



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.18220 of 2013 and
M.P(MD).No.1 and 2 of 2013

Vijayaraj ... Petitioner/ Sole Accused

Vs.

1.State rep by
Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.
(Crime No.1 of 2000) ... Respondent/Complainant

2.Eswari ...Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.793 of 2004 on the file of the Judicial Magistrate, Sivakasi and quash the same.

For Petitioner : Mr. S.Ramasamy
For R1 : Mr. K. Suyambulinga Bharathi
Government Advocate (Crl. Side)
For R2 : No Appearance

O R D E R

The petitioner herein, who is arrayed as sole accused in C.C.No.793 of 2004, on the file of the learned Judicial Magistrate, Sivakasi, has filed this petition seeking the relief to call for the records pertaining to the above said case and quash the same.

2. Initially, the first respondent Police registered a case in Crime No.1 of 2000, against the 11 persons for the offence punishable under Sections 498(A) r/w. 3 and 4 of Dowry Prohibition Act. The petitioner is a husband of the defacto complainant. After completing the investigation, the first respondent Police had filed a final report before the learned Judicial Magistrate, Sivakasi, which was taken on file in C.C.No.684 of 2002 and thereafter, the



petitioner has not appeared before the concerned Court. Hence, the case against the petitioner had been split up as C.C.No.793 of 2004.

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

4. Now, on going through the facts of the case it is seen that after solemnization of marriage between the petitioner and the second respondent, the petitioner herein and his family members ill treated her and demanded more dowry. Due to the continuous threat made by the petitioner and other accused, the second respondent left the matrimonial home and lodged a complaint before the first respondent Police, for which, this case has been registered.

5. No doubt, the averments made in the First Information Report as well as the allegations levelled in the charge sheet are all factual allegations. Apart from that, the learned counsel appearing for the petitioner does not say anything with regard to the illegality committed during the time of investigation and also he had not stated anything, which attract the abuse of process of law.

6. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in Ajay Kumar Das Vs. State of Jharkhand and another reported in 2011 (12) SCC 319, wherein it has been held as follows:

''15. allegations will have to be dealt with by the court at different stages for which liberty would be available to the appellant. In our considered opinion, this is not the stage when the court would make an inquiry into the factual position to find out as to whether or not the appellant is guilty of the charges or not. The appellant, in our considered opinion, will have sufficient opportunity to place his entire case before the Court at the time of framing of the charge since charge-sheet had already been filed against the appellant also holding that a case under Section 304-B and Section 34 is made out. We do not wish to enter into the factual details for any discussion on them at this stage as the same may prejudicially affect the case of the appellant.''

7. So, as per the above said judgment of our Hon'ble Supreme Court, factual aspects can be discussed only during the time of trial and not in a petition filed for quashing the case. Hence, this court came to the conclusion that the prayer sought by the first petitioner is not at all maintainable. Accordingly, this



Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (W)

/True Copy/

WEB COPY

Sub Assistant Registrar

To

1. Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.

2. The Judicial Magistrate, Sivakasi.

+1 cc to Mr.S.RAMASAMY, Advocate, SR.55298

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M.P(MD).No.1 and 2 of 2013
13.03.2018

TRP

KK/SV MMS/SAR-3/16.04.2018/3P-4C