son and minor daughter, H.C.P.no.641 of 2016 dismissed. In the mediation process held between the family members, it was decided that the defacto complainant will have her own way of life and both the children, namely, Ponmalar and Vihwa would be under the care and custody of the petitioners' brother Suresh. Thereafter, the petitioners' brother withdrawn the civil miscellaneous appeal and it was dismissed as withdrawn on 23.08.2016. Now both the children are with their father Mr.Suresh, the petitioner's brother, who is taking care of all their needs with love and affection, provides them proper School education.

8.It is further submitted that after obtaining divorce, the defacto complainant married one Rajkumar, a Teacher with the blessings of her family as well as Raj Kumar's family on 12.09.2018 at Dharmapuri Kottai Temple, both their families participated and thereafter, they are living together happily. Out of their wedlock, the defacto complainant gave birth to a female child R.L.Lokamithra on 22.10.2021 at BGR Hospital, Dharmapuri. Now the defacto complainant is happy with her new family. It is further submitted that the defacto complainant filed W.P.No.22075 of 2021 before this Court seeking a Mandamus to sanction maternity leave for the period from 11.10.2021 till 12.10.2022 for delivering R.U.Lokamithra. In the writ petition, she filed an affidavit confirming that the defacto complaint's earlier marriage with the petitioners' brother and birth of the two children to them, they got legally separated in the year 2017 and the children are with the petitioners' brother custody are admitted. Further she admits her marriage with Rajkumar on 12.09.2018. Thus, by her own admission, she admits the divorce, second marriage and the custody of the minor children with the petitioners' brother. In sum and substance, by her own admission, she had given a go-by for the previous allegations not only against the petitioners even against the petitioners' brother/her divorced husband. Hence, he prayed for quashing the complaint.

9.The learned counsel for the defacto complainant/second respondent submitted that the defacto complainant and the



petitioners' brother had love marriage and out of their wedlock they had two children. Initially, they had a happy life, the petitioners' brother was employed in Railway Protection Force and carrying on chit business. For his chit business, he used the bank account of the defacto complainant for all his transactions which was objected by the defacto complainant. The petitioners' brother became suspicious, was monitoring the movement of the defacto complainant by either following her from a distance or through his friends and also checking her mobile phone for the contacts, he had his own imagination and brutally assaulted her. The defacto complainant is a Post Graduate B.ed Teacher, she swallowed the insult and assault considering the welfare of her children. The humiliation and assault further aggravated after the defacto complainant joined the Government School as a Teacher. The defacto complainant was taken by the petitioners family members to tantrics and some poojas were held. Unable to bear any further, the defacto complainant taken her children and went to her uncle's house, there also the petitioners family were constantly harassing her. The defacto complainant became very scary and to protect her children, she was dropping and picking them from School regularly.

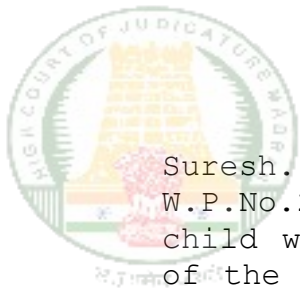
10.He further submitted that on one such occasion, when she was taking the children to School, she was restrained by the petitioners along with their brother abused the defacto complainant, the children were forcibly taken and she was forced to accompany them to their house where her mobile phone was forcibly taken, her contacts verified and she was abused by the entire family members of the petitioners. The defacto complainant thereafter went to her parents house since her brother was getting married on 25.10.2015, her estranged husband Suresh, brother of petitioners came there in the guise of attending the marriage, attempted to forcibly take the children away which was resisted by the defacto complainant and her father. Both the defacto complainant and her father were assaulted and beaten badly. Thereafter, both of them got admitted in the Government Hospital, Dharmapuri and lodged a complaint. Thereafter, a case came to be registered and final report was filed. On perusal of the final report, it was seen that the defacto complainant's uncle and aunt who were present at the time of assault on 01.11.2015 and who intervened in the assault, they were not examined as witness. Further, her family friend who passed by had seen the assault was also not examined. Thereafter, petition was given to the Superintendent of Police and on the direction of the Superintendent of Police, further investigation conducted, the witnesses were examined and statement recorded. The defacto complainant admit the divorce



obtained by her on the ground of cruelty. Thereafter, the petitioners' brother filed C.M.A. and the same was withdrawn, who now projects that a compromise was arrived at between them. It is further submitted that she had now married one Rajkumar, a Teacher and they are living happily. The defacto complainant's second marriage would not absolve the petitioners and their brother committing the assault, injury and harassment to the defacto complainant. Hence, he prays for dismissal of this petition. In support of his contention, he relied upon the decision in the case of Karunamoorthi and others vs. State rep. by the Inspector of Police and another reported in 2020 SC Online Mad 6026.

11.The learned Additional Public Prosecutor appearing for the first respondent submits that on the complaint of the defacto complainant, a case was registered, statements of defacto complainant, her father, uncle, aunt, neighbours were recorded, observation mahazar and rough sketch prepared, statement of Doctor recorded and medical records collected, final report filed, further investigation petition filed and three more witnesses examined and their statements recorded. It is further submitted that the case is at the stage of trial and due to the pendency of this petition, the case is kept pending without any progress. It is further submitted that the points raised by the petitioners are factual in nature, which are to be decided during trial. Hence, he prays for dismissal of this petition. In support of his contention, he relied upon the decisions in the case of Anbazhagan vs. State rep. by Inspector of Police, Kancheepuram District reported in 2012 (1) MWN(Crl.) 154 and Gouresh Mehra and another vs. The State rep. Sub-Inspector of Police, Cyber Crime Cell, CCB Egmore, Chennai and another reported in 2010 SCC Online Mad 5348.

12.Considering the submissions made and on perusal of the materials placed before this Court, it is not in dispute that the petitioners' brother Suresh and the defacto complainant had love marriage, out of their wedlock, they had two children and they lived happily for sometime. Thereafter, misunderstanding arose between them, they got separated, divorce obtained, the defacto complainant now married to one Rajkumar, her colleague and they have a child. The children of the defacto complainant and her divorced husband Suresh, brother of petitioners are in the care and custody of Mr.Suresh. In the petition filed by the defacto complainant earlier in H.C.P.No.641 of 2016 it is recorded that the children are happy and in harmony with the petitioners' brother, defacto complainant's divorced husband



Suresh. The defacto complainant filed a writ petition in W.P.No.22075 of 2021 for grant of Maternity leave for her third child wherein she admits her earlier marriage, divorce, custody of the children with her divorced husband Suresh and her second marriage with Rajkumar and now they have a child. She filed a writ petition for the maternity leave. This Court in the writ jurisdiction considering all the aspects recording the subsequent marriage and also finding that she is eligible for maternity leave granted the leave sought for. Thus, it is seen that the defacto complainant obtained divorce from her erstwhile husband, there is no relationship subsisting between them, the children are in the custody and care of the petitioners' brother Suresh, which is not disputed by her. The above case primarily proceeds for forcibly taking the custody of the two children, namely, Ponmalar and Vishwa. Earlier in H.C.P.No.641 of 2016, this Court found that the two children were not in illegal detention. The copy of the order in H.C.P.No.641 of 2016 dated 14.06.2016, Divorce order in H.M.O.P.No.153 of 2016 dated 20.03.2017, copy of the order in C.M.A.No.1437 of 2017 dated 23.08.2018, Marriage invitation of defacto complainant K.Umadevi with M.Rajkumar dated 12.09.2018, birth certificate of Baby R.U.Lokamithra, copy of the order in W.P.No.22075 of 2021 dated 25.03.2022, Senthil Public School certificates, Fees receipt for Ponmalar and Vishwa produced and verified. It is also seen now the petitioners' brother Suresh also married one Poornima. Now the position and status of the defacto complainant K.Umadevi and her divorced husband Suresh have completely changed. The defacto complainant K.Umadevi married Rajkumar and they have a child Baby R.U.Lokamitha. The petitioners' brother Suresh now married Poornima, the children Ponmalar and Vishwa live with their father and stepmother happily pursuing their education in harmony with proper care and protection. Let not the cratel get disturbed due to the above case.

13. Therefore, from the statement of witnesses and the materials collected, there is nothing against the petitioners herein and in view of the further development and admitted facts of the defacto complainant, this Court is inclined to quash the proceedings against the petitioners as well as against the petitioners' brother Suresh/A1. Accordingly, the proceedings in C.C.No.29 of 2016 pending on the file of the learned Judicial Magistrate, Palacode is hereby quashed not only against the petitioners and also against the petitioners' brother Suresh/A1.



14. In the result, the Criminal Original Petition is allowed.

WEB COPY

Sd/-
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
All Women Police Station,
Pennagaram.
2. The Judicial Magistrate,
Palacode.
3. The Chief Judicial Magistrate,
Dharmapuri.
4. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.8274 of 2017

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