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Crl.O.P No.19263 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.01.2023**

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.19263 of 2019
and Crl.M.P. Nos.9851 & 9852 of 2019

V.Gopinath

... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
Masinagudi Police Station,
Nilgiris District.

2. M. Keerthana

... Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records in Spl.C.C. No.1 of 2019 on the file of Principal Sessions Court, Uthagamandalam, Nilgiris and quash the same.

For Petitioners : Mr.K.Vellayaraj
for M/s.V.K.Raj Law Chambers

For Respondent-1 : Mr. A.Gopinath
Government Advocate (crl.side)
2 : Mr.A.K.Gopalan



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ORDER

This Criminal Original Petition has been filed to call for the entire records in Spl.C.C. No.1 of 2019 on the file of Principal Sessions Court, Uthagamandalam, Nilgiris and quash the same.

2. The second respondent / defacto complainant was the wife of the petitioner at the time of the occurrence. The marriage between the petitioner and the second respondent was solemnized on 27.04.2008 in the presence of their relatives. After marrying the second respondent, the petitioner did not take her to the matrimonial home. Instead, he pacified her that he would come with his parents and take her along with the child after delivery. On 15.08.2018 the second respondent delivered a male baby and thereafter the petitioner stopped communicating with the second respondent. Hence, the second respondent had given a police complaint against the petitioner and thereafter an enquiry was conducted by the police. The petitioner assured that divorce proceedings has been initiated by him at Dharmapuri Court and that he would abide by the decision of the Court.



2.1 When the second respondent, her mother along with her sister and aunt returned from the police station and standing in the Masinakudi bus stop, the petitioner and his father had arrived there and at that time there was a wordy quarrel between the petitioner and the second respondent and the petitioner abused her in filthy language. The occurrence was witnessed by the other witnesses and her relatives. On the complaint given by the second respondent, FIR has been registered against the petitioner for the offences under Section 294(b), 498(A) IPC and Section 3(1)(r) of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. After the completion of investigation, charge sheet has been filed in Spl.S.C. No.1 of 2019 on the file of the Principal Sessions Court, Uthagamandalam, Nilgiris for the offences under Section 294(b), 498(A) IPC and Section 3(1)(r) of The Scheduled Caste and The Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. The learned counsel for the petitioner submitted that the complaint is an offshoot of the marital dispute between the petitioner and the second respondent; despite the matrimonial dispute got settled between the second respondent and the petitioner, the second respondent continued to conduct



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the criminal proceedings for the reasons best known to her; the accused had never been to the place of occurrence at the time of the alleged occurrence; many of the witnesses cited by the prosecution in the charge sheet are hearsay witnesses and the case of the prosecution does not have any materials to sustain the prosecution against the petitioner; so far as the offence of marital cruelty is concerned, there is absolutely no material; the petitioner never lived with the second respondent subsequent to the marriage; the complaint is a motivated one and hence the proceedings should be quashed.

4. The learned Government Advocate (Crl.side) submitted that there are eye witnesses to the occurrence and they have given their statement about the occurrence; the defacto complainant who is the second respondent had also given a clear statement about the manner in which the occurrence had taken place; the facts now submitted by the petitioner should be put to test only during trial and hence the petition should be dismissed.

5. On perusal of records it is seen that the petitioner and the second respondent got married on 27.04.2008 and the marriage appears to be a love



marriage. Shortly after the marriage the second respondent delivered a male child. Despite the petitioner had assured the second respondent that he would come back and take her to his place along with the child, it did not happen. After the second respondent had given a police complaint, an enquiry was made by the police in which the parties have agreed to abide by the decision of the matrimonial Court in which a matrimonial dispute has already been pending. The second respondent alleged that after finishing enquiry, herself along with her mother and other relatives while standing at the Masinakudi bus stop, the petitioner came along with his father. When the second respondent lamented about the failure of marriage with him, he started to abuse her in degrading language and more specifically by caste calling. Since the second respondent belongs to Scheduled Tribe community and the words alleged to have been spoken by the petitioner is sufficient enough to attract the offence under the Special Act, the charge sheet has been filed against the petitioner.

6. The submission of the petitioner that he was not present at the time of the occurrence is a fact which should be put to trial and only when the witnesses are examined and cross-examined, those facts can be proved



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before the Court. As of now the materials supporting the charge sheet have got enough substance to make out a case against the petitioner and hence I do not find any reason to relieve the petitioner from undergoing the process of trial. However, the petitioner is at liberty to raise all the points which has been put forth before this Court as his defense during the time of trial.

7. For the above stated reasons, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petitions are closed.

05.01.2023

Index : Yes/No
Speaking Order / Non speaking order
bkn

To:

1. The Inspector of Police,
Masinagudi Police Station,
Nilgiris District.



2. The Public Prosecutor,
High Court, Madras.

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R.N.MANJULA, J.,

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