



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.03.2015

CORAM:

THE HON'BLE MR.JUSTICE C.T.SELVAM

CRL.O.P.(MD)No.11128 of 2011 and M.P.(MD).No.2 of 2011

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J.Nirmala

... Petitioner/Accused-2

Vs.

1.The State of Tamilnadu

Rep. by the Inspector of Police,

District Crime Branch,

Nagercoil,

Kanyakumari District.

..1st Respondent/Complainant

2.Dr.Ralph S.O.Daniel

... 2nd Respondent/Defacto Complainant

PRAYER:Criminal Original Petition filed under section 482 of the Code of Criminal Procedure, praying to call for the records and quash the FIR in Cr.No.47 of 2010 dated 02.06.2010 registered against the petitioner herein as Accused No.2 under sections 420, 468 & 471 of I.P.C. on the file of the respondent police.

For Petitioner : Mr.E.V.N.Siva

For R1 : Mr.K.Anbarasan

Government Advocate(Crl. Side)

O R D E R

This petition has been filed to quash the F.I.R. in Crime No.47 of 2010 pending on the file of the first respondent police.

2.Heard the learned counsel for the petitioner and also the learned Government Advocate(Crl. Side) appearing for the respondent.

3. The petitioner who is the second accused in case registered in Crime No.47 of 2010 on the file of the first respondent for offences u/s 420, 468 and 471 of IPC seeks quash of proceedings therein. It is the contention of the learned Counsel for Petitioner that 10 years after the execution of a document, a false complaint has been preferred by the second respondent/defacto complainant and that she as also her relatives executed a sale deed in favour of the petitioner.

4. On perusal of the FIR, this Court is of the view that Prima Facie offences are made out. We now cannot accept the contention made on behalf of the petitioner to undo investigation in a case, properly registered. Hence, the Criminal Original Petition shall stand dismissed. However, the clear dictum of the Honourable Apex Court in **Arnesh Kumar vs. State of Bihar and Another reported in (2014) 3 MLJ (Crl) (SC)**, is to be followed both by the respondent police as also the concerned Jurisdictional Magistrates. For ready reference, paragraph 14 and 15 of the judgment referred to is reproduced hereunder:

<https://hcservices.ecourts.gov.in/hcservices/>

"14.Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do



not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

(2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

(6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

(7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

15. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."



3

4. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Per. Admn.)

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Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Nagercoil.
2. The Inspector of Police,
District Crime Branch,
Nagercoil,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.E.V.N.Siva, Advocate, SR.No.13054

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