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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Cr1.O.P. No.10058 of 2015

1. A. Subburam,

2. S. Saraswathi,

...Petitioners/Accused 2 & 3

Vs.

1. The Inspector of Police,
All Women Police Station,
Ambathur.

2. Ramya

... Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the Charge Sheet in C.C. No.234 of 2013 on the file of the Judicial Magistrate, Ambattur, Chennai, and quash the same.

For Petitioners : Mr. S. Arivazhagan

For Respondent-1 : Mr. E. Rajthilak
(Counsel for Govt. (Cr1. Side))

For Respondent-2 : No Appearance

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records relating to the Charge Sheet in C.C. No.234 of 2013 on the file of the Judicial Magistrate, Ambattur, Chennai, and quash the same.

2. The case of the prosecution is that the second respondent herein lodged a complaint against the petitioners and others alleging that marriage was held between the 2nd respondent and Mr. Senthil Kumar who is arrayed as A1 in the FIR in accordance with Hindu Rites and Customs. Before the



Marriage, Mr. Senthil Kumar is said to have completed M.B.A Degree and done Export Business. Under these pretext, the marriage has been held between the 2nd respondent and the A1. At the time of the Marriage, 72 grams Gold Jewels, household articles, a cash of Rs.1,00,000/- were given as Sridhana. After the marriage, the A1 obtained Gold Jewels from the 2nd respondent on promising that they will be returned to the 2nd respondent after finalizing the contract for doing a business. But, the Gold Jewels were not returned to her even though repeated demand and on the other hand, A1 threatened the 2nd respondent/defacto-complainant. When the defacto-complainant/2nd respondent and her family members brought to the notice of her in-laws who are petitioners herein. Being Joined together, they had supported to A1 and cheated the tune of 72 Gram Gold Jewels and cash of Rs.1,00,000/- received as Sridhana. Hence, the complainant/2nd respondent herein lodged a complaint against the petitioners. Based on the aforesaid complaint, the petitioners were arrested as A2 and A4 and later they were released on bail.

3.The learned Counsel appearing for the petitioner would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. The petitioners are living separately along with their family members and they have never visited the place where the alleged incident taken place. They had never lived with the 2nd respondent and her husband. Their implication in the complaint is meant to harass and humiliate the relatives of her husband.

4. It has been further stated that the petitioners had never participated during the negotiation of marriage held between the A1 and the 2nd respondent herein. Without any base, the first respondent police registered a case in Crime No.21 of 2012 for the offences under Sections 498(A), 406 of IPC and 4 of D.P. Act, as against the petitioners and the same has been taken cognizance in C.C.No. 234 of 2013 on the file of the Judicial Magistrate, Ambattur. Hence he prayed to quash the same.

5. 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.

6. Heard Mr. S. Arivazhagan, the learned counsel appearing for the petitioner and Mr. E. Rajthilak, , learned Government Advocate (Crl. Side) appearing for the first respondent.

7. 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:-



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" 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.

8. 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.”

9. 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.

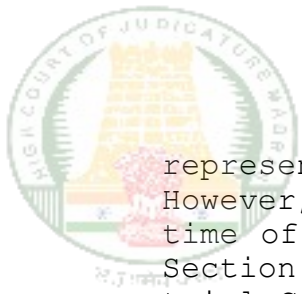
.....

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.

10. On a perusal of the records, it is seen that the marriage between the A1 and the complainant was held stating that the A1 has studied MBA and is doing Export business. Further, after the marriage, the complainant has given Gold jewels to A1 for his business and the same was not returned to the complainant in which it has been stated that the petitioners are also involved. Being such a case, the aforesaid complaint is to be proved by conducting Trial in the Court below.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.234 of 2013 in Crime No.21 of 2012 on the file of the 1st respondent herein. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be



represented by a counsel after filing appropriate application. However, the petitioner 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.

12. In the result, the Criminal Original Petition stands closed. Consequently, connected miscellaneous petition is closed if any.

Sd/-
Assistant Registrar (CS-II)

// True Copy//

Sub Assistant Registrar

Lbm

To

1. The Judicial Magistrate,
Ambattur.
2. -Do Through-
The Chief Judicial Magistrate,
Chennai.
3. The Inspector of Police,
All Women Police Station,
Ambathur.
4. The Public Prosecutor,
High Court of Madras,
Chennai.

Cr1.O.P. No.10058 of 2015

PL(CO)
SU(08/09/2021)