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CrI.O.P.(MD)No.19503 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.04.2023

Delivered on : **07.06.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

CrI.O.P.(MD) No.19503 of 2021
and
CrI.M.P.(MD)Nos.10901 & 10903 of 2021

1.D.Shobia

2.P.Vincent

3.D.Paneerselvam

4.A.JENmarakkini @ Rakkini

5.P.Jeyam

... Petitioners / Accused Nos.1 to 5

Vs.

1.The State rep. by its

The Inspector of Police,

Thirukattupalli Police Station,

Thanjavur District.

(Crime No.161/2016)

... 1st Respondent / Complainant

2.Dharmaraj

... 2nd Respondent /defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in C.C.No.184 of 2021, on the file of the Judicial Magistrate, Thiruvaiyaru and to quash the same as illegal, asfar as the petitioners are concerned.



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For Petitioners : Mr.J.Jeyakumaran
For Respondents : Mrs.M.Aasha
Government Advocate(crl.side)for R1
: Mr.S.Deenadhayalan for R2

ORDER

This petition is filed to quash the case in C.C.No.184 of 2021, on the file of the Judicial Magistrate, Thiruvaiyaru.

2. The allegation against the petitioners is that on 06.05.2004, the first petitioner married the defacto complainant, they had a male child. Due to misunderstanding, the defacto complainant filed a case in H.M.O.P.No.186 of 2012 on the file of the Additional Sub Court, Thanjavur. On 26.11.2014, a decree of divorce was granted. Then, the first petitioner filed an appeal in C.M.A.No.4 of 2015, on the file of the II Additional District and Sessions Judge, Thanjavur and the appeal was allowed on 31.08.2015. The first petitioner induced the second petitioner to attack the complainant. Immediately, the second petitioner attacked the complainant with iron rod and then, the third petitioner felted stones and thereafter, the petitioners 1, 4 and 5 attacked the said Chitradevi with their legs and a case was registered against the petitioners.



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3. On the side of the petitioners, it is stated that on 28.06.2016, the complainant and the second wife-Chitradevi and one Rathinasamy trespassed into the house of the first petitioner and they attacked them with bamboo stick and wooden logs. A complaint was registered against this complainant and his second wife-Chitradevi and one Rathinasamy in Crime No.160 of 2016, for an offence punishable under Sections 294(b), 323, 342 and 506(i) of I.P.C. As a counter blast, a false case was filed by the complainant and the same was registered in Crime No.161 of 2016, for the offences punishable under Sections 147, 294(b), 323, 324 of I.P.C. against the petitioners and the same was taken on file as C.C.No.184 of 2021, on the file of the Judicial Magistrate, Thiruvaiyaru.

4. On the side of the petitioners, it is stated that there is no specific overt act against the petitioners and that the injuries were simple in nature. Period of limitation by taking cognizance of the offence already expired. There is a delay in filing the charge sheet, only after five years, the charge sheet was filed and the case is to be quashed under Section 468 of Cr.P.C.



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5. On the side of the petitioners, it is further stated that Sections 323 and 324 were not made out, since there was only wordy quarrel. A judgment of the Allahabad High Court, reported in **2022-0-Supreme (All)-586 (Jai Krishna Dubey @ Raj Dubey V. State of U.P and another)** is cited, wherein, it is stated as follows:-

“13. The matter of computing the period of limitation under Section 468 Cr.P.C was referred to Constitution Bench of the Apex Court in case of Sarah Mathew Vs. Institute of Cardio Vascular Diseases (2014)-2-SCC-62. The Constitution Bench of the Apex Court after discussing the matter in detail observed in paragraph No.51 as:

“51. In view of the above, we hold that for the purpose of computing the period of limitaion under Section 468 Cr.P.C., the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance... “

6. On the side of the prosecution, it is stated that the occurrence took place on 28.06.2016 and that the complaint was registered on 06.07.2016. The complainant and his wife were admitted in Thanjavur Medical College Hospital and they were discharged on 02.07.2016 and hence, there was a delay in lodging the complaint. The



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complainant married A1 in the year 2004 and the male child was with A1.

A1 married one Chitradevi. When the said Chitradevi was working, the first petitioner abused her and there was a wordy quarrel. A1 induced A2 and A3 to assault the complainant. The prosecution has examined 9 witnesses, including two eye witnesses,. Charge sheet was filed on 15.07.2016 and the same was taken on file as C.C.No.184 of 2021, on the file of the Judicial Magistrate, Thiruvaiyaru and the case is pending for trial and prayed the petition to be dismissed.

7. From the above submission, it is seen that the charge sheet was filed on 15.07.2016 itself and the case was taken on file as C.C.No.184 of 2021, under Sections 147, 294(b), 323 and 324 of I.P.C. Considering that there is a counter case pending against the defacto complainant and others, it is decided that this case requires a trial. The trial Court is directed to take up both the cases together for trial and to dispose of both the cases on merit within a period of six months from the date of receipt of copy of this order.

8. With the above direction, this Petition is disposed of. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Ls

07.06.2023



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R.THARANI. J.

Ls

To

- 1.The Judicial Magistrate,
Thiruvaiyaru.
2. The Inspector of Police,
Thirukattupalli Police Station,
Thanjavur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.19503 of 2021

07.06.2023