



Crl.O.P(MD).No.4822 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.4822 of 2020

and

Crl.M.P(MD) Nos.2772 and 2773 of 2020

1.P.Mahesh
2. Valarmathi

...Petitioners

Vs

K.Vidhya

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the impugned proceedings in CC.No.534 of 2018 on the file of Additional Mahila Court(Magistrate Level) Nagarcoil and quash the same as illegal as petitioners concerned

For Petitioners : Mr.R.Maheswaran

For Respondent : Mr.A.Balakrishnan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in CC.No.534 of 2018 on the file of Additional Mahila Court(Magistrate Level) Nagarcoil



Crl.O.P(MD).No.4822 of 2020

2. According to the petitioner charge sheet has been filed in CC.No.534 of 2018 on the file of Additional Mahila Court(Magistrate Level) Nagarcoil as against the petitioners and others for the offences under Sections 494,496,498(A) of IPC and Sections 4 and 6 of D.P.Act. According to the petitioners the respondent had given complaint under Section 200 of Cr.P.C on the allegation that respondent married one Prabhu on 23.01.2015, who is the brother of the first petitioner herein and the second petitioner is the wife of the first petitioner. After marriage the respondent become pregnant and the petitioners and their family members have compelled the respondent to abort the child, hence the respondent left the matrimonial home and lived along with her parents. On 08.11.2018 one male child was born to the respondent. Thereafter the respondent came to know that her husband married another girl by name Usha on 09.04.2017. On coming to know about the same the respondent enquired the same with the said Prabu and at that time the petitioners and their family members gave life threat to the respondent. With the above said allegations the respondent has filed private complaint and the learned Magistrate has taken the case on file in C.C. No.534 of 2018. Infact the first petitioner is the brother-in-law of the respondent and the second petitioner is the wife of the first petitioner. They have nothing to do with the alleged offence as alleged by the respondent. The first petitioner is working in Tamil Nadu Transport Corporation and the second petitioner is working as Sales



Crl.O.P(MD).No.4822 of 2020

women in Kanyakumari Panchayat Preliminary Agricultural Co-operative Society, Mahathanapuram and they have not at all participated in the second marriage of the said Prabhu on 09.04.2017 and they were in duty and they have also produced the copy of attendance register . Even according to the complaint averments do not constitute any offence as against this petitioner, hence the proceedings in CC.No.534 of 2018 on the file of Additional Mahila Court(Magistrate Level) Nagarcoil.

3. No counter was filed by the respondent.

4. The learned counsel for the petitioners would contend that the respondent had preferred complaint as against the petitioners and others. The first petitioner was arrayed as A3 and the second petitioner was arrayed as A6 in the private complaint. Based on the complaint the the case has been taken cognizance by the Additional Mahila Court(Magistrate Level) Nagercoil in C.C. No.534 of 2018. The allegations levelled against the petitioner are general and omnibus allegations and no specific overt act has been attributed as against the petitioners. Further the petitioners are working in the Government Department and inorder to rope the petitioners the respondent has given false complaint and thereby the above mentioned charge as against the petitioners are liable to be quashed.



CrI.O.P(MD).No.4822 of 2020

5. The learned counsel appearing for the respondent would contend that the petitioners along with other accused have caused cruelty on the respondent and they also solemnized the second marriage to the husband of the defacto complainant and they also demanded dowry and they also compelled the defacto complainant to abort the child and therefore she left the matrimonial home and living with her parents. On 09.04.2017 the petitioners along with others performed the marriage of her husband along with one Usha and thereafter when the defacto complainant asked about the same to the petitioners, the petitioners threatened her. Hence she gave a complaint before the Additional Mahila Court, Nagercoil and after satisfying that *prima facie* materials are available as against the petitioners and others the learned Magistrate has taken cognizance of the case and thereby elaborate trial is required in this case. The above said *alibi* is one of the defence and the same cannot be looked into at this stage and hence the petition may be dismissed.

6. Heard both sides and perused the materials available on record.

7. It is an admitted that there is no contraversion between the relationship of the parties. These petitioners are in-laws. The first petitioner is the brother of the respondent husband and the second petitioner is the wife of the first petitioner. According to the



Crl.O.P(MD).No.4822 of 2020

respondents the petitioners as well as their family members threatened the respondent to abort the child and caused cruelty on her. The petitioner's contention is that they have not committed any offence as alleged in the complaint and the allegations are only general and omnibus allegations. Even according to the allegations no offence is made out as against these petitioners. The first petitioner is working in Tamil Nadu Transport Corporation and the second petitioner is working as Sales women in Kanyakumari Panchayat Preliminary Agricultural Co-operative Society, Mahathanapuram. In order to wreck vengeance for family dispute these petitioners have been added as parties in this complaint. The petitioners have produced a copy of the attendance sheet and on perusal of the same, it is seen that on the date of alleged occurrence they were on duty. According to the complaint these petitioners participated in the second marriage on 09.04.2017 at about 11.30 a.m., but on the same day these petitioners were on duty. The entire complaint shows the matrimonial dispute. Even according to the complaint the main accused is A1. The learned counsel appearing for the respondent would contend that this defence is a matter for trial. However in order to prevent the abuse the process of law, this Court can look into matter if any prima facie materials available to quash the First Information Report and Charge Sheet. In this case, these petitioners are only in-laws and the allegations levelled against the petitioners are only general and omnibus allegations and even



Crl.O.P(MD).No.4822 of 2020

according to the respondent she heard about the alleged second marriage of the main accused in this case. Further these petitioners are in-laws and main accused is husband of the respondent i.e., in this case.

8. At this juncture the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of ***Kahkashan Kausar @ Sonam &Ors .vs. State of Bihar and Ors*** in ***Crl.A. No. 195 of 2022*** , wherein it is held as follows:

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution.

9. On careful reading on the said judgment it is clear that the general and omnibus allegations against the accused do not warrant



CrI.O.P(MD).No.4822 of 2020

prosecution. In the case on hand also the allegations are against these petitioners are general and omnibus allegations. In view of the above said judgment and also considering the facts and circumstances of the case and as discussed supra it is appropriate to allow this petition.

10. Accordingly this Criminal Original Petition is allowed and the proceedings in CC.No.534 of 2018 on the file of Additional Mahila Court(Magistrate Level) Nagercoil is hereby quashed in so far as the petitioners concerned. Consequently connected miscellaneous petitions are also closed.

08.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

The Additional Mahila Court(Magistrate Level) Nagercoil



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Crl.O.P(MD).No.4822 of 2020

P. DHANABAL,J.

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Crl.O.P(MD).No.4822 of 2020

08.08.2023