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CrI.O.P.No.15166 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07.08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.15166 of 2024
& CrI.M.P.Nos.9272 & 9273 of 2024

Preetha. ... Petitioner/Sole Accused
/versus/
1. The Inspector of Police,
P2, Otteri Police Station,
Chennai.
(Crime No.108 of 2022) ... Respondent/Complainant
2. ~~Sreekanth~~ ... Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the record and quash the S.C.No.137 of 2023 on the file of Sessions Judge for Mahalir Neethimandram, Allikulam, Chennai and quash the same.

For Petitioner : No appearance

For R1 : Mr.S.Udaya Kumar,
Government Advocate (CrI.Side)

Page No.1/6



Cr.O.P.No.15166 of 2024

WEB COPY

ORDER

This Criminal Original petition is filed to quash the S.C.No.137 of 2023 on the file of Sessions Court, Mahila Neethimandram, Chennai on the ground that the petitioner in exercise of private defence was force to kill her husband who was in drunken mood tried to ravish his own daughter aged about 21 years.

2. Referring to the statement of the daughter of the deceased and the photographs of the deceased relied by the prosecution and also the post mortem report which indicate that the victim had sustained injury on his back of the head and submitted that it is clear case of private defence which attracts Section 97 of I.P.C and therefore, the prosecution of the petitioner under Section 302 of I.P.C is erroneous.

3. A detailed counter has been filed wherein it is stated that investigation has revealed that the deceased was lying on his daughter and gagging her mouth. On hearing the noise, the accused tried to pull the deceased who was hugging her daughter. Since he did not move, the accused took a wooden knife and

Page No.2/6



CrI.O.P.No.15166 of 2024

WEB COPY

hit the deceased on the back of the head but, the deceased did not move but continued to do the sexual act on his daughter. Therefore, the accused/petitioner took a hammer and hit the head of her husband, who died instantly.

4. The narration of the fact extracted above is the substance of witnesses statement collected during the course of investigation. The post-mortem report also substantiates the statement of the accused given to the police. It is corroborated by the victim girl recorded under Section 161 & 164 of Cr.P.C statement.

5. From the record, it is obvious that the deceased was drunken state and tried to misbehave with his own daughter. To save the honour of his daughter, the petitioner herein, who is none other than the mother of the girl had committed the above offence.

6. Chapter-IV of I.P.C provides for 'General Exceptions'. In which

Page No.3/6



CrI.O.P.No.15166 of 2024

WEB COPY

Section 97 of I.P.C says, every person has a right, subject to restrictions contain in Section 99 to defend his own body and the body of any other person, against any offence affecting the human body. Section 354 of I.P.C deals about offence of using criminal force to woman with intend to outrage her modesty. Section 375 of I.P.C defines offence of Rape. The other provisions like Section 354-A, 354-B of I.P.C also deals with offence of assault or criminal force with intention to cause sexual harassment. If any person, in order to save herself or anybody from such sexual offence have right to private defence under Section 97 of I.P.C. Even if the offence is admitted, the petitioner will be exempted under Section 97 of I.P.C from being punished.

7. In such circumstances, it is a fit case to be interfered taking note of the fact that the body of the deceased found semi nude and injury on his head i.e., skull broken tallies with the explanation given by the petitioner as well as the statement of ~~Sreekanthi~~, daughter of the petitioner.

Page No.4/6



CrI.O.P.No.15166 of 2024

WEB COPY

8. Hence, this *Criminal Original Petition is allowed*. The complaint

in S.C.No.137 of 2023 on the file of Sessions Judge, Mahalir Neethimandram, Allikulam, Chennai is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

07.08.2024

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
bsm

Copy to:-

1. The Sessions Judge for Mahalir Neethimandram, Allikulam, Chennai.
2. The Inspector of Police, P2, Otteri Police Station, Chennai.
3. The Public Prosecutor, High Court, Madras.

Dr.G.JAYACHANDRAN, J.

Page No.5/6



WEB COPY



CrI.O.P.No.15166 of 2024

bsm

CrI.O.P.No.15166 of 2024

07.08.2024

Page No.6/6