



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.No.29922 of 2019

and

Crl.M.P.Nos.16156 & 16157 of 2019

1. P. Balakumar
2. V. Panneerselvam
3. P. Parvathi

...Petitioners

Vs.

1. State Rep. By
The Inspector of Police,
All Women Police Station,
Pennagaram Taluk,
Dharmapuri District.
(Crime No.1/2017)

2. Palaniammal

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the C.C.No.93 of 2017 on the file of the Judicial Magistrate Court, Pennagaram, Dharmapuri District and quash the same.

For Petitioners : Mr.M.Selvam

For Respondents : Mr.R.Vinoth Raja

Government Advocate (Crl. Side) for R1

O R D E R

This Criminal Original Petition had been filed to quash the case in C.C.No.93 of 2017 on the file of the Judicial Magistrate Court, Pennagaram, Dharmapuri District.

2. The learned Counsel for the Petitioners submitted that the Petitioners had filed this Petition to quash the Charge sheet in C.C.No.93 of 2017 on the file of the learned Judicial Magistrate, Pennagaram, Dharmapuri District. Subsequent to the case in C.C.No.93 of 2017, the second Respondent/defacto



Complainant had filed HMOP.No.62 of 2017 on the file of the learned Family Judge, Dharmapuri for divorce. The third Petitioner herein filed a petition in HMOP.No.87 of 2016 for restitution of conjugal rights. Both the Petitions were taken for enquiry. On assessment of evidence, the learned Family Judge had granted decree of divorce to the Respondent/defacto Complainant in HMOP No.62 of 2017 and dismissed the HMOP.No.87 of 2016 filed by the third Petitioner herein. Therefore, the learned Counsel for the Petitioners seeks to quash the charge sheet in C.C.No.93 of 2017.

3. The learned Government Advocate (Crl. Side) vehemently objects to quash the charge sheet on the ground that the second Respondent/defacto Complainant had been granted decree of divorce. The learned Government Advocate (Crl. Side) further submits that as per the contents of the charge sheet, it is for the trial Court to consider the valuable defence available to the Petitioner herein and not at this stage. This matter is to be considered on the basis of evidence adduced by the respective Parties before the trial Court. This Court exercising its discretion under Section 482 of Cr.P.C to quash the charge sheet is deprecated as per the ruling of the Hon'ble Supreme Court reported in 1992 Supp (1) SCC 335:1992 SCC (cri) 426 in the case of State of Haryana Vs. Bhajanlal.

4. Considering the rival submissions, the submission made by the learned Counsel for the Petitioners that the second Respondent/defacto Complainant had been granted decree of divorce cannot be a ground to exercise discretion of this Court under Section 482 of Cr.P.C., to quash the charge sheet, that on the relevant date there had been cruelty alleged by the defacto Complainant against the Petitioners herein, resulting in, registration of FIR. On the basis of registration of FIR, the investigation had proceeded and laid the final report before the Court concerned. Subsequent allegation was found in the FIR regarding granting of divorce to the defacto Complainant. Therefore, it is contra to the submission of the learned Counsel for the Petitioner, ingredient of Section 498 A is prima facie made out.

5. As pointed out by the learned Government Advocate (Crl.Side) that it is a fit case to be considered by the trial Court and not before this Court exercising discretion under Section 482 of Cr.P.C., as per the ruling of the Hon'ble Supreme Court in 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 in the case of State of Haryana and others Vs. Bhajanlal and others. Hence, this Criminal Original Petition is dismissed with a direction to



the learned Judicial Magistrate, Dharmapuri to proceed with the trial and dispose of the case within a period of three months from the date of receipt of a copy of this order.

6. The learned Judicial Magistrate may pass appropriate orders to dispense with the appearance of the Petitioners herein 2 and 3 who are arrayed as Accused 2 and 3 before the trial Court, if the Accused file a Petition to dispense with personal appearance, since the identity has not disputed and proceed with the trial. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate,
Pennagaram, Dharmapuri District.
2. The Inspector of Police,
All Women Police Station,
Pennagaram Taluk,
Dharmapuri District.
3. The Public Prosecutor
High Court of Madras
Chennai 600 104.

+1 CC to Mr.M.Selvam, Advocate sr 24784

CRL.O.P.No.29922 of 2019

GMR(CO)
SP(13/05/2022)