

thereafter, Ex.P.7-Complaint was given to All Women Police Station, Theni, which was signed by all the witnesses and the Inspector of Police also conciliated and the 1st Appellant agreed to live with P.W.1 and after coming out of the Police Station, he did not agree and only thereafter, Ex.P.1-Complaint was given. When there was a conciliation and P.W.1 agreed to live with the 1st Appellant, it cannot be stated that the Appellants have committed an offence under Section 498-A, IPC by subjecting P.W.1 for cruelty immediately prior to the Complaint.

16. For the reasons stated above, I am of the considered view that the prosecution has failed to prove the case. Under such circumstances, the Appeal stands allowed and the conviction and sentence passed by the learned Additional District and Sessions Judge, Fast Track Court No.IV, Periyakulam in S.C. Nos.180/1996 dated 5.3.2003 is set aside. Fine amount, if any paid, is ordered to be refunded.

2011 (2) MWN (Cr.) 24

IN THE HIGH COURT OF MADRAS

T. Sudanthiram, J.

Crl.O.P. No.7649 of 2011

6.4.2011

G. Murugan

.....Petitioner

Vs.

The State, represented by the Inspector of Police, Manali New Town Police Station, Ponneri Taluk, Thiruvarur District (*Crime No.108/2011*)

.....Respondent

IPC, S. 324

Offence under — Bailable or non-bailable — Effect of Cr.P.C. 2005 Amendment Act — Effect of Section 42(f)(iii) [making Section 324, IPC “non-bailable”] not coming into force.

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 436 — CODE OF CRIMINAL (AMENDMENT) ACT, 2005, Section 42(f)(iii) — INDIAN PENAL CODE, 1860 (45 of 1860), Section 324 — Offence under — Nature of — Whether bailable or non-bailable — As per Cr.P.C. prior to 2005 Amendment offence under Section 324 was bailable — By Section 42(f)(iii) of Cr.P.C. (Amendment) Act, 2005, word “bailable” in column 5 of 1st Schedule substituted by word “non-bailable” — Therefore, after 2005 Amendment, offence under Section 324 has been made “non-bailable” — However, as per Notification dated

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21.6.2006 [S.O. 923(E)], Section 42(f)(iii) of 2005 Amendment Act has not come into force — As such, offence under Section 324, IPC remains as “bailable”. (Paras 3 & 4)

CRIMINAL PROCEDURE CODE, 1973 (2 of 1974), Section 438 — Anticipatory Bail Petition — Maintainability — Offence under Section 324 though made “non-bailable” vide Section 42(f)(iii) of Cr.P.C. 2005 Amendment Act, Section 42(f)(iii) having not come into force, same remains as ‘bailable’ — Offence alleged against Petitioner being bailable in nature, Petition for anticipatory bail not sustainable — Petitioner may appear before Magistrate and seek for bail. (Paras 3 to 6)

T.P. Sekar, Advocate for Petitioner.

G. Prassanna, Government Advocate (Criminal side) for Respondents.

Finding — Petition dismissed.

Prayer: The Petitioner who apprehends arrest at the hands of the Respondent-Police for the offences under Sections 294(b), 324 and 506(ii), IPC, seeks Anticipatory Bail.

JUDGMENT

1. The Petitioner who apprehends arrest at the hands of the Respondent-Police for the offences under Sections 294(b), 324 and 506(ii), IPC, seeks Anticipatory Bail.

2. The learned Government Advocate (Criminal side) submitted that the case is registered against this Petitioner and his son under Sections 294(b) and 324, IPC which are bailable in nature.

3. At this juncture, the learned Counsel appearing for the Petitioner submitted that the learned Judicial Magistrate II, Ponneri, remanded the co-Accused on 18.03.2011 and refused to release the Accused on bail when the Bail Petition was filed under Section 436, Cr.P.C. observing that the offence is a non-bailable as per the amended Act and released him on bail only on 23.02.2011. The learned Counsel also produced the copy of the Bail Application and order passed by the learned Magistrate dated 18.03.2011 and 23.03.2011 in C.M.P. No.1857 of 2011.

4. This Court feels that it is erroneous on the part of the learned Judicial Magistrate II, Ponneri, to consider Section 324, IPC as non-bailable by merely looking into printed book. Under Act 25 of 2005, Cr.P.C. dated 23.06.2005, the Code of Criminal Procedure was amended and as per the amended Act under Section 42(f)(iii) against Section 325, IPC. In 5th Column of First Schedule of Cr.P.C, the word “bailable” was deleted and the word “non-bailable” was included. The amendment of the Criminal Procedure Code under Act No.25 of 2005 was followed by a Notification dated 21.06.2006 which is as follows:

“MINISTRY OF HOME AFFAIRS

Notification

New Delhi, the 21st June, 2006

S.O.923(E) - In exercise of the powers conferred by sub-section (2) of Section 1 of the Code of Criminal procedure (Amendment) Act, 2005 (No.25 of 2005), the Central Government hereby appoints the 23rd June, 2006, as the date on which the provisions of the said Act, except the provisions of Sections 16, 25, 28(a), 28(b), 38, 42(a), 42(f)(iii) and (iv) and 44(a), shall come into force.

[F.No.2/5/90-Judl Cell (Vol VIII)]

Dr. P.K. Seth, Jt. Secy.”

The above Notification shows that Section 42(f)(iii) of the Code of Criminal Procedure (Amendment) Act, 2005 has not come into force and as such, the offence under Section 324, IPC remains as bailable.

5. In view of the above, as the offences alleged against the Petitioner are only bailable in nature, *the Petition for anticipatory bail is dismissed.*

6. The Petitioner is at liberty to appear before the learned Judicial Magistrate II, Ponneri and seek for bail. The learned Magistrate is directed to consider the Bail Application under Section 436, Cr.P.C.

7. This Court feels that when an Application was tiled before the learned Judicial Magistrate II, Ponneri under Section 436, Cr.P.C., the learned Magistrate should have confirmed whether the offence is bailable or non-bailable. It appears that even the defence Counsel did not place all the materials before the learned Magistrate to show that the offence under Section 324, IPC is bailable in nature, it is not clear whether the learned Magistrate sought any clarification from the concerned Assistant Public Prosecutor. I feel there was a dereliction of duty on the part of all. The learned Magistrate is directed to give report within a period of two weeks.

8. In order to avoid difficulties in the future, a copy of this order shall be communicated to all the Magistrates.
