



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.11698 of 2018

and

Crl.MP(MD)Nos.5293 and 5294 of 2018

WEB COPY

1.Akbar Ali

2.A.Mehatha Banu

: Petitioners/A2 and A3

Vs.

1.The State rep. By

The Inspector of Police,
South Gate Police Station,
Madurai District.

(Crime No.985 of 2016)

: R1/Respondent

2.S.Mahabiyath Begam

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to CC No.179 of 2017 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai and quash the same.

For Petitioner

: Mr.R.Anand

For 1st Respondent

: Mr.P.Kottai Chamy

For 2nd Respondent

: Mr.K.Pandiarajan

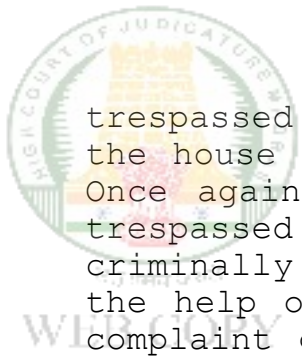
(Legal Aid Counsel)

O R D E R

This petition has been filed seeking quashment of CC No.179 of 2017 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai.

2.The case of the prosecution in brief:-

The de-facto complainant and A1 were married to each other. But later due to some sort of difference of opinion Talaq was pronounced and they were living separately. Over the house, in which the de-facto complainant was living, continuous trouble existed between them. On 28/06/2018 at about 6.00 pm, when the daughter of the de-facto complainant was sleeping in the house, A1



trespassed into the house and forced the de-facto complainant to leave the house and also caused injury by slapping her against the wall. Once again, on 14/11/2018 at 5.00 pm, A1 without any dress again trespassed into the house and abused in filthy language and also criminally intimidated the de-facto complainant stating that with the help of A2 and A3, he will kill her. So on the basis of the complaint given by the de-facto complainant, a case was registered in Crime No.985 of 2016 for the offences under sections 294(b), 448, 354A(3), 354-D, 506(i) and 109 of IPC and section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and after completing the investigation, final report was filed against three accused persons alleging that A1 has committed the offences under section 294(b), 448, 506(1), 354A(3), 354(D) IPC r/w 4 of TNWH Act and against A2 and A3 for the offence under sections 294(b), 506(i) IPC r/w 109 IPC.

3. Seeking quashment of the above said criminal proceedings, A2 and A3 have preferred this criminal original petition on the ground that even as per the allegations made in the FIR as well as in the final report, no offences are attracted against the petitioners. The main contention is only with regard to the dispute between the husband and wife. More-over, the petitioners residing elsewhere and the first petitioner is working in Government service as 'Assistant Engineer' in Tamil Nadu Highways Department. Only for the purpose of wreck vengeance, such a false complaint has been given against the petitioners also.

4. Since the 2nd respondent/de-facto complainant did not appear in spite of receipt of notice, Legal Aid counsel has been appointed and both side were heard.

5. Reading of the entire materials shows that the main dispute is between the de-facto complainant and A1, who is her husband, married to each other. Because of some trouble, now they were separated and living separately. As per her complaint, an attempt was made on 28/06/2016 by the first accused to trespass into her house and she was also assaulted. No complaint was given by her regarding the above said occurrence. The second occurrence was stated to be on 14/11/2016. On that date also, he trespassed into the house and abused her in filthy language and also criminally intimidated.

6. Now the allegation against the petitioners is that only at their instance and support, the above said offences have been committed by the first accused. Except mentioning the bald allegation that with the support and assistance and at the instance of the petitioners, the first accused has committed the above said offences, no other materials are available or collected during the course of investigation. In the final report, it has been stated that these petitioners were also abetting the commission of offence by A1.

7. The learned counsel appearing for the petitioners would submit that after the marriage between the de-facto complainant and A1, they were living separately and these petitioners were living



separately and the first petitioner is working as 'Assistant Engineer' in the Tamil Nadu Highways Department and only for the purpose of making vengeance, these petitioners have been wrongly implicated by the de-facto complainant in the above said occurrences. The learned counsel appearing for the petitioners would rely upon the judgment of the Hon'ble Supreme Court in Kahkashan Kausar @ Sonam & Others Vs. State of Bihar & others (Criminal Appeal No.195 of 2020, dated 08th February 2022 for the purpose of argument that off late, when a matrimonial dispute between the husband and wife, it is usual for the wife to implicate the relatives of the husband. Such sort of attitude, threat and prosecution is not only causing trouble to the parties, but also to the entire society and if any such complaint is given against the relatives of the husband, then the possibility of making due settlement between the husband and wife has also become a problem.

8.The Hon'ble Supreme Court has approached the problem not only in the angle of the family, but also in setup the angle of the entire society. The Hon'ble Supreme Court went into the consequence of the initiation of the criminal prosecution by the wife. It has also given advise not only to the parties to the matrimonial issue, but also even in the legal fraternity, while advising the parties to the dispute. This judgment has been followed right from in the case of Arnesh Kumar Vs. State of Bihar and another (2014)8 SCC 273, Preeti Gupta and another Vs. State of Jharkhand and another (2010)7 SCC 667, Geeta Mehotra and another Vs. State of UP and another (2012)10 SCC 741, G.V.Rao Vs. L.H.V Prasad and another (2002)3 SCC 693 and K.Subba Rao Vs. The State of Telangana (2018)14 SCC 452. In all these cases, the danger of including the relatives in the matrimonial dispute has been clearly spelt out. When we go into this case on this line, the allegation made against the petitioners appears that this case also one such cases, it has been pointed out by the Hon'ble Supreme Court, which is liable to be quashed and these petitioners have been apparently roped without any basis and with an ulterior motive also. This clearly shows the abuse of process of court and law. On that sole ground, this petition is liable to be allowed.

9.In the result, this criminal original petition stands **allowed**. The entire proceedings in CC No.179 of 2017 pending on the file of the Judicial Magistrate, Additional Mahila Court, Madurai is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

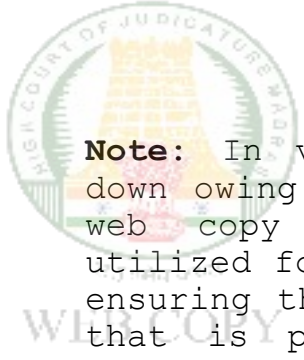
Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /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 Judicial Magistrate,
Additional Mahila Court,Madurai.
- 2.The Inspector of Police,
South Gate Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.K.PANDIARAJAN, Advocate (SR-9023[F] dated 28/02/2022)
Crl.O.P. (MD)No.11698 of 2018
24/02/2022

MGJ(09.03.2022) 4P 6C