



Crl.O.P.(MD)No.11860 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.11860 of 2022

and

Crl.M.P.(MD).No.7499 of 2022

1.Eswari

2.Rangasamy

... Petitioner/Accused No.5 & 6

Vs.

1.The State rep by

The Inspector of Police,

All Women Police Station,

Vadamadurai, Dindigul District.

Crime No.1 of 2017.

... 1st Respondent/Complainant

2.Kousalya

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in pursuant to C.C.No.173 of 2019 on the file of the Additional District Munsif cum Judicial Magistrate Court, Veda sandur, Dindigul District and quash the same as illegal insofar as the petitioners/A5 & A6 are concerned.

For petitioner

: Mr.S.Pugalendhi

For R1

: Mr.P.Kottaichamy

Government Advocate (Cr.Side)

For R2

: No Appearance



ORDER

WEB COPY

This petition has been filed seeking quashment of proceedings in C.C.No.173 of 2019 on the file of the Additional District Munsif cum Judicial Magistrate Court, Veda sandur, Dindigul District.

2.The petitioners are arrayed as A5 & A6 and they are facing trial in C.C.No.173 of 2019 on the file of the Additional District Munsif cum Judicial Magistrate Court, Veda sandur, Dindigul District, which has been taken cognizance for the alleged offences punishable under Sections 498(A), 495 & 109 of IPC. Challenging the same, the present petition is filed.

3.The case of the prosecution is that the first respondent registered a case against the petitioners based on the complaint given by the second respondent/wife of A1. As per the prosecution case, in the year 2012, the marriage was solemnized between the defacto complainant and A1. At that time of marriage, 4 sovereigns of gold jewels was given to the defacto complainant as sridhana. Apart from that, a Hero Honda bike bearing Reg.No.TN-57-AQ-3457 and Rs.2 lakhs were also given as sridhanas. Even after that, A1 to A3, who are none other than the husband, mother-in-law and sister-in-law of the defacto complainant



demanded additional dowry from the *defacto* complainant. Thereby, a panchayat was convened on 10.12.2016 at Kaliyamman Kovil. However, A1 to A3 have not accepted the decision of the panchayat. Thereafter, in the year 2016, the *defacto* complainant went to her parent's house for taking treatment to the ill-health second child. In the mean time, A1 married A4 with the help of the petitioners herein. Thereby, the *defacto* complainant made a complaint before the Law Enforcing Agency and the Law Enforcing Agency registered a case in Crime No.1 of 2017 and after completing the investigation, the respondent Police filed a charge sheet and the same was taken on file in C.C.No.173 of 2019 on the file of the Additional District Munsif cum Judicial Magistrate Court, Veda sandur, Dindigul District, for the alleged offence punishable under Sections 498(A), 495 & 109 of IPC. Challenging the same, the present petition has been filed.

4.The learned counsel appearing for the petitioners would submit that in the statement recorded under Section 161 Cr.P.C., it is categorically held that A1 has illegal intimacy with A4 and along with A1, the petitioners herein attacked the *defacto* complainant and chased away her from the matrimonial home. However, per contra to the said statement, FIR was registered as if the marriage was performed in



between A1 and A4 with the help of the parents of A1 and the parents of A4, who are the petitioners herein. However, no proof was filed before this Court with regard to the second marriage performed between A1 & A4.

5.He would further submit that the petitioners are the parents of A4. No marriage was performed in between A1 and A4 as alleged by the prosecution. Even that such marriage had been happened, for which, the petitioners were not responsible for that. He would further submit that there are two different versions. The version available in the FIR is contrary to the version available in 161 Cr.P.C., statement. Hence, the same is not sustainable one. The petitioners herein are the aged old persons and they have had no active participation with A4. Already A4 left from the house of the petitioners and married another person and also started to live separately. Hence, there is no connection in between A4 and the petitioners herein. Accordingly, he prayed for allowing this petition.

6.Though the name of the second respondent/defacto complainant was printed in the cause list, none appeared on behalf of her. Considering the pendency of the proceedings against the petitioners, this Court is inclined to dispose of the petition.



WEB COPY

7.The learned Government advocate (Crl.Side) appearing for the State would submit that though as per the FIR, the petitioners have performed marriage in between A1 and A4, to prove the same, no proof was available with the Law Enforcing Agency. Further, as per the statement recorded under Section 161 Cr.P.C., the prosecution made it clear that the petitioners attacked the defacto complainant along with A4. However, the Law Enforcing Agency without registering the case for the offences under Sections 323 & 320 of IPC, registered the case only for the offences punishable under Sections 498(A), 495 & 109 of IPC. He would further submit that all those points raised before this Court is a triable issue, which cannot be canvassed before this Court and it can be canvassed only at the time of trial. Accordingly, he prayed for dismissal of this petition.

8.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the State and perused the records available on records.

9.The fact in the present case is not in dispute. Admittedly, the marriage was solemnized in between A1 and the defacto complainant.

A1 is the husband, A2 is the mother-in-law and A3 is the sister-in-law of



the defacto complainant. A4 claimed to be a paramour of A1, the prosecution claimed that the second marriage was performed in between the A1 & A4. However, no proof was filed to prove the same. In which, it is proved that the petitioners herein have not helped for the second marriage. However, this Court perused the statement recorded under Section 161 Cr.P.C., It reveals that A1 refused to come out from the relationship with A4 and thereby, he chased away the defacto complainant from the matrimonial home. In which, the petitioners also facilitated A1 for chasing away the defacto complainant. Though such contention has been made in the statement recorded under Section 161 Cr.P.C., it is absolutely contra to the averments made in the FIR. The FIR reveals that the marriage was performed in between A1 & A4 in the presence of the petitioners. However, to prove the same, no proof was filed before this Court. Further, there was vague allegation made against the petitioners as if the petitioners along with A1 chased away the defacto complainant from the matrimonial home. However, such a vague allegation is impermissible one. Further, the offence against the petitioners is 109 of IPC and not any other heinous offence. In order to prove the offence under Section 109 of IPC, no material was placed before this Court. Hence, this Court has no hesitation to quash the proceedings in respect of the petitioners alone.



Crl.O.P.(MD)No.11860 of 2022

WEB COPY

10. Accordingly, the proceedings in C.C.No.173 of 2019 on the file of the the Additional District Munsif cum Judicial Magistrate Court, Vedasandur, Dindigul District, is hereby quashed insofar as the petitioners alone and the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

11.03.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
dss

To

- 1.The Additional District Munsif cum Judicial Magistrate Court,
Vedasandur, Dindigul District
2. The Inspector of Police,
All Women Police Station,
Vadamadurai, Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.11860 of 2022

M.DHANDAPANI. J.

dss

Crl.O.P.(MD) No.11860 of 2022
and
Crl.M.P.(MD).No.7499 of 2022

11.03.2024