

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.04.2018

Pronounced on : 04.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1. OP (MD)No.21880 of 2013

and

MP(MD)No.1 of 2013

P.Sangeetha

... Petitioner

Vs.

1.The Inspector of Police,
All Women Police Station,
Sivakasi, Virudhunagar District.
(Ref.Crime No.9/2013).

2.P.Ponnarasi

... Respondents

Prayer : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for records in C.C.No. 330/2013 on the file of the Judicial Magistrate, Sivakasi, Virudhunagar District and quash the charge sheet and consequential further proceedings as against the petitioner.

For Petitioners : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.A.Robinson,
Government Advocate for R1

Mr.N.Dilip Kumar for R12

ORDER

Heard the learned counsel on either side.

2.This petition has been filed for quashing the proceedings in C.C No.330 of 2013 on the file of the Judicial Magistrate, Sivakasi insofar as the petitioner is concerned. The petitioner has been shown as the fourth accused in the impugned criminal proceedings. The second respondent herein is admittedly the wife of the first accused Feroz Khan. They were in love with each other and difficulties arose in view of the inter religious character of the relationship. Therefore, the local communist party office bearers stepped in. On 13.05.2004, the marriage between the first accused and the second respondent herein was solemnized under the provisions of the Special Marriage Act. Two children were born of the wedlock in the year 2005 and 2007. Both are girl children. But, the first accused Feroz Khan compelled the second respondent Ponnarasi to convert to Islam. The second respondent steadfastly refused. Therefore, she was sent away from marital home.

3.The case of the second respondent is that unable to bear the cruelty caused to her by the first accused and her in-laws,

she lodged a complaint before the All Women Police Station, Sivakasi on 15.02.2013. Reconciliation efforts were undertaken. On 23.02.2013, the first accused Feroz Khan left the cell phone behind and went out. A call came and the second respondent herein attended to the same. The caller at the other end was a woman. The second respondent herein wanted to know as to who she was. In response thereto, a voice at the other end stated that it was the second respondent who was speaking on the mobile of the caller's husband and wanted to know the identity of the second respondent. The second respondent told that she was the wife of the Feroz Khan. When the person speaking on the other end heard this, she threatened the second respondent that only she alone is the wife of the Feroz Khan and that if the second respondent repeated her assertion, she would be done away with.

4. Deeply upset by this development, the second respondent/defacto complainant went to the house bearing No. 25 A, Muslim Naduthuru where the first accused was residing. The second respondent saw the petitioner along with Feroz Khan. The second respondent asked her husband Feroz Khan as to who the petitioner was. Feroz Khan told the second

respondent/defacto complainant that since she refused to convert to Islam, he had chosen to marry the petitioner herein. The petitioner was originally known as Sangeetha. She was the daughter of one teacher by name Pandiyarajan and was converted to Islam and renamed as Umra Fatima on 03.03.2011. After that the said Feroz Khan got married to the petitioner herein. Thereafter, the petitioner also told the second respondent that since the second respondent refused to convert Islam, she had chosen to convert to Islam and marry Feroz Khan. The petitioner asserted that she alone was the wife of the Feroz Khan and that if the second respondent did not stay away, she would be done away with.

5.The second respondent once again took up the matter to the local communist party office-bearers on 23.02.2013. They enquired the first accused Feroz Khan. He admitted that he in fact married the petitioner herein. It was true that the petitioner had converted to Islam and got her name also changed into an islamic one.

6.The police after conducting their investigation filed final report against all the four accused. As regards the petitioner

herein, final report was filed under Sections 494, 506(i) of IPC. As regards the first accused, final report was filed under Sections 498(A), 506(i), 406 and 494 of IPC. As regards the in-laws, the charges were made under Sections 498(A), 506(i) IPC. The learned Judicial Magistrate, Sivakasi took the final report on file in C.C No.330 of 2013 and issued notice to the accused. To quash the same, this criminal original petition came to be filed.

7. The learned counsel appearing for the petitioner pointed out that the very registration of F.I.R under Section 494 of IPC is illegal. He would contend that there has been a mis-joinder of charges in this case. Sections 498 A and 494 of IPC cannot be clubbed together as far as the petitioner is concerned. He placed reliance on the decision reported in **2012 -2 - L.W (Crl) 584 (Deepalakshmi vs. K.Murugesh & others)**. He also pointed out that there is absolutely no legal evidence to show that the petitioner had contracted marriage with Feroz Khan when the marriage between the Feroz Khan and the defacto complainant Ponnarasi was in subsistence. He also would contend that the offence of criminal intimidation was clearly not made out. The defacto complainant has not anywhere averred

that she felt intimidated as a result of the words uttered by the petitioner herein. In this regard, he placed reliance on the decision of the Madras High Court reported in **1989 Crl L.J. 669.**

8.The learned counsel appearing for the defacto complainant/second respondent as well as the learned Government Advocate (Crl.Side) submitted that this is not a case deserving the invocation of the inherent powers of this Court for quashing the impugned criminal proceedings. He would submit that there are sufficient materials on record which prima facie indicating that the petitioner herein is guilty of the offences under Sections 506(i) and 494 r/w 109 IPC.

9.This Court bestowed its anxious consideration to the rival contentions. It is not in dispute that the defacto complainant is the legally wedded wife of A1 Feroz Khan. It was the marriage solemnized under the Special Marriage Act. If the marriage between the first accused Feroz Khan and the defacto complainant Ponnarasi had taken place under the aegis of islamic law, then, A1 can contend he is entitled to enter into another marriage even when his first marriage is subsisting and

that he cannot be said to be guilty of offence under Section 494 of IPC. But, in this case, the marriage between the first accused Feroz Khan and Ponnarasi took place under the provisions of the Special Marriage Act.

10. Admittedly, the said marriage has not dissolved in the manner known to law. It is very much in subsistence. Now, the question is whether during the said subsistence of the first marriage, the said Feroz Khan entered into a second marriage. The police have recorded the statement of the defacto complainant under Section 161(3) Cr.PC. The specific statement of the second respondent is that by sheer chance she attended the call made by the petitioner herein to the mobile number of the first accused Feroz Khan and that the petitioner had affirmed that she was the wife of A1. Thereafter, the second respondent had gone to the premise bearing No.25 A, Muslim Nadutharu where the first accused was residing. Both the petitioner and the A1 Feroz Khan were found therein. Feroz Khan as well as the petitioner herein had told the second respondent herein that since the second respondent refused to convert to Islam, the petitioner had got married to Feroz Khan. The petitioner was originally a Hindu. She was known as

Sangeetha. She was the daughter of one teacher by name, Pandiyarajan. Thereafter, the petitioner underwent conversion to Islam and even got her name changed as Umra Fatima. There was also a gazette notification in this regard. There is a clear reference to the gazette notification in the statement recorded under 161 (3) statement. In the CrI.OP grounds, this has not been challenged. Therefore, there is enough material to indicate that the petitioner herein had consciously got married to said Feroz Khan with full knowledge that the marriage between the first accused and the second respondent is very much in subsistence.

11.The learned counsel appearing for the defacto complainant placed reliance on the decision of the Hon'ble Supreme Court reported in **(2012) 6 SCC 353 (Ushaben V. Kishorbhai Chunilal Talpada)**. The Hon'ble Supreme Court held that if a complaint contains allegations about commission of offence under Section 498A of the IPC which is a cognizable offence, apart from allegations about the commission of offence under Section 494 of the IPC, the court can take cognizance thereof even on a police report. This decision of the Hon'ble Supreme Court is a clear answer to the contentions raised by the

learned counsel for the petitioner that the Trial Court cannot take cognizance of both the offences under Sections 494 as well as 498 of IPC in a single proceeding. This Court rejects the contention of the petitioner that the registration of F.I.R is illegal.

12. In this case, the allegations against A1 to A3 on the one hand and the allegations against the fourth accused on the other cannot be bifurcated. This Court is of the view that the offences against all the four accused will have to be tried together. It is true that in the complaint, the second respondent has not specifically averred that she felt afraid and intimidated following the utterances of the petitioner herein. The second respondent is a woman who has been betrayed by her husband. Two girl children were born of the wedlock. She had been repeatedly pleading with the local office bearers of the communist party for reconciliation. This Court can easily come to the conclusion that the second respondent became afraid. This is evident from her conduct. That the second respondent felt the impact of the words uttered by the petitioner herein can be inferred from the subsequent conduct of the second respondent in going to the police station and lodging a complaint. That itself would show that she felt afraid. This Court is of the view that no case has

been made out for quashing the impugned proceedings. However, considering the fact that the petitioner is a woman, this Court directs that the trial magistrate shall insist on the appearance of the petitioner herein only for answering the charges and at the time of examination of witnesses under Section 313 of Cr.PC and at the time of pronouncing judgement. Except the aforesaid occasions, on other hearing dates the petitioner can be permitted to be represented through counsel.

13. With this relief regarding dispensing with the personal appearance of the petitioner, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed.

04. 06.2018

Index : Yes / No
Internet : Yes / No

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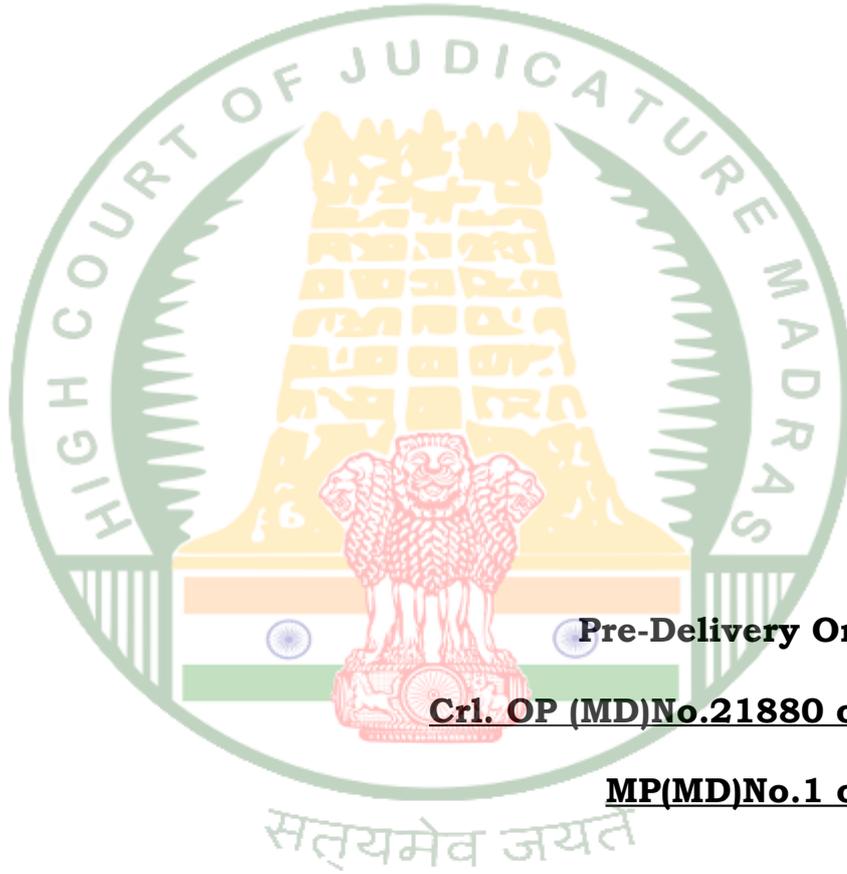
To

1. The Inspector of Police,
All Women Police Station,
Sivakasi, Virudhunagar District.
(Ref. Crime No.9/2013).

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.R.SWAMINATHAN, J.

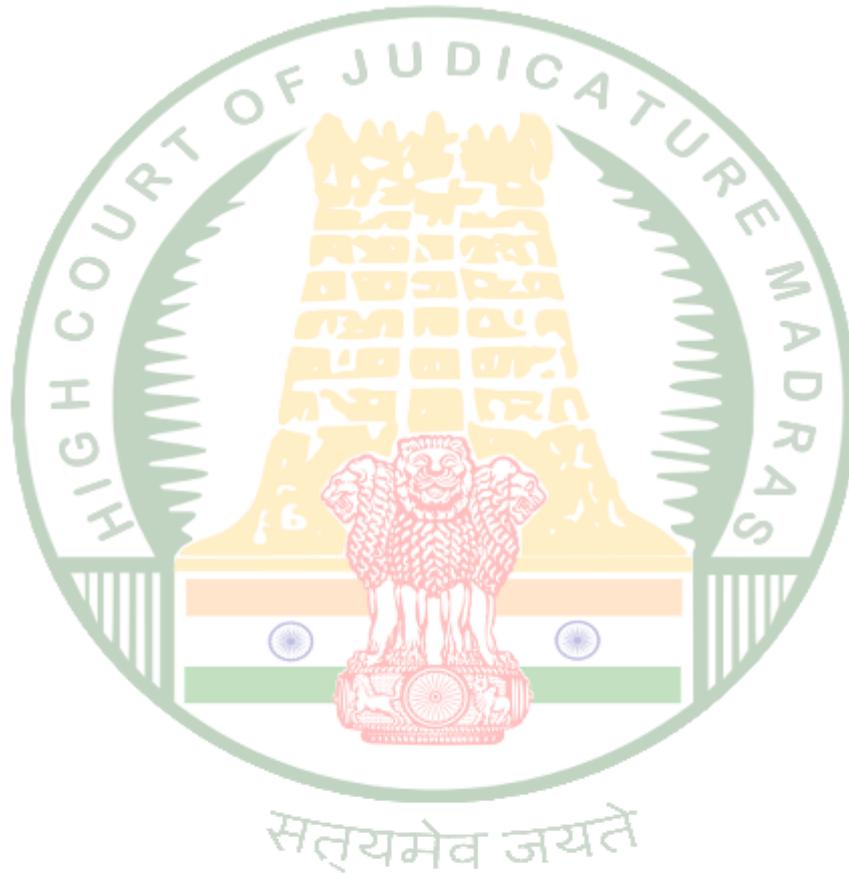
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Pre-Delivery Order in
Crl. OP (MD)No.21880 of 2013
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MP(MD)No.1 of 2013

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