

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.9795 of 2018 and
Crl.M.P.No.5047 of 2018

1.A.R.Salauddin Abdul Razaaq
2.A.R.Mariyambeevee
3.A.R.Naazhira
4.A.R.Rageela
5.A.R.Sarambi
6.A.R.Habibha Bi
7.A.R.Dhakira
8.A.R.Hairun Bi ... Petitioners

Vs.

1.State Rep by The Inspector of Police,
All Woman Police Station,
Panruti
2.S.Thaslima Parveen ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in Crime No.6 of 2018 on the file of 1st respondent and quash the proceedings thereon.

For Petitioners : Mr.V.V.Sairam

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 : Mr.S.Thiruvengadam

ORDER

This petition has been filed to quash the FIR in Crime No.6 of 2018 on the file of the first respondent.

2. Mr.V.V.Sairam, the learned counsel for the petitioners submitted that the petitioners are arrayed as A1 to A8 in the case registered in Crime No.6 of 2018 for the offences under Sections 405, 294(b), 506(i) I.P.C. and 6 (2) of Dowry Prohibition Act on the complaint lodged by the second respondent

herein. He further submitted that the first petitioner is none other than the husband of the second respondent and got married on 19.04.2015 as per Islamic Law. After marriage, they settled at Dubai and lived happily. While being so, the father of the second respondent came to Dubai and took away the second respondent to India even without any prior information. Thereafter the first petitioner came to understand that the second respondent filed a suit in O.S.No.95 of 2017 on the file of the learned District Munsif, Panruti for dissolution of marriage. Thereafter, the second respondent also filed a complaint under DV Act in DVA.No.3 of 2017. In fact, the said proceedings was challenged by the petitioners in CrI.O.P.Nos.16562 of 2017 and 18159 of 2017 and both OP's are pending before this Court. Thereafter, on 22.03.2017, there was a settlement arrived between the parties and the articles were returned to the second respondent by the petitioners and after a long gap of one year and three months with ulterior motive the present complaint has been lodged only as against the petitioners. Therefore, there are absolutely no averments to constitute any offence registered by the first respondent as against the petitioners. Further he relied upon the Judgments in the following cases and prayed for quashment of the FIR.

(i) Kans Raj Vs. State of Punjab and Others reported in (2005) 5 SCC 207

(ii) Kartik Chandra Majee Alias Kartik Chand Majee Vs. State of Jharkhand and Another reported in (2018) 13 SCC 747

(iii) R.Mohan Ranganathan Vs. The Inspector of Police, Kelambakkam Police Station, Kanchipuram and 2 others reported in 2011 (3) MWN (Cr.) 257.

3. Per contra, Mr.S.Thiruvengadam, the learned counsel for the second respondent submitted that the second respondent is the wife of the first petitioner. They got married on 19.04.2015 and settled at Dubai since the first petitioner is working at Dubai. Thereafter, the first petitioner on the instigation of other petitioners tortured the second respondent and also harassed. Thereafter they also seized the passport of the second respondent and compelled the second respondent to say 'Talaq'. Further there are specific allegations as against the petitioners to attract the offences as registered by the first respondent. Therefore, he prayed for dismissal of this quash petition.

4. Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police submitted that there are totally eight accused and all the petitioners arrayed as A1 to A8 and the complaint lodged by the case has been registered in Crime No.6 of 2018 for the offences under Sections so and so.

There are specific averments and allegations as against the petitioners to attract the offences as registered by the first respondent. Further he submitted that the FIR cannot be quashed on its threshold and it is to be investigated further in depth. Therefore, he prayed for dismissal of this quash petition.

5. Heard Mr.V.V.Sairam, the learned counsel for the petitioners, Mr.S.Thiruvengadam, the learned counsel for the second respondent and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police.

6. The petitioners are arrayed as A1 to A8 in Crime No.6 of 2018 registered for the offences under Sections 405, 294(b), 506(i) I.P.C. and 6 (2) of Dowry Prohibition Act, 1961. Though the dissolution of marriage petition and the Domestic Violence Complaint are pending, it does not mean that other complaints cannot be registered as against the petitioners. Further there are specific allegations and averments and also prima facie case is made out to constitute the offences as against the petitioners. Therefore, the first respondent registered a case as against the petitioners for the above said offences.

7. Further it is seen from the First Information Report that there is a specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8. Further, in the case of *Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.* in CrI.A.No.255 of 2019 dated 12.02.2019, the Hon'ble Supreme Court of India has held as follows:

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or

evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....
9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. Therefore, the judgements relied upon by the learned counsel for the petitioners are not all helpful to the present

case on hand as such this Court is not inclined to allow the prayer sought for by the petitioners and this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
All Woman Police Station,
Panruti

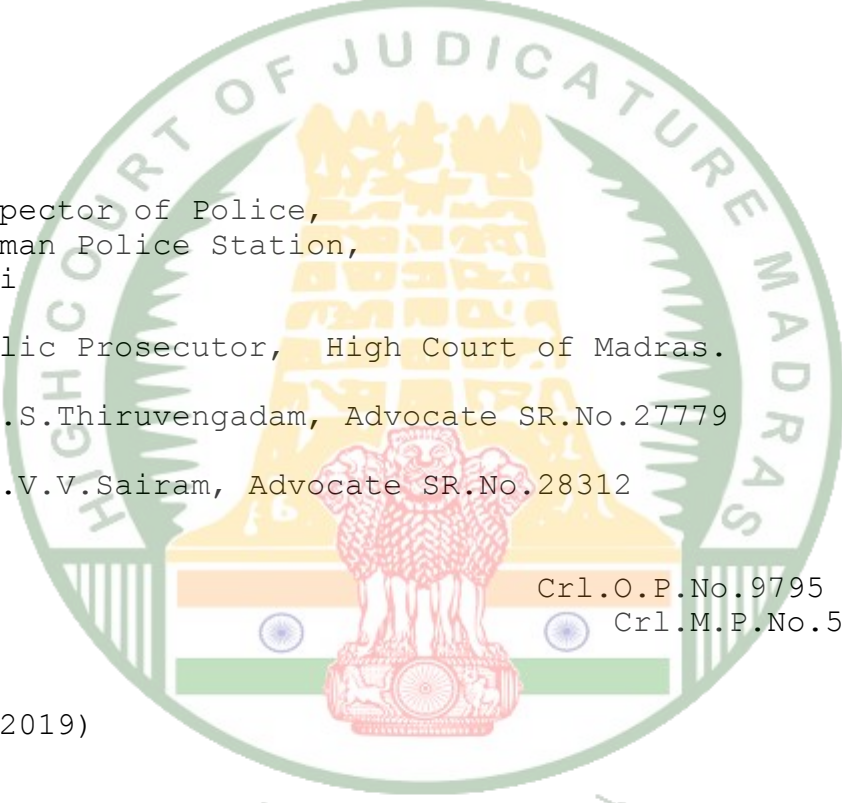
2. The Public Prosecutor, High Court of Madras.

+1cc to Mr.S.Thiruvengadam, Advocate SR.No.27779

+1cc to Mr.V.V.Sairam, Advocate SR.No.28312

Cr1.O.P.No.9795 of 2018 and
Cr1.M.P.No.5047 of 2018

VP(CO)
GMY(23/04/2019)



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