



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.21503 of 2016

and

Crl.M.P.(MD)No.11031 of 2016

WEB COPY

1.Beaula

2.Shylam

...Petitioners/Accused Nos.3 & 4

-Vs-

1.The Inspector of Police,
All Woman Police Station,
Cholachel,
Kanyakumari District.

... 1st Respondent/Complainant

2.Saraswathi

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.42 of 2014 on the file of the learned Judicial Magistrate, Eraniel and quash the same in respect of the petitioners.

For Petitioners	: Mr.K.P.Narayanakumar
For R1	: Mr.R.Erottuchamy
	Government Advocate (Crl. side)
For R2	: Mr.B.Brijesh Kishore

ORDER

This petition has been filed to quash the proceedings in C.C.No.42 of 2014 on the file of the learned Judicial Magistrate, Eraniel, thereby taken cognizance for the offences under Sections 498 (A), 506 (i), 294 (b) IPC & Sec 4 & 6 of DP Act, in Crime No.11 of 2012, as against these petitioners.

2.The case of the prosecution is that the defacto complainant and A1 got married on 07.05.2012. From the date of marriage, the petitioners along with other accused persons demanded more dowry from the defacto complainant and harassed her. After the defacto complainant's husband/A1 went to abroad, the other accused persons demanded a sum of Rs.50,000/- cash as additional dowry. Further, they tried to arrange second marriage for A1. Hence, the defacto complainant lodged a complaint before the Cholachel All Women Police Station, Kanyakumari District. After conducting enquiry, the same was closed. Thereafter, she filed another complaint before the Superintendent of Police, Kanyakumari District. Since, no action was



taken on the said complaint, she approached the learned Judicial Magistrate, Eraniel by filing petition under Section 156 (3) Cr.P.C. As per the direction issued by the learned Magistrate, FIR has been registered in Crime No.11 of 2012. After completion of investigation, the respondent police filed a final report before the learned Judicial Magistrate, Eraniel, and the same has been taken cognizance in C.C.No.42 of 2014. Challenging the same, the petitioners preferred this petition.

3.The learned Counsel appearing for the petitioners would submit that the petitioners are innocent persons and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.11 of 2012 for the offences under Sections 498 (A), 506 (i), 294 (b) IPC & Sec 4 & 6 of DP Act, as against the petitioners and the same has been taken cognizance in C.C.No.42 of 2014 on the file of the learned Judicial Magistrate, Eraniel. Hence he prayed to quash the same.

4.The learned Government Advocate (Crl.Side) would submit that the trial has been commenced and some of the witnesses have been examined in this case.

5.Heard Mr.K.P.Narayanakumar, learned counsel appearing for the petitioners, Mr.R.Erottuchamy, learned Government Advocate (Crl.side), appearing for the first respondent and Mr.B.Brijesh Kishore, learned counsel appearing for the second respondent.

6.It is 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 direct the respondent to restore the aforementioned complaint case to



its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **CrI.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

<https://hcservices.ecourts.gov.in/hcservices/> 13. A look at the complaint filed by the



appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

9.In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.42 of 2014 in Crime No.11 of 2012 on the file of the learned Judicial Magistrate, Eraniel. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, 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. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

10.Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dss

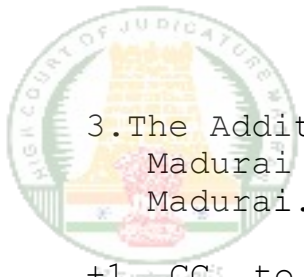
Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate,
Eraniel.

2.The Inspector of Police,
All Woman Police Station,
Cholachel, Kanyakumari District.

<https://hcservices.ecourts.gov.in/hcservices/>



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

+1 CC to M/s.R.BRIJESH KISHORE, Advocate (SR-20731[F] dated
29/10/2020)

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28.10.2020

SJ(CO)
KB(05.11.2020) 5P 5C