



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 15.12.2020

COARM:

The Hon'ble Mr. Justice **G.K. ILANTHIRAIYAN**

CRL OP(MD).No.9994 of 2017

and

CrI.M.P(MD)Nos.6833 and 6834 of 2017

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1.Alwin Ronald

2.Ramalingam

... Petitioners/Accused Nos.1 & 2

Vs.

1. State Rep. by

The Inspector of Police,
All Women Police Station,
Tiruchendur,
Tuticorin District.
(Cr.No.14 of 2014)

... 1st Respondent/Complainant

2. M.Shanthini

... 2nd Respondent/Defacto Complainant

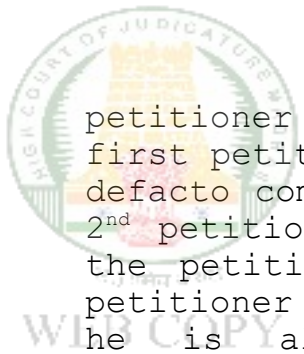
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the charge sheet in C.C.No.172 of 2015 on the file of the Judicial Magistrate, Tiruchendur and quash the same as illegal.

For Petitioners : Mr.S.Karthick Subramanian
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (CrI.Side)

O R D E R

This petition has been filed to quash the proceedings in C.C.No.172 of 2015 on the file of the Judicial Magistrate, Tiruchendur, as against the petitioners.

2.The case of the prosecution is that on first night itself the first petitioner compelled the defacto complainant to take liquor. While she refused the same, she was beaten by the first petitioner. Further the first petitioner forcibly had sexual intercourse with the defacto complainant. Further the first petitioner attempted to murder the defacto complainant. Before marriage the first petitioner told the defacto complainant that he completed B.E. Computer Science and working in Mumbai for monthly salary of Rs.40,000/- but after marriage she came to know that the first petitioner has not even completed 10th Standard. On January 2013 the petitioners scolded the defacto complainant with filthy language for the reason of not giving of Pongal Seer. The first



petitioner arranged for marriage reception at Mumbai, there also the first petitioner has taken too much of liquor and quarreled with the defacto complainant to have sexual intercourse against nature. The 2nd petitioner also misbehaved with the defacto complainant. Both the petitioners harassed the defacto complainant. Even the first petitioner refused to take the defacto complainant to her house and he is also demanding more dowries. Both the petitioners misappropriated the jewels and household articles of the defacto complainant and hence, the complaint.

3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent 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.14 of 2014 for the offences under Sections 498(A), 506(i) and 406 IPC and 4 of Tamil Nadu Prohibition of Harassment of Women Act, as against the petitioners and the same has been taken cognizance in C.C.No.172 of 2015 on the file of the learned Judicial Magistrate, Tiruchendur. Hence he prayed to quash the same.

4.The learned Government Advocate (Crl.Side) would submit that the trial has been commenced and there are totally eight list of witnesses on the side of the prosecution, out of which, the prosecution so far examined seven witnesses and post for further witnesses.

5.Heard Mr.S.Karthick Subramanian, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl.Side) appearing for the first 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 restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

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7. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, 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 **Crl.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.

.....
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.172 of 2015 on the file of the learned Judicial Magistrate, Tiruchendur. The petitioners are at liberty to raise all the grounds before the trial Court. The personal appearance of the petitioners is 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.

10. 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. It is made clear that any observation made by this Court would not affect the trial Court for disposing the trial.

11. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (A.E)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vsd



To

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

Copy to: The Registrar(Judicial),
Madurai Bench of Madras High Court,
Madurai.

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and
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15.12.2020

MJ(CO)
CS(20.01.2021) 5P 5C