



Crl.O.P.Nos.6157 & 7748 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos.6157 & 7748 of 2021
and Crl.M.P.Nos.4062, 4063 & 5117 of 2021

A.Hemamalini

...Petitioner in Crl.O.P
No.6157 of 2021

1. Meenachiammal
2. Manivannan
3. Vairam Elango
4. Dr.Elango
5. Anbumuthu
6. Arulkumar
7. Pettai Siva

...Petitioners in Crl.O.P
No.7748 of 2021

Vs.

1. State Rep. by
The Inspector of Police,
Muthupettai Police Station,
Thiruvarur.

2. K.Ranipadmini

... Respondents in both
Crl.O.Ps.

Common Prayer: Criminal Original petitions filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.1 of 2021 on the file of the learned Judicial Magistrate, Thiruthuraipoondi and quash the same in the interest of justice.



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In both Crl.O.Ps.

For Petitioners : Mr.S.Manuraj
For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side)
For R2 : Mr.A.Nagarajan
For Mr.K.M.Rameshkumar

COMMON ORDER

These petitions have been filed to quash the proceedings in C.C.No.1 of 2021 on the file of the learned Judicial Magistrate, Thiruthuraipoondi, thereby taken cognizance for the offences punishable under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002, as against the petitioners.

2. On the complaint lodged by the second respondent, the first respondent registered FIR in Crime No.95 of 2018, for the offences punishable under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002. The crux of the complaint is that, the second respondent/defacto complainant got married the deceased Swaminathan on 19.08.1998. Thereafter due to misunderstanding between them, the defacto complainant got separated and living with her parents. While being so, due to illness, the defacto



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complainant's husband died on 06.03.2018. She also participated along with her family members in the death ceremony. When 16th day rites were performed on 20.03.2018, the defacto complainant along with her family members went to the house of her husband. However, the accused persons without even allowing them from entering into the house, scolded them with filthy language and also threatened them with dire consequences. Hence, the complaint.

2. On receipt of the said complaint FIR was registered and after completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.1 of 2021 on the file of the learned Judicial Magistrate, Thiruthuraipoondi, for the offences punishable under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002.

3. The learned counsel appearing for the petitioners submitted that the defacto complainant is none other than the ex-wife of the first accused's deceased son viz., Swaminathan. They got married on 19.08.1998. There was misunderstanding between them as such, she was separated and living in her parents house. Therefore, the deceased son of



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the first accused was constrained to file petition for restitution of conjugal rights in H.M.O.P.No.10 of 2002 on the file of the Subordinate Court, Thiruvarur. Though it was decreed by the judgment and decree dated 14.08.2003, in favour of the deceased husband, the second respondent did not come to the matrimonial home in order to comply the judgment and decree passed by the Subordinate Court.

3.1. Thereafter in the year 2006, the deceased husband filed divorce petition in H.M.O.P.No.50 of 2006 on the file of the Subordinate Court, Mannargudi, on the ground of cruelty and non compliance of the order passed in the restitution of conjugal rights petition and the same was also decreed by the judgment and decree dated 20.07.2007. In both petitions filed by the deceased husband, the second respondent was set exparte. The second respondent did not chose to file any application to set aside the exparte decree. Only in the year 2017, she filed petition to set aside the exparte judgment and decree passed in the divorce petition in I.A.No.51 of 2017 in H.M.O.P.No.50 of 2006.

3.2. He further submitted that in fact, the deceased husband was appeared before the Subordinate Court, Mannargudi, on 16.09.2017.



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Unfortunately due to his prolonged illness, he was admitted in Raja Muthaiah Medical College and Hospital, Annamalainagar on 05.03.2018.

However, due to the failure in treatment, he died on 06.03.2018.

Thereafter, the first accused lodged complaint before the first respondent on 16.03.2018 alleging that they anticipated trouble, trespass and violence by the second respondent, when the 16th day rites to be performed in their house. On receipt of the said complaint, the first accused was issued C.S.R.No.85 of 2018. However no action was taken.

As anticipated by them, the second respondent had come to their house on 20.03.2018 and started altercation with the entire family members, when they were doing 16th rites of the deceased son of the first accused.

3.3. On the same day, the first accused lodged complaint and she was issued another C.S.R.No.95 of 2018. Therefore, subsequent to their complaint, the second respondent lodged the present complaint on 23.03.2018 with false allegations. There is no proper explanation for the belated complaint. Though FIR registered on 23.03.2018, it was reached the concerned Judicial Magistrate Court on 27.03.2018, since the father of the second respondent was the Assistant Commissioner of Police and as such he influenced on the belated complaint lodged by the second



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respondent and registered pre-dated FIR and sent to the Court on 27.03.2018. Therefore, no such occurrence was happened and the entire case of the second respondent is false one. She lodged complaint only to extract the property from the petitioner. Hence, he prayed for quashment of the entire proceedings.

4. Per contra, the learned counsel appearing for the second respondent submitted that though the second respondent was living with her husband and while she was very much in the matrimonial home, utilizing the situation of the deceased husband, the family members themselves filed petition for divorce and obtained exparte decree. In fact, she came to understand about the exparte decree of divorce only in the year 2017. Immediately she filed petition to set aside the exparte decree in I.A.No.51 of 2017 in H.M.O.P.No.50 of 2006 on the file of the Subordinate Court, Mannargudi and it is pending. In order to cheat the defacto complainant, she was not allowed to participate in her husband 16th day death ceremony. The family members prohibited that if she allowed to participate in the ceremony, she is entitled to have her share.



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4.1. That apart there are specific overt act as against all the accused persons in order to attract the offences under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002. Therefore, the ground raised by the petitioner can be considered only before the trial Court and prayed for dismissal of both the petitions.

5. The learned Government Advocate (Crl. Side) appearing for the first respondent submitted that now the trial is pending for taking cognizance in C.C.No.1 of 2021 on the file of the learned Judicial Magistrate, Thiruthuraipoondi. The petitioners are arrayed as A1 to A8 and there are specific allegations as against all the petitioners in order to attract the offences under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002. Hence, he prayed for dismissal of both the petitions.

6. Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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7. There are totally eight accused in this case. The petitioners in

Crl.O.P.No.7748 of 2021 are arrayed as A1 to A4, A6 to A8 and the petitioner in Crl.O.P.No.6157 of 2021 is arrayed as A5. All the petitioners are close relatives. The second respondent got married the son of the first accused on 19.08.1998. They had no issues. Due to the misunderstanding between them, she used to stay in her parents house most of the time. That apart, she failed to respect the family members of her husband and as such there was a quarrel between them. Hence she got separated and as such the deceased husband filed petition for restitution of conjugal rights in H.M.O.P.No.10 of 2002 before the Subordinate Court, Thiruvavur. Though notice was received by the second respondent, she failed to appear before the trial Court and as such she was set exparte and the case was decreed in favour of the husband. Even then, the second respondent failed to live with her husband and did not comply the order passed by the trial Court in restitution of conjugal right petition.

8. Hence, the deceased husband was constrained to file petition for divorce in H.M.O.P.No.50 of 2006, on the ground of non compliance of the order passed in the restitution of conjugal right petition. In the



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divorce petition also, the second respondent received notice and failed to appear before the trial Court and she was set exparte and exparte decree was passed in favour of the husband by the judgment and decree dated 20.07.2007.

9. There is no evidence to show that the second respondent was living with the deceased husband till his death. Her husband fell in sick and admitted in the hospital. Only thereafter, the second respondent filed application to set aside the exparte decree that too after the period of ten years with condone delay petition. Unfortunately the husband of the second respondent died due to his ill-health on 06.03.2018. According to the second respondent, she also attended the condolence of her husband. Thereafter, the first accused lodged complaint before the first respondent anticipating the quarrel made by the second respondent during her deceased son 16th day death ceremony. She was issued C.S.R.No.85 of 2018 dated 16.03.2018.

10. On 20.03.2018, they performed 16th day ceremony of her deceased son. On that day, according to the second respondent, she along with her family members went to the house of the first accused. There,



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they were refused to allow her to enter into their house and also attacked the second respondent by hands. They also scolded them with filthy language and threatened them with dire consequences. However, on that day the second respondent did not lodge any complaint. Only on 23.03.2018, the second respondent lodged complaint before the first respondent and on the same day the complaint was registered in Crime No.95 of 2018 for the offences under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002.

11. After registration of FIR, the same was reached before the jurisdiction Court viz., the learned Judicial Magistrate, Thiruthuraipoondi only on 27.03.2018. There is no proper explanation for the belated complaint. Though the petitioners specifically contended that the father of the second respondent was retired Assistant Commissioner of Police, and therefore, the second respondent influenced with the first respondent to manipulate the FIR by pre-dated and sent to the Court on 27.03.2018, there is no evidence to that effect. Further there was a late in the lodgment of the complaint and there was no delay in sending the FIR to concerned Court.



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12. On perusal of the statement of the second respondent as well as the other witnesses including the individual witness revealed that, the second respondent and his family members went to 16th day death ceremony of her husband and there was altercation between both the family members. While being so, the accused 6 to 8 quarreled with her and pushed her from house. They also attacked by their hands and kicked her. Therefore, the accused 6 to 8 had specific overt act in order to attract the offences under Sections 147, 294(b), 341, 506(1) of IPC and Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 2002.

13. Insofar as the other accused persons are concerned, all the allegations are bald and vague and no specific allegations made out as against other accused persons. Therefore, insofar as the accused A6 to A8 viz., the petitioners 5 to 7 in Crl.O.P.No.7748 of 2021 are concerned the petition is dismissed. Insofar as the petitioners 1 to 4 in Crl.O.P.No.7748 of 2021 and the petitioner in Crl.O.P.No.6154 of 2021 are concerned, the the proceedings in C.C.No.1 of 2021 on the file of the learned Judicial Magistrate, Thiruthuraipoondi, is hereby quashed. The trial Court viz., the learned Judicial Magistrate, Thiruthuraipoondi, is directed to proceed



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with the trial as against the accused Nos.6 to 8 and dispose the same on merits and in accordance with law, as early as possible.

14. Accordingly, the Criminal Original Petition in Crl.O.P.No.6154 of 2021 stands allowed and the Criminal Original Petition in Crl.O.P.No.7748 of 2021 stands partly allowed. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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1. The Judicial Magistrate,
Thiruthuraipoondi.
2. The Inspector of Police,
Muthupettai Police Station,
Thiruvarur.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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