



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

Crl.O.P.(MD).No.7700 of 2016

G.Jenitta Packia Seeli

.. Petitioner/Defacto Complainant

Vs.

The Inspector of Police,
All Women Police Station,
Tuticorin District.

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying for a direction directing the respondent to secure all the accused those who are involved in Crime No.3 of 2015, pending on the file of the respondent police.

For Petitioner

: Mr.C.Christopher

For respondent

: Mr.A.P.Balasubramani,
Government Advocate
(Criminal side)

O R D E R

It is an application seeking a direction to the respondent to arrest the accused in Crime No.3 of 2015, which has been registered under Sections 498(A), 406 and 506(ii) IPC and Section 4 of TNPWH Act and Section 4 of DP Act.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the respondents.

3.The learned counsel for the petitioner submitted that though a complaint has been registered as early as on 06.03.2015 in Crime No.3 of 2015, on the basis of the complaint given by the petitioner that

a) her in-laws abused her in filthy language;

b) threatened her with dire consequences, when she requested them to return her sridhana jewels, the respondent Police did not take any steps to arrest them and to recover the jewels. Hence, the petitioner has come up with this petition for the aforesaid prayer.

3.1. It is submitted by the learned counsel for the petitioner that the arrest is essential, when the allegations are serious.

4.The learned Government Advocate (Criminal Side) would submit that already investigation has been completed and final



report has been filed before the learned Judicial Magistrate, Tiruchendur on 11.05.2015. Therefore, there is no need to arrest.

4.1. It is submitted by the learned counsel for the respondent that it is the discretion of the respondent to cause arrest of the person depending upon the facts and circumstances of the case and that in any event, the custodial interrogation of the accused is not necessary in this case, as the respondent Police has already completed the investigation and filed a final report before the learned Judicial Magistrate, Tiruchendur.

5. In order to appreciate the contention on both sides, it is necessary to consider the decision of the Supreme Court rendered in the case of **Arnesh Kumar vs. State of Bihar and another**, reported in (2014) 3 MLJ (Crl) 353 (SC). The relevant observation reads as under:

"From a plain reading of the aforesaid provision, it is evident that a person accused of offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on its satisfaction that such person had committed the offence punishable as aforesaid. Police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In pith and core, the police office before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to



be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 of Cr.P.C.

5.1. In order to prevent unnecessary arrest and casual detention, the court has issued the following directions:-

1. All the State Governments will instruct the police officers not to arrest automatically when any case under section 498-A of IPC is registered. They will make sure that such arrest must satisfy the provisions laid down under section 41 of Civil Procedure Code.
2. All the police officers will be provided with check list containing specified sub-clauses under section 41(1) (b) (ii).
3. The police officer shall forward the check list along with the reasons and materials which necessitated such arrest, while producing the accused before the Magistrate for any further detention.
4. The Magistrate while authorizing detention of the accused shall examine the report furnished by the police officer and only after being satisfied will authorize further detention.
5. If the police officer decides not to arrest any accused, then such decision should be forwarded to the Magistrate in writing along with the reasons behind such decision within two weeks from the date of the institution of such case. A copy of it shall be forwarded to the Magistrate which may be extended by the Superintendent of police of the district.
6. Notice to appear in terms of Section 41-A of CrPC shall be served to the accused within two weeks of the 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. If the police officer fails to comply with the aforesaid directions, then they will be liable for departmental actions and shall also be liable for to be punished for Contempt Of Court. Such cases should be instituted before the High Court having territorial jurisdiction.
8. If a Judicial Magistrate authorizes detention without recording the reasons as aforesaid, then he shall be liable for departmental action by the appropriate High Court.



9. The aforesaid directions shall not only apply to cases under section 498-A of Indian Penal Code, 1860 and section 4 of the Dowry Prohibition Act, 1961 but also in such cases where offence is punishable with punishment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

10. A copy of this judgment shall be forwarded to the Chief Secretaries as also the Director Generals of Police of all State Governments and the Union Territories and the Registrar General Of all High Courts for onward transmission and ensuring its compliance."

6. This is a case where investigation has been already completed and therefore, the necessity to arrest the accused does not exist. The decision cited supra supports this view.

7. Accordingly, this Criminal Original Petition is closed.

Sd/-

Assistant Registrar (CS I)

/True Copy/

Sub Assistant Registrar

To:

1. The Inspector of Police,
All Women Police Station,
Tuticorin District.

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

+1cc to Mr. C. Christopher, Advocate in SR No. 29937

Cr1.O.P (MD) No. 7700 of 2016
09.06.2016

ANR/DB/07.12.2016/2P/4C