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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/04/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVA**

Cr1.OP(MD)No.5565 of 2023

and

Cr1.MP(MD)Nos.4862 and 4863 of 2023

Theivanayaki @ Usha : Petitioner/A2

Vs.

1.State rep. by,
The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli City,
(Crime No.14 of 2022) : R1/Complainant

2.Mariammal : R2/De-facto Complainant

PRAYER:- This Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.2467 of 2022 on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same and pass such further orders.

For Petitioner : Mr.A.Mohan

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition has been filed seeking quashment of the case in CC No.2467 of 2022 on the file of the Judicial Magistrate No.1, Tirunelveli.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that she was married to A1 some 14 years back. They had one child. For about 10 years, there was no problem. In 2019, A2 became a tenant in their house. A1 was addicted to liquor and used to harass her and the child. Later, A1 developed illegal intimacy with A2. When that was questioned, she and the child were driven out of the house. Because of the illegal intimacy between A2 and A1, A2's husband committed suicide. So she returned back to the matrimonial home. But however, A1 continued the illegal intimacy with A2. In 2018, there was a trouble between them. So a case was registered in Crime No.232 of 2018, on the basis of her complaint. There was a compromise. So the case was withdrawn. On 10/05/2022 at about 06.30 pm, A1 and A2 came to the house, abused her in filthy language and A1 caused assault, which was



followed by A2. Her dress was also damaged. At the instigation of A2, A1 tried to murder her by pouring kerosene and A2 attempted to burn her by lighting the match box. That was prevented by her son. So she escaped from that attempt. Over the occurrence, a case was registered in Crime No.14 of 2022 for the offences under sections 498(A), 294(b), 352 and 506(ii) IPC. After completing the formalities of investigation, final report was filed and it was taken in CC No.2667 of 2022 by the Judicial Magistrate No.1, Tirunelveli.

3. Seeking quashment of the same, A2 has filed this petition on the ground that the complaint given by the de-facto complainant is nothing, but a *mala-fide* exercise of right.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would submit that the conduct of the de-facto complainant must be taken into consideration; Petitioner is working as Staff Nurse in the Government Hospital, Rayapet, Chennai and later, she was transferred to Theni and



become a tenant in a house adjacent to A1; There was a domestic quarrel between the husband and wife namely A1 and the de-facto complainant; Even before the date of occurrence, as mentioned in the complaint, the case was registered against A1 and that ended in acquittal. A1 filed HMOP No.108 of 2022 seeking divorce. So according to him, absolutely, this petitioner is not involved in the matrimonial affairs between the de-facto complainant and A1; She was already married and got two childrens; There is a delay in lodging the complaint.

6. So the question, which arises for consideration is whether these factual circumstances are sufficient enough to quash the criminal proceedings.

7. Reading of the FIR as well as the final report shows that *prima facie*, it appears that this petitioner is also involved in the above said occurrence. A serious allegation of attempt to commit murder has been made. So such a complaint must be tried in its logical conclusion. Factual aspects cannot be taken into account at this stage. So, I find no merit in this petition.



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8. In the result, this criminal original petition is **dismissed**. But however, since the petitioner is working as Staff Nurse, her personal appearance alone is dispensed with on condition that within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that she will appear as and when required by the court, the attested photograph must be attached in the affidavit and she must ensure that she is properly represented by an Advocate. Accordingly, CR.MP (MD) No.4863 of 2023 is allowed. Consequently, connected Cr1.MP (MD) No.4862 of 2023 is closed.

05/04/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.1,
Tirunelveli.
- 2.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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Cr1.OP(MD) No.5565 of 2023

05/04/2023