



CRL.O.P (MD) No.13643 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13643 of 2022

Santhakumari

... Petitioners

Vs.

1.State Rep. by
The Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai City.
(Crime No.51 of 2013)

2.Parthiban

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the Additional Mahila Court, Madurai to alter the charge by including the offence of Section 494 of IPC in C.C.No.392 of 2019.

For Petitioner : Mr.T.A.Ebenezer

For R1 : Mr.R.Sureshkumar
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed to direct the Additional Mahila Court, Madurai to alter the charge by including the offence under Section 494 of IPC in C.C.No.392 of 2019.



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2.The learned counsel appearing for the petitioner submitted that the petitioner is the *de facto* complainant and she gave a complaint against the second respondent to the first respondent police. Based on that complaint, a case has been registered in Crime No.53 of 2013 for the offence punishable under Sections 498(A), 341 and 506(i) of IPC on 20.05.2013. After completing the investigation, final report has been filed and the same was taken on file in C.C.No.392 of 2019 before the Additional Mahila Court, Madurai. While taking cognizance and at the time of framing charge, the offence under Section 494 of IPC was not included. Hence, he filed this petition.

3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that this Court in Crl.O.P(MD)No.2077 of 2021, dated 11.02.2021, directed the Court below to dispose the C.C.No. 392 of 2019 within a period of six months from the date of that order.

4. I have considered the matter in the light of the submissions made by the parties.



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5. In this petition, the petitioner/defacto complainant seeks to direct the learned Magistrate to alter the charge by including the offence under Section 494 of IPC in C.C.No.392 of 2019. A perusal of records shows that the petitioner gave a complaint against the second respondent/husband, the case has been registered in Crime No.53 of 2013 for the offences punishable under Sections 498(A), 341 and 506(i) of IPC on 25.05.2013 by the first respondent police. After investigation, final report has been filed and the same was taken on file in C.C.No.392 of 2019 by the Additional Mahila Court, Madurai. The trial Court itself has the power to alter the charge under Section 216 of Cr.P.C., which reads as follows:-

"216. Court may alter charge

- (1) Any Court may alter or add to any charge at any time before judgment is pronounced*
- (2) Every such alteration or addition shall be read and explained to the accused*
- (3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court to prejudice the accused in his defence or the prosecutor in the conduct of the case the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge*
- (4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary*
- (5) If the offence stated in the altered or added charge is one for the prosecution of which*



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previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded."

Therefore, there is an remedy available before the trial Court under Section 216 of Cr.P.C. to the petitioner. When a remedy is available before the trial Court, the power under Section 482 Cr.P.C., need not be invoked. Hence, this Court finds no merits in this case.

6.Accordingly, this Criminal Original Petition stands dismissed with liberty to the petitioner to approach the trial Court for redressal of the grievances.

28.07.2022

Internet:Yes./No
Index:Yes/no
vsd



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To

- 1.The Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

vsd

ORDER IN
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