

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10250 of 2019 and
Crl.M.P.Nos.5291 & 5292 of 2019

1.S.Nagarajan
2.N.Padmavathy

... Petitioners

Vs.

1.The State Rep. by
The Inspector of Police
AWPS West
Coimbatore City

2.Kavitha

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.494 of 2019 on the file of the learned Judicial Magistrate, Additional (Mahila Court), Coimbatore registered pursuant to the Final Report dated 07.03.2019 in F.I.R.No.1 of 2019 originally filed by the respondent police and quash the same.

For Petitioners : Mr.N.Ramakrishnan
For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
for R1

Mr.G.Mani Prabhu for R2

ORDER

This Criminal Original Petition has been filed by the petitioners under Section 482 Cr.P.C. to call for the records in C.C.No.494 of 2019 on the file of the learned Judicial Magistrate, Additional (Mahila Court), Coimbatore registered pursuant to the Final Report dated 07.03.2019 in F.I.R.No.1 of 2019 originally filed by the respondent police and quash the same.

2.The learned counsel for the petitioners would submit that the petitioners are the mother in law and the father in law of

the 2nd respondent. The 2nd respondent and the petitioners' son are not leading a peaceful married life and started to live separately in 2015 itself. The allegation that the petitioners demanded dowry from the defacto complainant is entirely false. In fact, the petitioners have rendered financial help to the parents of the defacto complainant. The petitioners have never harassed or tortured the defacto complainant. Hence, this petition.

3.The defacto complainant / 2nd respondent lodged a complaint before the 1st respondent police for the offence under Sections 498(A), 406 and 506(i) IPC, stating that the petitioners have harassed and tortured the 2nd respondent herein.

4.Heard the learned counsel on either side.

5.It is seen from the records that the petitioners have harassed and tortured the 2nd respondent and she was thrown out of the house of her husband on 07.07.2015. The petitioners have demanded dowry and instigated the first accused to torture the 2nd respondent.

6.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., 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."

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be

done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8.Therefore, all the points raised before this Court shall be considered only at the time of trial. Hence, this Court is not inclined to quash the proceedings in C.C.No.494 of 2019 pending on the file of the learned Judicial Magistrate, Additional (Mahila Court), Coimbatore. The learned Magistrate is hereby directed to complete the trial in C.C.No.494 of 2019 within a period of six months.

9.However, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. The petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

10.Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To.

1.The Inspector of Police
AWPS West
Coimbatore City

2.The Judicial Magistrate
Additional (Mahila Court)
Coimbatore

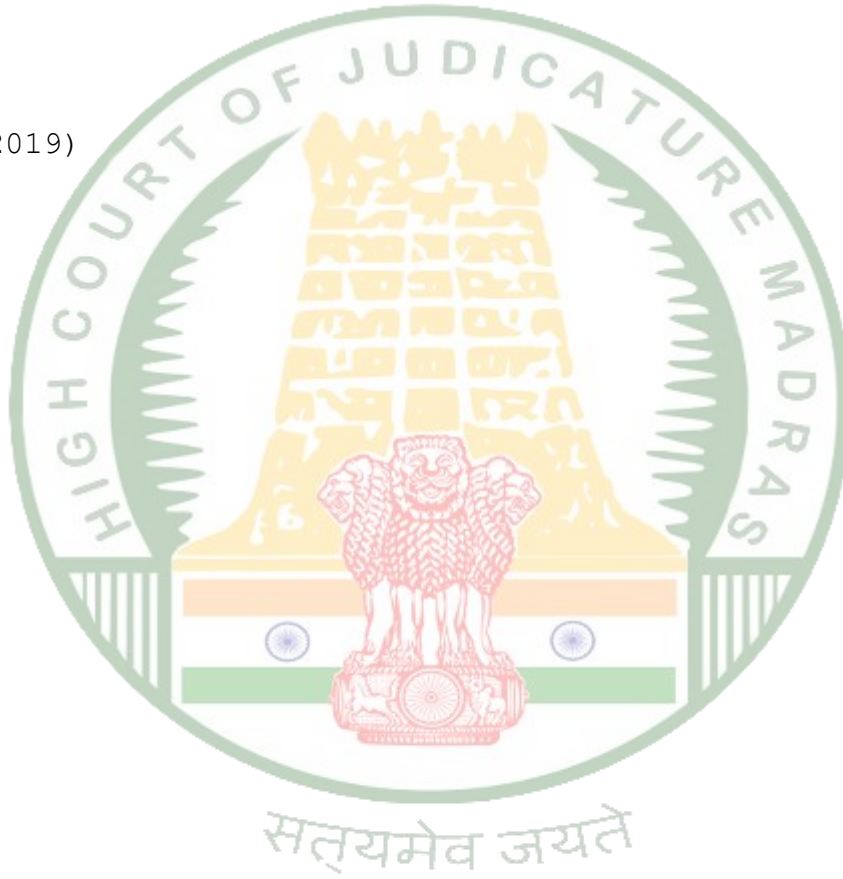
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3.Public Prosecutor
High Court of Madras

+1 CC to Waraon & Sairams, sr 38073.

CrI.O.P.No.10250 of 2019
and
CrI.M.P.Nos.5291 & 5292 of 2019

KAN(CO)
SP(26/04/2019)



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