



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2022

Pronounced on : 16.09.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

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CRL.O.P.(MD).No.11284 of 2019

and

CRL.M.P(MD)Nos. 7066 & 7067 of 2019

Sreekanth @ Sreekanth Anandaram

... Petitioner/Accused

Vs.

1.State of Tamil Nadu,
Rep.The Inspector of Police,
All Women Police Station,
Tanjore Road, Thiruverumbur,
Thiruchirapalli District.
Crime No.7 of 2018.

... 1st Respondent/ Complainant

2.S.Prabha

... 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in C.C.No.1216 of 2019 on the file of the Additional Mahila Court (Magistrate Level) Trichy and may quash the same.

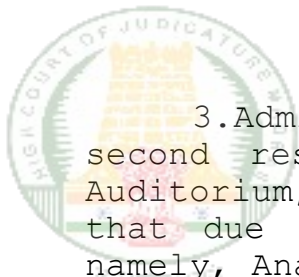
For Petitioner : Mr.P.R.Madhusudhanan,
For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (Crl Side), for R1.

Mr.V.M.Balamohan Thambi, for R2.

ORDER

The Criminal Original Petition is filed, invoking Section 482 of Cr.PC., seeking orders to call for the records pertaining to the case in C.C.No.1216 of 2019 pending on the file of the Additional Mahila Court (Magistrate Level) Trichy and quash the same.

2. The petitioner is the sole accused in C.C.No.1216 of 2019 on the file of the Additional Mahila Court (Magisterial Level) Trichy. On the basis of the complaint lodged by the second respondent, FIR came to the registered in Crime No.7 of 2018, dated 05.06.2018 against the petitioner under Sections 498(A) and 506(i) IPC. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C, dated 30.11.2018 against the petitioner for the alleged offence under Sections 498(A) and 506(i) and the case was taken on file in C.C.No.1216 of 2019 and the same is pending on the Additional Mahila Court (Magisterial Level) Trichy.



3. Admittedly, the marriage between the petitioner and the second respondent was solemnized on 23.11.2010 at Lalit Mahal Auditorium, Thiruvananthapuram as per Hindu rites and rituals and that due to their wed-lock, they were blessed with a boy baby namely, Ananthakrishnan.

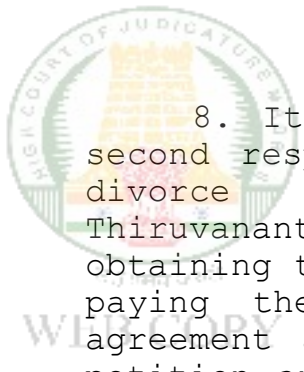
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4. It is not in dispute that the petitioner was working as Assistant Professor in National Institute of Technology, Tiruchirappalli and the second respondent was working in Corporation Bank at Kottayam, Kerala and that subsequently, the second respondent joined in Dairy Development Department of Kerala.

5. It is also not in dispute that the second respondent has filed a petition for divorce against the petitioner in 2014 and due to mediation talk, they have entered into an agreement and accordingly, she had withdrawn her divorce petition and went to the petitioner's quarters at NIT Campus and stayed there for a period of ten months.

6. The case of the prosecution is that though the second respondent had stayed at NIT Campus with the petitioner for a period of 10 months, they did not have any conjugal relationship; that on 28.04.2015, the second respondent had noticed homosexual activities of the petitioner with one of his student; that when the same was questioned by the second respondent, the petitioner had caused criminal intimidation and that the petitioner having such illegal relationship with his student, had caused cruelty to the second respondent.

7. It is pertinent to note that in the complaint based on which, the present FIR came to the registered, the defacto complainant has stated that after coming to know about the homosexual activities of the petitioner, she came across whatsapp chats in his mobile and came to know that the petitioner is having chronic homosexual trait and he is having innumerable number of male partners; that he utilizes his official capacity as Assistant Professor as well as Associate Dean for finding out male students as his partners, that he had also supplied narcotic drugs and psychotropic substances to the said students and thereby, induced them to have homosexual activities with him, that she had also transferred videos and photos available in the petitioner's mobile and laptop, that thereafter, she returned to Thiruvananthapuram along with her child and informed the petitioner about the whatsapp chat and the evidence which she was having, and that the petitioner admitted his mistakes and expressed his willingness for settlement and accordingly, they have entered into a written agreement on 25.06.2016 in the presence of his counsel and whereunder, the petitioner agreed to give Rs.45 Lakhs to the second respondent and also expressed his willingness to file a petition for divorce on mutual consent and also to waive his right over the minor child and in return, the second respondent would not complain or reveal about the petitioner's contents and his homosexual with students.



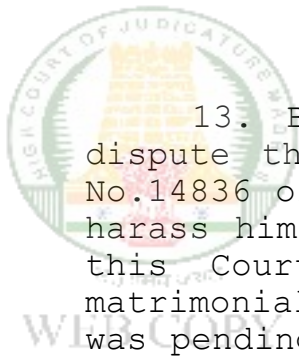
8. It is the further case of the second respondent the second respondent along with the petitioner filed a petition for divorce in O.P.No.1313 of 2016 before Family Court, Thiruvananthapuram and another petition in O.P.No.1478 of 2016 for obtaining the guardianship of her child; that the petitioner without paying the amount agreed, had unilaterally withdrew from the agreement and represented his disinterest in pursuing the divorce petition and this was nothing, but a well planned ploy between her husband and his earlier advocate in order to obtain adequate time to escape from the clutches of law and thereby, betrayed her completely; that the second respondent came to know that the petitioner subsequent to entering of the agreement have surrendered his official cell number through which he had communicated with his male partners, that the second respondent is now apprehending that the petitioner is trying to surrender his official post and is trying to escape to some other foreign country so as to avoid the prosecution against him and that therefore, the second respondent was constrained to lodge the above compliant.

9. At the out set, this Court is constrained to observe that the defacto complainant in her complaint has nowhere whispered that the petitioner had caused dowry harassment or any other harassment or that she was subjected to cruelty.

10. A cursory perusal of the the complaint and other materials would only reveal that the second respondent has been attempting to canvass a case that the homosexual relationship of the petitioner with his student and others would amount to causing mental cruelty on her.

11. No doubt, in the statement recorded under Section 161(3) Cr.P.C, the second respondent has alleged that immediately, after noticing the homosexual activities of the petitioner, she had questioned him about his conduct and thereby destroying her life and that when the second respondent was questioned about the whatsapp chats found in his mobile, he threatened that he would kill the second respondent and her son with the help of his male partners and that therefore, she was constrained to proceed to Thiruvananthapuram.

12. But, as rightly pointed out by the learned counsel for the petitioner, the above allegations does not find place in the complaint. It is pertinent to note that initially the complaint of the petitioner was not registered by the Police and hence, she filed a writ petition in W.P.(MD)No.18020 of 2017, seeking direction for registration of FIR and when the Writ Petition was pending, it was represented by the learned Government Advocate (Criminal Side) that FIR came to be registered in Crime No.7 of 2018, dated 05.06.2018 and recording the said submission, the Writ petition was ordered to be dismissed.



13. Before the registration of the FIR, it is also in dispute that the petitioner has filed a petition in Crl.O.P.(MD) No.14836 of 2017, seeking direction to the respondent Police not to harass him and his family members in the guise of enquiry and that this Court after observing that the petitioner was having a matrimonial dispute with his wife and the proceedings for divorce was pending before the High Court of Kerala and that there was also a dispute regarding guardianship and custody over their minor child, directed the Police Officials not to interfere in the matter.

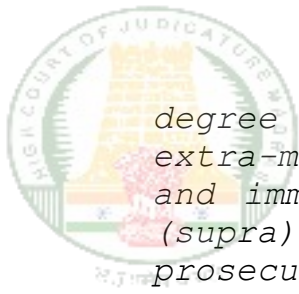
14. The learned counsel for the petitioner would submit that even assuming for arguments sake that the petitioner is having homosexual relationship with some persons, that cannot be considered as mental cruelty which would attract the ingredients of Section 498 (A) IPC and relied on the following decisions of the Hon'ble Supreme Court.

(i) **Pinakin Mahipatray Rawal Vs. State of Gujarat**, reported in (2013) 10 Supreme Court Cases 48.

23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498 A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498 A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide."

(ii) **Ghusabhai Raisangbhai Chorasiya and others Vs. State of Gujarat** reported in (2015) 11 Supreme Court Cases 753.

21. Coming to the facts of the present case, it is seen that the factum of divorce has not been believed by the learned trial Judge and the High Court. But the fact remains is that the husband and the wife had started living separately in the same house and the deceased had told her sister that there was severance of status and she would be going to her parental home after the 'Holi' festival. True it is, there is some evidence about the illicit relationship and even if the same is proven, we are of the considered opinion that cruelty, as envisaged under the first limb of Section 498 A IPC would not get attracted. It would be difficult to hold that the mental cruelty was of such a



degree that it would drive the wife to commit suicide. extra-marital relationship, even if proved, would be illegal and immoral, as has been said in *Pinakin Mahipatray Rawal* (supra), but it would take a different character if the prosecution brings some evidence on record to show that the accused had conducted in such a manner to drive the wife to commit suicide. In the instant case, the accused may have been involved in an illicit relationship with the appellant no.4, but in the absence of some other acceptable evidence on record that can establish such high degree of mental cruelty, the Explanation to Section 498 A IPC which includes cruelty to drive a woman to commit suicide, would not be attracted.

(iii) **K.V.Prakash Babu Vs. State of Karnataka** reported in (2017) 11 Supreme Court Cases 176 .

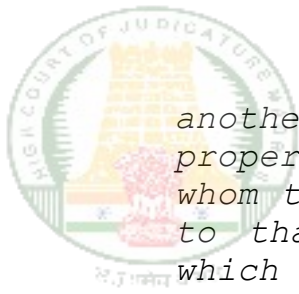
15. The concept of mental cruelty depends upon the milieu and the strata from which the persons come from and definitely has an individualistic perception regard being had to one's endurance and sensitivity. It is difficult to generalize but certainly it can be appreciated in a set of established facts. Extra-marital relationship, per se, or as such would not come within the ambit of Section 498 A IPC. It would be an illegal or immoral act, but other ingredients are to be brought home so that it would constitute a criminal offence. There is no denial of the fact that the cruelty need not be physical but a mental torture or abnormal behaviour that amounts to cruelty or harassment in a given case. It will depend upon the facts of the said case. To explicate, solely because the husband is involved in an extra-marital relationship and there is some suspicion in the mind of wife, that cannot be regarded as mental cruelty which would attract mental cruelty for satisfying the ingredients of Section 306 IPC.

15. In the above three decisions, the accused therein were charged for the offence under Sections 498(A) and 306 IPC and the Hon'ble Supreme Court has reiterated the same position that an extra marital relationship of the husband cannot be considered as a mental cruelty, attracting the ingredients of Section 498(A) IPC.

16. Now turning to the next offence under Section 506(1) IPC, the prosecution has to show that the threat given by the accused as real and substantial. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in **Manik Taneja and another vs. State of Karnataka and another** reported in (2015) 7 SCC 423 and the relevant passages are extracted hereunder:-

"11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

"503. Criminal Intimidation.- Whoever threatens



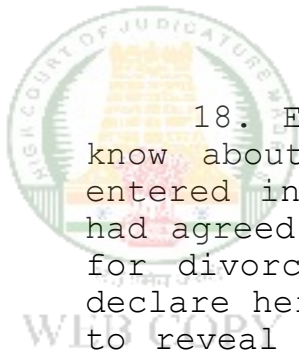
another with any injury to his person, reputation property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

17. As already pointed out, in the complaint, the second respondent has nowhere whispered that she was criminally intimidated by the petitioner. But in the statement recorded under Section 161 Cr.P.C, she has improved her case by alleging that the petitioner had threatened that he would kill the second respondent and her son with the help of his male partners.



18. Even according to the second respondent, after coming to know about the homosexual activities of the petitioner, she had entered into an agreement with the petitioner and whereunder, she had agreed to receive Rs.45 lakhs and also to file a joint petition for divorce on mutual consent and for filing another petition to declare her guardianship of her son and that she had also agreed not to reveal the whatsapp chats and the homosexual activities of the petitioner and that in pursuance of the said agreement, joint petition for divorce and petition for guardianship came to be filed. But subsequently, the petitioner had withdrawn from the agreement and refused for mutual divorce.

19. More importantly, as rightly pointed out by the learned counsel for the petitioner, since the agreement alleged to have been entered into between the parties, has subsequently failed, she has come forward to lodge the above complaint alleging cruelty and criminal intimidation.

20. On considering the above facts and circumstances, there is absolutely no averments or materials so as to attract the ingredients of the offences alleged against him. Hence, this Court has no hesitation to hold that permitting the prosecution to proceed further would only amount to abuse of process of law and that the proceeding in C.C.No.1216 of 2019, is liable to be quashed.

21. In the result, the Criminal Original Petition is allowed and the proceeding in C.C.No.1216 of 2019 on the file of the Additional Mahila Court (Magisterial Level) Trichy, is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS.II)

// True Copy //

/09/2022

Sub Assistant Registrar(CS)

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional Mahila Court, (Magistrate Level)
Trichy.



2.The Inspector of Police,
All Women Police Station,
Tanjore Road, Thiruverumbur,
Thiruchirapalli District.

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

+1 CC to M/s.A.BALAKRISHNAN, Advocate (SR-45444[F]
dated 16/09/2022)

Order made in
CRL.O.P. (MD) .No.11284 of 2019
and
CRL.M.P (MD) Nos. 7066 & 7067 of 2019
Date:16.09.2022

das
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