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Crl.O.P (MD)No.15412 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.11.2022

DELIVERED ON : 11.08.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P(MD).No.15412 of 2022

and

Crl.M.P(MD).No.10119 of 2022

1. Veerapagu
2. Arumugam
3. Thirupururasundari : Petitioners

Vs

Gomathi : Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records relating to C.C.No.248 of 2019, on the file of the learned Judicial Magistrate, Sankarankovil and to quash the said proceedings as against the Petitioners.

For Petitioners : Mr.D.Ramesh Kumar
For Respondent : Mr.M.Sankar



ORDER

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This Criminal Original Petition had been filed seeking to quash the C.C.No.248 of 2019, on the file of the learned Judicial Magistrate, Sankarankovil, as against the Petitioners.

2. The learned Counsel appearing for the Petitioners submitted that the first Petitioner and the Respondent are husband and wife. Their marriage was solemnized on 09.05.2010. There was frequent misunderstanding between them. Hence, the Respondent lodged a private complaint under Section 156(3) Cr.P.C., before the learned Judicial Magistrate, Sankarankoil and the same was forwarded to the All Women Police Station, Sankarankoil and FIR in Crime No.21 of 2012 had been registered against the first Petitioner and his family members. After investigation, negative final report had been filed by closing the complaint as 'mistake of fact'. In that regard, RCS notice was served to the Respondent/*De-facto Complainant*. However, the first Petitioner had preferred divorce petition in H.M.O.P.No.54 of 2012 on the file of the learned Principal Sub Judge, Tiruppur and the same was dismissed. Against the dismissal of the said petition, the first Petitioner had preferred appeal in H.M.C.M.A.No.1 of 2018 before the learned I Additional District Judge,



Tiruppur and the same was allowed by granting divorce. In the meanwhile, the Respondent herein had preferred H.M.O.P.No.51 of 2016 for restitution of conjugal rights before the Sub Court, Sankarankovil and the same was dismissed. Aggrieved over the same, the Respondent had preferred appeal in H.M.C.M.A.No.5 of 2020 and the same was also dismissed. Without challenging the negative final report, she preferred the present complaint by suppressing the facts about the earlier complaint. The present complaint was preferred before the learned Judicial Magistrate, Sankarankoil, against eight persons. After recording the statements and perusal of the case, fresh summons were ordered to the Accused Nos.1 to 3. After that, she herself admitted about the other case. Hence, it is a clear abuse of process of law. Therefore, this petition may be allowed.

3. The learned Counsel appearing for the Respondent/*De-facto Complainant* submitted that RCS notice was not received by the *De-facto Complainant*, so she filed the present complaint before the Judicial Magistrate, Sankarankovil. Further, he submitted that on the very next day of the marriage, the Petitioners harassed the *De-facto Complainant* by way of demanding dowry.

4. Heard both sides and perused the documents available on record.



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5. On considering the rival submissions, in the earlier complaint given by the Respondent, the learned Judicial Magistrate, Sankarankovil, had directed the Station House Officer, All Women Police Station, Sankarankovil, to investigate the case and register an FIR. Accordingly, FIR in Crime No.21 of 2012 had been registered against the Petitioners and five others. After investigation, negative final report was filed by closing the complaint as Mistake of Fact. Against which, the Respondent/*De-facto Complainant* had not filed protest petition or any appeal or revision against the order passed by the learned Judicial Magistrate regarding the RCS negative final report. When that be so, the petition for divorce filed by the first Petitioner was allowed in appeal and the petition for restitution of conjugal rights filed by the Respondent having been dismissed upto the appeal, there cannot be a second complaint.

6. The fact that the Petitioner had mentioned about the H.M.O.P. No. 51 of 2016 filed by the Respondent against the first Petitioner for Restitution of Conjugal Rights and the same was dismissed. Aggrieved by the dismissal of the same, the Respondent herein as Petitioner in the H.M.O.P.No.51 of 2016 filed appeal in H.M.C.M.A. No.5 of 2020 before



the I Additional District Court, Tirunelveli. The appeal filed by the Respondent in H.M.C.M.A.No.5 of 2020 was also dismissed by the learned I Additional District Judge, Tirunelveli. What had been stated in the Petition submitted by the learned Counsel for the Petitioners was not denied by the learned Counsel for the Respondent. The only ground raised by the learned Counsel for the Respondent is that after the earlier complaint was closed by the Investigation Officer, based on the fact that on investigation it was found that it was a false complaint. The witnesses had not supported the version of the Complainant. Therefore, it was closed as mistake of fact and the notice regarding Referred Charge Sheet was served on the Respondent herein/*De-facto Complainant*. The reply by the learned Counsel for the Respondent is that notice was not served. The typed set furnished by the learned Counsel for the Petitioner contains copy of the RCS also. Therefore, it is presumed that the Respondent/*De-facto Complainant* had received the RCS. The Respondent herein is the wife when the earlier complaint was closed as mistake of fact, the Respondent as Complainant cannot file a subsequent private complaint for the same set of facts. Therefore, the attempt of the Respondent/wife filing a private complaint is considered as nothing but an abuse of process of Court to harass the first Petitioner and his relatives. Therefore, the complaint pending on the file of



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the learned Judicial Magistrate, Sankarankovil in C.C.No.248 of 2019 is liable to be quashed.

7. In the result, **this Criminal Original Petition is allowed.** The complaint pending on the file of the learned Judicial Magistrate, Sankarankovil in C.C.No.248 of 2019 is quashed in respect of these Petitioners. Consequently, connected miscellaneous petition is closed.

11.08.2023

Index :Yes/No
Internet : Yes/No
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To

- 1.The Judicial Magistrate,
Sankarankovil,
Tenkasi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

lr/srm

Order made in
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