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CRL.O.P.(MD)NO.6482 OF 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.01.2020

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**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

Crl.O.P.(MD)No.6482 of 2016 and  
Crl.M.P.(MD)Nos.3232 of 2016 & 6321 of 2019

1. Dhilip Raja
2. Sahul Hameed
3. Ayesha Begam
4. Benazir Faritha
5. Rafeek Raja

... Petitioners/Accused

Vs.

1. The Inspector of Police,  
All Women Police Station,  
Uthamapalayam,  
Theni District.  
Crime No.7 of 2015)

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

2. Kalima Banu

... Respondent/Defacto Complainant

**Prayer:** Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.340 of 2015 on the file of the learned Judicial Magistrate, Uthamapalayam and quash the same.

|                 |                                                         |
|-----------------|---------------------------------------------------------|
| For Petitioners | : Mr.N.Mohideen Basha                                   |
| For R-1         | : Mr.K.K.Ramakrishnan,<br>Additional Public Prosecutor. |
| For R-2         | : Mr.K.K.Samy                                           |

### **O R D E R**

The petitioners are facing trial in C.C.No.340 of 2015 on the file of the Judicial Magistrate, Uthamapalayam, for the offences under Section 498(A) of I.P.C. and Section 4 of Dowry Prohibition Act.

2. The second respondent herein got married to the first petitioner on 16.03.2014. A girl child was also born through the wedlock. Even according to the defacto complainant, within a few weeks, their marital relationship came under severe strain and that led to registration of Crime No.7 of 2015. It was investigated and final report was filed before the Judicial Magistrate, Uthamapalayam and the same was also taken on file.



3. Heard the learned counsel on either side.

4. The petitioners' counsel seeks to not press this criminal original petition as far as petitioners 1 to 3. They would establish their innocence before the Court below.

5. I make it clear that this Court has not gone into the merits of the matter. I leave open all the contentions and defences of petitioners 1 to 3. This criminal original petition stands dismissed as regards petitioners 1 to 3. However, taking note of the age and other aspects, personal appearance of petitioners 2 and 3, namely, the parents-in-law of the defacto complainant before the Court below is dispensed with.

6. The learned trial Magistrate shall insist on the personal appearance of petitioners 2 and 3 only when it is absolutely necessary and imperative. Petitioners 2 and 3 shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, petitioners 2 and 3 can be represented through their counsel.

7. The third petitioner is in a conservative family and that therefore, the learned trial Magistrate will bear the same in mind with regard to summoning her.

8. The petitioners' counsel would further contend that the first petitioner was seriously injured at the hands of the relative of the second respondent herein. He had also produced some materials to that effect. He expressed his grave expression with regard to physical safety.

9. I make it clear that the first respondent is under an obligation to ensure that the safety of the petitioners herein, when they appear for trial before the Court below.

10. The case of petitioners 4 and 5 are on a different footing. The fourth petitioner is the sister-in-law, while the fifth petitioner is the husband of the fourth petitioner. The fourth petitioner and the fifth petitioner got married to each other even prior to the marriage between the defacto complainant and the first petitioner. Petitioners 4 and 5 are primarily residing in Arumbakkam, Chennai. At no point of time, they were part of the shared household. Only to unnecessarily rope them in the criminal proceedings, the defacto complainant in her complaint had alleged that petitioners 4 and 5 telephonically made a demand.



11. I am of the view that this implication of petitioners 4 and 5 is not bonafide. Therefore, the impugned proceedings stand quashed as regards petitioners 4 and 5. The criminal original petition stands partly allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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**To:**

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

+1 CC to M/s.K.K.SAMY, Advocate ( SR-604[F] dated 07/01/2020 )

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Crl.M.P.(MD)Nos.3232 of 2016 & 6321 of 2019  
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TR(09.06.2020)3P 5C