



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.09.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.3476 of 2018

and

Crl.M.P. (MD) Nos.1637 and 1638 of 2018

Martin Peter

... Petitioner/sole Accused

Vs

1.State of Tamilnadu,
rep. by the Inspector of Police,
All Women Police Station,
Kuzhithurai District
Crime No.15 of 2007

2.Shajina ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the proceedings in C.C.No.245 of 2008 pending on the file of the Judicial Magistrate, Padmanabhapuram and quash the same.

For Petitioner : Mr.K.Vamanan

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side) for R1
No Appearance for R2

O R D E R

This petition has been filed to quash the proceedings in C.C.No.245 of 2008 pending on the file of the Judicial Magistrate, Padmanabhapuram.

2.The learned Counsel appearing for the petitioner would submit that the marriage between the petitioner and the 2nd respondent was solemnized on 15.05.2004 and the petitioner went to Finland for job on 02.06.2004. Thereafter, it is alleged that the 2nd respondent was harassed by the petitioner's family by demanding dowry. Hence, the



petitioner brought the 2nd respondent to Finland, where, the petitioner also harassed her and on 08.02.2005, she returned to India and she was forcibly sent out from the matrimonial home on 06.01.2006. Therefore, the complaint has been filed and the same has been registered as FIR in crime No.15 of 2007 for the offence under Sections 498(A), 406 of I.P.C. and Sections 4 and 6 of Dowry Prohibition Act. and without considering the facts and circumstances of the case, the 1st respondent conducted the investigation and filed charge sheet, which was taken on file in C.C.No.245 of 2008 on the file of the Judicial Magistrate, Padmanabhapuram.

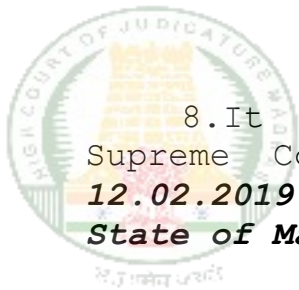
3.The learned counsel appearing for the petitioner further submitted that the 2nd respondent got judicial separation vide order dated 10.01.2013 made in I.D.O.P.No.195 of 2011 and she married one Joshua Samuel Raj and gave birth to a child. However, the petitioner did not marry any other. There is no demand or harassment made by the petitioner and the 2nd respondent on her own accord from the matrimonial home. Therefore, he prayed for quashment of the charge sheet.

4.The learned Government Advocate (criminal side) appearing for the 2nd respondent would submit that from the complaint itself, it reveals that the petitioner harassed the 2nd respondent by demanding dowry and sent her out from the matrimonial home. The statements of 161(3) of Cr.P.C. of the witnesses also would reveal the same and there are categorical materials to attract the offence under Sections 498(A) 406 of I.P.C. and Sections 4 and 6 of Dowry Prohibition Act. Since there is NBW pending as against the petitioner from 29.11.2018, the trial has not been proceed further and the case is pending from 2008 and hence, he prayed for dismissal of the application.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (criminal side) and perused the materials available on record.

6.The petitioner is the sole accused. According to the defacto complainant, she was harassed by the petitioner by demanding dowry and after the marriage, the petitioner gone to Finland for his job and thereafter, he brought her to Finland, where, he harassed the 2nd respondent and when she returned to India, she was forcibly sent to her parental home. It is seen from the statements recorded from the defacto complainant and other supporting witnesses, there are materials to attract the offences under Sections 498(A), 406 of I.P.C. and Sections 4 and 6 of Dowry Prohibition Act.

7.This Court find no merits in the grounds raised by the petitioner to quash the criminal proceedings. The grounds raised in the petition have to be gone into in a full fledged trial.



8.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019** in the case of **Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.**, as follows:-

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"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.

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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



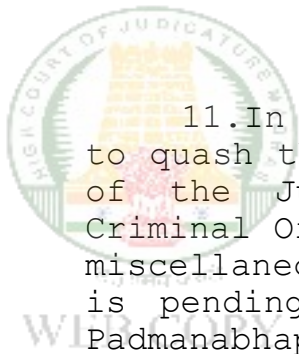
Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot 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.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.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.

10.Following the above said decisions and considering the facts and circumstances, this Court is of the view that the points raised by the learned counsel for the petitioners can be gone in to a trial by the trial Court and this as such this Court cannot interfere with the same.



11. In view of the above discussion, this Court is not inclined to quash the charge sheet in C.C.No.245 of 2008 pending on the file of the Judicial Magistrate, Padmanabhapuram. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is also dismissed. However, since the case is pending from the year 2008, the learned Judicial Magistrate, Padmanabhapuram, is directed to complete the trial dispose of the case, within a period of three months from the date of receipt of a copy of this order. The personal appearance of the petitioner before the trial Court is dispensed with, except the dates on which, the trial Judge insisted the petitioner for his appearance.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Inspector of Police,
All Women Police Station,
Kuzhithurai District
2. The Judicial Magistrate, Padmanabhapuram
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.VAMANAN, Advocate SR-86758.

Order made in
CRL.O.P (MD) No.3476 of 2018
13.09.2019

CS(26.09.2019) 5P 5C