



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.09.2019

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.3681 of 2018

and

Crl.M.P. (MD) Nos.1771 and 1772 of 2018

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Zarina Begum

: Petitioner/Accused No.3

Vs

1.The Inspector of Police,  
All Women Police Station,  
Srirangam, Trichy  
Crime No.2 of 2017

: 1<sup>st</sup> Respondent/Complainant

2.M.Ayisha

: 2<sup>nd</sup> Respondent/Defacto Complainant

**PRAYER:** Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in C.C.No.55 of 2017 on the file of the Judicial Magistrate cum Additional Mahila Court, Trichy and quash the same as illegal with respect to the petitioner.

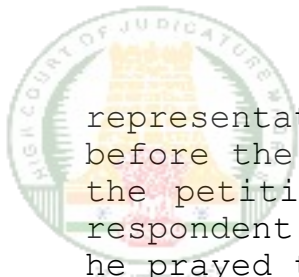
For Petitioner : Mr.Karthick Subramanian

For Respondent : Mr.K.Suyambulinga Bharathi,  
G.A.(Crl. Side) for R1  
Mr.R.Gandhi, for R2

### O R D E R

This petition has been filed by the petitioner to quash the proceedings in C.C.No.55 of 2017 on the file of the Judicial Magistrate cum Additional Mahila Court, Trichy, as against the petitioner/A3.

2.The learned counsel appearing for the petitioner would submit that the marriage between the petitioner's son and the defacto complainant was solemnized on 11.09.2014. The alleged case of the prosecution is that the parents of the defacto complainant gave 25 sovereigns of gold jewels and Rs.50,000/- towards dowry at the time of marriage and even after marriage, the petitioner's son did not take her to Dubai, where, her son is working and they are treating the defacto complainant as servant maid and they are harassing the defacto complainant. He would further submit that the petitioner is 57 years old lady and she is an innocent person and she has been falsely implicated in the case with oblique motive there is no dowry harassment. He would further submit that earlier the 2<sup>nd</sup> respondent gave complaints, which were closed as she consented to settle the dispute amicably. The 1<sup>st</sup> respondent police, without considering the



representation given by the petitioner's husband dated 02.02.2016 before the Commissioner of Trichy, filed the charge sheet as against the petitioner and others. Her son is ready to live with the 2<sup>nd</sup> respondent and he is having no intention to divorce her. Therefore, he prayed to quash the criminal proceedings against her.

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3.The learned Government Advocate (criminal side) submitted that there are materials available to proceed with the trial as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and the charge framed against the petitioner has to be gone into a full-fledged trial and hence, he prayed for dismissal of the petition.

4. Heard both sides and perused the materials available on records.

5.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 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



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."

6.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.

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7.In view of the above citations, the criminal proceedings against the petitioner cannot be quashed at its threshold and it has to be gone in to by full fledged trial. Therefore, the charge sheet cannot be quashed at this stage and this criminal original petition is liable to be dismissed.

8.Accordingly, this criminal original petition is dismissed with the liberty to the petitioner to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed.

9.Since the case is of the year 2017, the learned Judicial Magistrate, Additional Mahila Court, Trichy is directed to complete the trial and dispose of the case, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS )

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To

- 1.The Inspector of Police, All Women Police Station,  
Srirangam, Trichy.
- 2.The Judicial Magistrate cum Additional Mahila Court,  
Trichy
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.R.GANDHI, Advocate SR-88637.

Order made in

**CRL.O.P (MD) No.3681 of 2018**

**20.09.2019**

CS (31.10.2019) 4P 5C