



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.09.2020

Pronounced on : 09.12.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.OP.(MD)Nos.598 of 2018 and 18981 of 2019 & Crl.M.P(MD)
Nos.258 & 259 of 2018 & 11138 and 11140 of 2019

1.Nargis banu

W/o (Late) A.M.Mohamed Sheriff

2.M.Shakul Hameed

S/o (Late) A.M.Mohamed Sheriff

3.Kamatchi @ Thasleema

W/o Shakul Hameed

... Petitioners/Accused No.2 to 4 in
Crl.O.P.No.598 of 2018

M.Hanifa

S/o (Late) A.M.Mohamed Sheriff

... Petitioner/Accused No.1 in
Crl.O.P.No.18981 of 2019

Vs.

1.The State through

Inspector of Police

All Women Police Station

Madurai South

Madurai City.

(Crime No.17 of 2017)

...1st Respondent/Complainant in
both the Crl O.Ps

2.Noorjahan

W/o Hanifa

...2nd Respondent/Defacto Complainant
in both the Crl.O.P's.

Common Prayer: Criminal Original Petitions filed under Section 482 Cr.P.C., praying to call for the entire records in C.C.No.220 of 2017 pending on the file of the learned Additional Mahila Court, (J.M.Level), Madurai and quash the same.

For Petitioners in

Crl.O.P.(MD)No.598 of 2018 : Mr.N.Mohideen Basha for
Mr.D.S.Haroon Rasheed

For Petitioner in

Crl.O.P.(MD)No.18981 of 2019 : Mr.Niranjan S.Kumar



For 1st Respondent
in both the Crl.O.P's. : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)
For 2nd Respondent : No appearance

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C O M M O N O R D E R

(These cases have been heard through video conference)

Both the Criminal Original Petitions have been filed, praying to call for the records pertaining to C.C.No.220 of 2017 on the file of the Additional Mahila Court, Madurai, and quash the same as illegal.

2.Heard Mr.Mohideen Basha, learned counsel for the petitioners in Crl.O.P(MD).No.598 of 2018; Mr.Niranjana S.Kumar, learned counsel appearing for the petitioner in Crl.O.P.(MD).No.18981 of 2019; and Mr.A.P.G.Ohm Chairma Prabhu, learned Government Advocate (Crl. side) appearing for the 1st respondent. Even after showing the name of the 2nd respondent in cause list, none appeared on behalf of her.

3.The petitioner in Crl.O.P.No.18981 of 2019, is the 1st accused in C.C.No.220 of 2017. Similarly, the petitioners 1 to 3 in Crl.O.P.No.598 of 2018 are arrayed as accused No.2 to 4 in the above referred calendar case. Both the applications have been filed for the same relief i.e., for quashing the charge sheet in C.C.No.220 of 2017. Since both the petitions are filed for the identical relief, both the Criminal Original Petitions are taken up together and after hearing the both side arguments, the following common order is pronounced.

4.The case of the petitioners is that the 2nd respondent was engaged with the 1st accused and the marriage took place on 19.02.2017. By birth, the 1st accused suffered from certain ailments and in similar, the 2nd respondent is also a physically challenged person. Due to that condition, both the petitioners in the two Criminal Original Petitions and the 2nd respondent's parents have mutually agreed for the marriage between the 1st accused/Hanifa and 2nd respondent/Noorjahan, without any expectation.

5.Immediately after the marriage, on 23.02.2017 efforts were made to register the same before the Registrar of Marriage, Madurai. The accused No.3, being an advocate was surprised to note that the process of registration was not informed to him. When the registration form and connected particulars were seen by accused

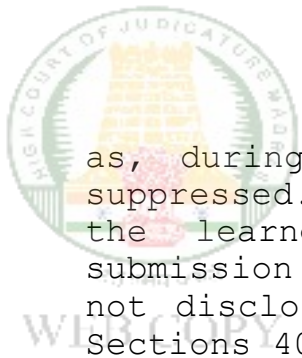


No.3, it was found that the 2nd respondent/defacto complainant's age is 38 years and it was represented as 27 years at the time of marriage. After taking note of the mischief, the same was informed to the Jamaat members and thereafter the 2nd respondent's family members gave a letter of apology on 25.02.2017. Subsequently, keeping all these in mind, the 2nd respondent herein was not able to live peacefully. Hence she left the matrimonial home on 15.04.2017, along with her belongings.

6.On 17.04.2017, while the accused No.3, was preparing himself to go to Court, the 2nd respondent and her family members attacked him and since the accused No.3 was severely injured, for the said offence, a complaint was lodged before the Tideernagar Police Station, Madurai on 17.04.2017 and case has been registered in Crime No.307 of 2020, for the offences punishable under Sections 294(b), 323 and 506 (i) of IPC as against the 2nd respondent and her family members. Further, the 1st accused has filed the suit in O.S.No.21 of 2017 before the Family Court, Madurai, seeking for divorce by nullifying the marriage happened on 19.02.2017 between the accused/Hanifa and 2nd respondent/Noorjahan. Further, on 04.05.2017 again the family members of the 2nd respondent attempted to assault the accused No.3 and therefore, a complaint was lodged before the Anna Nagar Police Station, Madurai on 05.05.2017 in CSR No.404 of 2017 and the same was enquired and closed. However, on 05.07.2017, the 2nd respondent lodged the 2nd complaint with fresh and false accusations against the petitioners. In respect of the same, the respondent police registered the case in Crime No.17 of 2017 against the petitioners for the offence punishable under Sections 406 and 498A of IPC. Before that, the complaint lodged by the 2nd respondent, on 05.05.2017 was closed and another complaint, given before the CM Cell, has also been closed, as not necessary. Subsequent to the registration of present FIR in Crime No.17 of 2017, the issue was referred to the Social Welfare Board Officer, by the 1st respondent.

7.The Social Welfare Officer, after conducting a detailed enquiry, gave a report in Na.Ka.No.4493/A4/2017 dated 01.09.2017, as no dowry harassment. However, the 1st respondent, without considering the said report given by the Social Welfare Officer, filed the charge sheet in C.C.No.220 of 2017. Aggrieved over the same, the petitioners are before this Court, praying to quash the C.C.No.220 of 2017.

8.The first and foremost contention raised by the learned counsel for the petitioners is that before marriage, by suppressing the actual age of the 2nd respondent, the family members of the 2nd respondent solemnised the marriage. In this regard, before the Jamaat, the Treasurer, who conducted the marriage, gave his evidence



as, during the time of marriage, age of the 2nd respondent was suppressed. Further relying on the evidence in O.S.No.21 of 2017, the learned counsel appearing for the petitioners made his submission that the final report filed in Crime No.17 of 2017, do not disclose a *prima facie* case for the offences punishable under Sections 406 and 498A of IPC.

9.Per contra, the learned Government Advocate (Crl. side) appearing for the 1st respondent would contend that the charge sheet in Crime No.17 of 2017 had taken cognizance for the offence punishable under Sections 406 and 498A of IPC and therefore, this is not the stage to quash the Charge sheet. According to him, remedy is available to the petitioners to file a petition before the Magistrate under Section 239 of Cr.P.C., praying for discharge from the charges. Accordingly, he prayed to dismiss these applications.

10.Considering the rival submissions made by the learned counsel on either side, in respect of deciding the applications, filed under Section 482 Cr.P.C., it is necessary to find out whether the averments found in the First Information Report and other relevant documents, made out a *prima facie* case for the alleged offences or not ? Reliance on the evidences given before the various forums, cannot be entertained at this stage.

11.At this juncture, it is relevant and useful to see the Judgment of our Hon'ble Apex Court reported in (2008) 2 SCC (Crl) 430 in the case of Central Bureau of Investigation Vs. K.M.Sharan, wherein our Hon'ble Apex Court has held as follows:-

"On the basis of the material available on record and allegations levelled against the respondent in FIR and charge-sheet, it cannot be concluded that no ingredients of offence under Section 120-B read with Section 193 IPC are present in the instant case. At this stage, the High Court in its jurisdiction under Section 482 Cr.P.C was not called upon to embark upon an inquiry whether the allegations in the FIR and the charge-sheet were reliable or not and thereupon to render definite finding about truthfulness or veracity of the allegations. These are matters which can be examined only by the court concerned after the entire material is produced before it on a thorough investigation and evidence is led. The High Court ought to have critically examine whether the allegations made in the FIR and the charge-sheet taken on their face value and accepted in their entirety would prima facie constitute an offence for making out a case against the respondent."



In the above referred Judgment, it is clear that the evidence given before the various forums will be appreciated by the trial Court, where the trial is commenced.

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12. In the present case, averments found in the First Information Report and the statements recorded from the witnesses, have clearly narrated the fact that the sridhana property which have been given by the family members of the 2nd respondent are all now taken by the petitioners. Further, in the matrimonial house, the 1st accused regularly assaulted the 2nd respondent in a drunken mood. More than that all the petitioners herein have demanded the 2nd respondent to bring more dowry. Further, they abused the 2nd respondent by using filthy language.

13. The said averments found in the First Information Report and the statements given by the witnesses under Section 161 Cr.P.C., are clear that a *prima facie* case has been made out for the offences mentioned above. Therefore, truthfulness of the matrimonial fraud cannot be decided at this stage.

14. Only after marking the relevant documents, we have to decide whether the documents relied on by the petitioners in respect of age of the 2nd respondent is found genuine or not? Secondly, in respect of the Social Welfare Officer's report, the learned counsel would rely on the Judgment of this Court in the case of Damodaran Vs. State of Tamilnadu in Crl.O.P.No.13483 of 2017 dated 03.08.2017, wherein this Court has held as follows:-

"11. In the meantime, the second respondent's husband had withdrawn the petition for restitution of conjugal rights on 31.08.2015 and had chosen to file a petition for divorce on 08.09.2015. On receipt of the summons in the divorce proceedings, the second respondent had filed the present complaint dated 25.08.2016 which culminated to framing of charges in C.C.No.47 of 2016. As such, I am of the view that the second respondent had chosen to file the second complaint with a mala fide intention of harassing the petitioners. In the absence of the offence being made out as against these petitioners and also in view of the fact that the second respondent had suppressed the report of the Social Welfare Officer stating that the offence of dowry harassment has not been made out as against the petitioners herein, the impugned charge sheet is liable to be quashed."

Further, he relied upon the Judgment of this Court pronounced in <https://hcservices.courts.gov.in/hcservices/2970> of 2017 dated 26.09.2019, wherein this Court



has held as follows:-

"6.The learned Additional Public Prosecutor appearing on behalf of the first respondent police submitted that the matter was referred to the Welfare Committee for enquiry. The Welfare Committee has also submitted a report on 18.05.2017 to the effect that there is a matrimonial dispute between the husband and the second respondent and the second respondent wants to join with her husband. The Protection Officer of the Welfare Committee did not find any materials to substantiate the allegations that have been made against the petitioner.

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10.In any event, the allegations made in the First Information Report and the subsequent report given by the Welfare Committee does not reflect any cruelty committed on the part of petitioners. The continuation of the investigation as against the petitioners will amount to abuse of process of law. In the result, the First Information Report in Crime No.01 of 2017, on the file of the first respondent is quashed insofar as the petitioners are concerned. The first respondent is directed to continue with the investigation insofar as other accused persons are concerned and file a final report before the concerned Court within a period of two months from the date of receipt of a copy of this order."

15.When examining the above two judgments together, it is made clear that after suppressing the report given by the Social Welfare Officer, the investigation officer concluded the investigation and the same amounts to abuse of process of law. Therefore, the report given by the Social Welfare Officer is having much value for deciding the present Criminal Original Petitions. Herein also in the report given by the Social Welfare Officer, he has specifically stated that no cruelty is attributed against the 2nd respondent in respect of demand of dowry. Only after suppressing the same, the 1st respondent has filed the Charge sheet against the petitioners and the same has been taken on file in C.C.No.220 of 2017. More than that it is submitted on either side, that before lodging the present complaint by the 2nd respondent, on 05.07.2017, the husband of the 2nd respondent filed a suit in O.S.No.21 of 2017, in which he prayed for dissolution of marriage. In respect of the dispute having between the petitioners and the 2nd respondent, the family members of the 2nd respondent made attempt to assault the 3rd accused, for which a case has been registered against them in Crime No.307 of 2017. More than that in the said case, final report has



been filed in C.C.No.176 of 2018 for the offences punishable under Section 294(b), 323 and 506(i) of IPC. Apart from that, on 18.04.2017 itself, the husband of the 2nd respondent issued Thalaak notice to her. Therefore, the said circumstances reveals the fact that the problem between the petitioners and the 2nd respondent has started from the month of April 2017 onwards. After knowing the details of case as against the 2nd respondent and also knowing the details of the suit filed in O.S.No.21 of 2017, further after receiving the Thalaak notice, after a lapse of three months, only on 05.07.2017, the 2nd respondent herein presented the complaint before the police against the petitioners.

16.In respect of deciding these type of matters, in a celebrated case i.e., State of Haryana Vs. Bhajan Lal, reported in 1992 suppl. (1) SCC 335, our Hon'ble Apex Court formulated various guidelines, in which the guideline No.7 reads as follows:

"(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17.Now, applying the above guidelines on the case in hand, the attitude of the 2nd respondent, i.e., presenting the complaint after leaving the matrimonial home, after receiving the Thalaak notice from her husband and also after facing the suit which was filed for dissolution of marriage, shows that with a view to take vengeance against the petitioners, the present case has been registered. Therefore, it is a fit case to quash the charge sheet and accordingly, I am of the opinion that filing the case as against the petitioners is nothing but an abuse of process of law and therefore, both the Criminal Original Petitions filed before this Court are allowed. Accordingly, C.C.No.220 of 2017 pending on the file of the learned Additional Mahila Court, (J.M.Level), Madurai, is quashed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)



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To

1.The Additional Mahila Court,
Judicial Magistrate Level,
Madurai.

2.The Inspector of Police
All Women Police Station
Madurai South
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+7 CC to M/s.D.S.HAROON RASHEED, Advocate (SR-24766[F] dated
10/12/2020)

+7 cc to M/s.NIRANJAN S.KUMAR, Advocate (SR-24767)

CrI.OP. (MD) Nos.598 of 2018

and 18981 of 2019

09.12.2020

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SR (CO)

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