



CrI.O.P.No.24204 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:01.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.24204 of 2024

and

M.P.Nos.13634 and 13636 of 2024

1.J.Suresh	..1 st Petitioner
2.S.Jayaraj	..2 nd Petitioner
3.J.Eswari	.. 3 rd Petitioner

/versus/

1.State rep.by The Inspector of Police, All Women Police Station-East, Coimbatore City.	..1 st Respondent
2.Kavitha	..2 nd Respondent

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in C.C.No.857 of 2024 pending on the file of learned Additional Mahila Court, Coimbatore and quash the same.



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For Petitioners :Mr.Ramesh Kumar Chopda
For R1 :Mr.K.M.D.Muhilan
Govt.Advocate (Crl.Side)

ORDER

The petitioners herein in this Original Petition are the accused in C.C.No.857 of 2024 on the file of the Additional Mahila Court, Coimbatore. Stating that the complaint as well as the statement of the witnesses recorded by the Police in support of the final report does not disclose any ingredient to attract offence under Section 498(a), 355, 506(2) of IPC, the present petition is filed to quash the case pending against them.

2. The learned counsel appearing for the petitioners submitted that the defacto complainant and the first petitioner got married on 11.06.2003 at Chinnamanur, Theni District. They were blessed with two children. The first petitioner, Police Constable in Tamil Nadu Police Department alleged to have developed extral marital intimacy and started neglecting the defacto complainant and her children. She has given a



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complaint to the Commissioner of Police alleging that the petitioner is neglecting her and her children and causing cruelty and she has been abused physically and mentally. Final report after investigation been filed against these petitioners. The said final report sought to be quashed on the ground that the defacto complainant had voluntarily withdrew from the marital relationship with the first petitioner and living separately since 12.10.2019. After causing notice which was returned as unclaimed, the first petitioner filed divorce application before the Additional Principal Family Court, Coimbatore in H.M.O.P.No.1866 of 2021 under Section 13(i)(ia)(ib) of Hindu Marriage Act and got an exparte decree of dissolution of marriage vide decree dated 17.10.2022. While so, the First Information Report No.50 of 2023 dated 26.07.2023 was registered and final report filed on 27.10.2023 without taking into consideration of the dissolution of the marriage and there was no occasion for the petitioners to cause any cruelty or criminal intimidation to the complainant, because she has been living separately since 2019. It is further contended by the learned counsel appering for the petitioners that the defacto complainant earlier gave a false complaint to the Veerapondi Police on 06.08.2017



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while the marriage was substance and that complaint was enquired and closed as a false complaint. While so, after four years of separation, almost with similar allegation, First Information Report in Crime No.50 of 2023 was initiated by the defacto complainant.

3. The learned Government Advocate (Crl.Side) referring the statement of the complainant and others submitted that a clear case of cruelty made out from the statement of witnesses.

4. The very specific allegation against the petitioners is use of criminal force, criminal intimidation, demanding dowry and protection from the husband and his family members.

5. On perusing the records, this Court finds that exparte decree by the first petitioner been obtained by showing the address of the defacto complainant as Door No.2, Telugar Street, J.K.Patty, Podinayakanur, Theni District. Whereas the complainant and her children are residing in Vinayagar Street, Ganapathy, Coimbatore.



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Therefore, the nature of the *exparte* divorce decree obtained by the petitioners itself is highly questionable. Be that as it may, even from the complaint and the statement of the witnesses, this Court finds that the *defacto* complainant is not even aware of the *exparte* decree obtained by the first petitioner. The end of the day, what would be found from her statement and the statement of the witnesses is that the first petitioner had joined hands with the other petitioners and has neglected to maintain his wife and children. When she demanded some protection and financial assistance, she had been threatened.

6. The learned counsel appearing for the petitioners submitted that the remedy open to the *defacto* complainant is either to take steps to set aside the *exparte* decree or to seek maintenance under BNSS Act or under Hindu Adoption and Maintenance Act or under Domestic Violence Act whichever is available. Having legally divorced, complaint under Section 498A *per se* is not maintainable.



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7. Section 498A is couched as below:-

Section 498A-Husband or relative of husband of a woman subjecting her to cruelty- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.—For the purposes of this section, "cruelty means"—(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

8. We cannot gave a narrow meaning to the expression “husband” and exclude a divorced husband. If he or his relatives subject the women cruelty, the exparte divorce decree even it is valid and sustainable, the cruelty by not maintaining her needs trial. Neglecting to maintain is a form of cruelty, for which it is the option of the victim to



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choose appropriate statute to get the redressal. Multiple statutes intends to protect the dignity and welfare of a woman, which cannot be used as a shield to deny the right of the women to get protection under the law, which the victim chooses. Hence, this Court finds no merit in this petition. Hence, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

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Index:Yes/No

Internet:Yes/No

Neutral Citation:Yes/no

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To

- 1.The Additional Mahila Court, Coimbatore.
- 2.The Inspector of Police, All Women Police Station-East, Coimbatore City.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G. JAYACHANDRAN,J.

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