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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.09.2020

PRONOUNCED ON : 28.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.1627 of 2013
and Crl.M.P.No.1 of 2013

1.T.Madhalaimuthu

2.Mrs.Maria Salomai ... Petitioners/Accused 2&3

Vs.

1.The Inspector of Police,
W-18, All Women Police Station,
M.K.B. Nagar,
Chennai. ... 1st Respondent/Complainant

2.Mrs.Lawrence alias Lawrence Antonia
... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.4 of 2020 pending on the file of the Additional Mahila Court, Egmore, Chennai - 600 008 and quash the same.

[Prayer amended as per order in Crl.O.P.No.1627 of 2013 dated 03.03.2020]

For Petitioners	:	Mr.Essath Ali
For R1	:	Mr.Mohammed Riyaz Addl. Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.No.4 of 2020 pending on the file of the Additional Mahila Court, Egmore, Chennai - 600 008 and quash the same.



2.The petitioners are A2 and A3 in C.C.No.4 of 2020 pending on the file of the Additional Mahila Court, Egmore, Chennai - 600 008, facing trial for the offence under Sections 498 A, 406, 506(i) IPC has filed this quash petition.

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3.The case of the prosecution is that the second respondent/defacto complainant was married to the son of the petitioners viz., Selin Raja @ Maria Selin Raj - A1. On 01.02.2009, during the marriage 80 sovereigns of gold jewels, cash of Rs.50,000/- and household articles were given. The marriage had taken place in a Church at Ponnakkareli Village, Muthukulathur Taluk, Ramanathapuram District. After the marriage A1 and the defacto complainant lived as husband and wife in the house of the petitioners. On 05.02.2011, A1 had left to Germany in connection with his work. The defacto complainant became pregnant and on the ninth month baby shower function was held and on 05.10.2009, a girl baby was born. After the baby shower function the petitioners picked up fight and they left. The paternity of the girl baby was doubted and a fight arose in this regard. The defacto complainant and the new born girl baby were residing at her parents house. Thereafter, A1 and his mother/A2 set up a separate home at Singaperumal Koil for defacto complainant. The defacto complainant had doubt that A1 had illicit relationship with his cousin Mercy. Further A1 for no reason, used to abuse and cause harassment to the defacto complainant often.

4.On 23.12.2009, for purchase of a housing plot, 80 sovereigns of the gold jewels of the defacto complainant was pledged, with that money the property was purchased. For the second time, the defacto complainant became pregnant. The second petitioner i.e. the mother-in-law of the defacto complainant along with the above said Mercy were casting aspersion against the second respondent/defacto complainant and subjected her to cruelty. On 10.02.2010, at about 01.00 a.m. in the night, the defacto complainant was taken to her parents house and was left there. On 20.03.2010, a compromise talk was held and thereafter, on 29.05.2010, both A1 and the defacto complainant again started to live as husband and wife. On 08.09.2010, A1 represented that there is a temple festival in his native, despite restrain shown by the defacto complainant, she was forcibly taken to Ramanathapuram District. The defacto complainant was deceived and taken to Ramanathapuram, there she was confined in a room, not provided with proper food and not allowed to move freely, she was tortured and subjected to cruelty, despite knowing that defacto complainant was pregnant. The defacto complainant was also forced to abort her pregnancy. Thereafter on 09.09.2010, defacto complainant informed her mother who had come there, pleaded with all the accused viz., A1 to A3 and she was taken back. On 14.04.2011, second daughter



was born to the defacto complainant. On coming to know that the second baby is also a girl baby the defacto complainant was abused and harassed by A2 and A3 and hence a complaint came to be lodged.

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5. On the complaint received by the defacto complainant a case in Crime No.6 of 2011 was registered for the offence under Sections 498 A, 406, 506(i) IPC against eight persons. On conclusion of the investigation, charge sheet was filed against three persons viz., the petitioners and their son. During investigation, statement of LW1 to LW11 were recorded. Listing LW1 to LW14, charge sheet filed along with listed documents.

6. The trial court on perusal of the charge sheet finding prima facie case, taken the case on file, assigned C.C.No., issued summons to the accused. On receipt of summons the petitioners immediately rushed to this court and filed this quash petition.

7. The contention of the petitioners is that after the marriage, defacto complainant and their son A1, stayed only for a week in their village and thereafter they shifted to Chennai and then to Bangalore. The petitioners never lived with them and the defacto complainant also rarely visited their village. There seems to be some difference of opinion. The defacto complainant had roped the petitioners and their son to spite vengeance. Despite the intervention of the elders in the family and well wishers, the defacto complainant refused to live with the petitioners' son and they have been living separately for more than 10 months. The petitioners' son had been harassed and abused and hit by the defacto complainant in Chennai and Bangalore. The defacto complainant earlier lodged a complaint before the Protection Officer under Domestic Violence Act. This complaint as well as the above Criminal case came to be lodged after the receipt of notice from the family court. The petitioners' son had filed a Divorce Petition on the ground of cruelty before the III Additional Family Court, Chennai in O.P.No.93 of 2011. The defacto complainant had filed a petition in O.P.No.603 of 2011 for Restitution of Conjugal Rights during February, 2011. The defacto complainant has not enforced the order dated 21.03.2018 passed by the III Additional Family Court, Chennai would clearly prove the purpose of this case being filed only to cause harassment to the petitioners and their son. The defacto complainant had also filed a complaint in D.V.No.2587 of 2011 under Domestic Violence Act .

8. Further, the defacto complainant had sent mails to the office of the petitioners' son and informed them that a criminal case is pending against him and directed them not to send him



abroad on official duty for any assignment. The petitioners' son had sent several lakh rupees through bank transfer, when he was staying in Germany. The defacto complainant's mother is involved in money lending business and always accompanied by muscle men for her business purpose. The petitioners' son was always threatened and man handled by these muscle men of the defacto complainant's mother. The first petitioner is a retired defence personnel, the second petitioner is a house wife with several health ailments. They have been unnecessarily arrayed as accused to spite vengeance.

9. Further submitted that a compromise was also arrived in the proceedings and a Memorandum of Understanding dated 26.10.2018 was entered between the petitioners' son and the defacto complainant. Thereafter, it was not effected, since the defacto complainant was not co-operating as per the Memorandum of Understanding. The defacto complainant agreed to withdraw all the cases against the petitioners' son and also the above case against the petitioners'.

10. Further placed reliance on the Judgment of the Supreme Court in the case of Manju Ram Kalita Vs. State of Assam reported in (2009) 13 Supreme Court Cases 330, for the point that petty quarrels cannot be termed as "Cruelty" to attract provisions of Section 498 A IPC.

11. The learned counsel appearing for the petitioners also placed reliance on the Judgment in the case of Geeta Mehrotra and Another Vs. State of Uttar Pradesh and Another reported in (2012) 10 Supreme Court Cases 741, for the proposition that where large number of family members had been included in FIR by casually mentioning their names and contents did not disclose their active involvement, cognizance of matter against them would not be justified.

12. The learned counsel further placing reliance on the Judgment of the High Court Punjab and Haryana at Chandigarh in the case of Amarjit Kaur and Others -Vs- Jaswinder Kaur and another, wherein the simplest way to harass is to get the relatives of the husband roped in under this provisions of 498 A, no matter whether they are living together or not?

13. Further placing reliance on the Judgment of the Apex Court in the case of Ruchi Agarwal Vs. Amit Kumar Agarwal & others in Appeal (Crl.) No.1274 of 2004, for the point that after signing of the compromise deed and thereafter going back cannot be accepted and the criminal complaint is only a harassment and nothing more.



14.Mr.P.Rajkumar, the learned counsel appearing for the defacto complainant submitted that she is a lady and she was constantly harassed by the petitioners' and their son. The defacto complainant is an Engineering Graduate in Electronics and Communication. The petitioners' son/A1 is also an Engineering Graduate (Mechanical). At the time of marriage, the defacto complainant was working in Infosys Technology Limited, Chennai. The petitioners' son was working at Tata Consultancy Services Limited at Germany. After the marriage they had gone to Munnar, Kerala and they were happy for some time. The marriage took place on 01.02.2009, within a month after the marriage i.e. on 05.03.2009, the petitioners' son left to Germany. Out of their wedlock a girl baby was born on 05.10.2009 viz. Maria Faustina. The petitioners started interfering with the defacto complainant's life on a day-to-day basis and used abusive words, in fact, the paternity of the child was questioned and thereby caused cruelty. The birth of the second girl baby was also not welcomed by the petitioners. The defacto complainant and the petitioners' son were residing at Chennai for some time at the parents house of defacto complainant.

15.The petitioner's mother/A2 wanted to live in Chennai, hence a flat was taken in Chennai at Singaperumal Koil, where the defacto complainant and the second petitioner were living for some time. At that time, the second petitioner used abusive words and subjected the defacto complainant to cruelty. A1 was working at Bangalore. During the weekends he used to come to Chennai, joined with the petitioners' and subjected the defacto complainant to cruelty. The defacto complainant was forcibly taken to their native place during September, 2010, when the defacto complainant was pregnant for the second time. There she was locked in a room, she was not provided with proper food and her movement was restricted. She was forced to abort her second pregnancy. Thereafter, on the intervention of the defacto complainant's mother she was rescued. Later she gave birth to a girl baby, which was not welcomed by the petitioners and according to the petitioners the second girl baby brought bad Oman to the petitioners' family. Hence, the defacto complainant was not allowed to join A1. Further they were making arrangements for the second marriage for their son. The jewels of defacto complainant weighing 80 sovereigns were pledged and used to purchase a property in the name of A1. Thus, defacto complainant was subjected to both mental and physical cruelty by the petitioners along with A1.

16.The defacto complainant was asked to receive a divorce notice in O.P.No.93 of 2011, within two years of marriage. The defacto complainant had filed the petition for Restitution of Conjugal Rights petition. The Family Court dismissed the



divorce petition filed by A1 and allowed the Restitution of Conjugal Rights Petition filed by the defacto complainant. She never joined A1. The defacto complainant approached the Social Welfare Officer and police for lodging the above complaint. Thereafter, the petitioners' and their son with sugar coated words had approached the defacto complainant and pretended that they would arrive at a settlement and a Memorandum of Understanding was also entered into. Taking into consideration, the welfare of the two minor girl babies viz., S.Maria Faustina and S.Maria Miruthula, Memorandum of Understanding was agreed upon. The petitioners' son handsomely earning employee in Tata Consultancy Services Limited, deceived the defacto complainant to enter into the compromise for the purpose of wriggling out of the cases. Thereafter he had sent a mail on 24.07.2019, informing the defacto complainant to reconsider her decision and come forward to fulfil the terms of the Memorandum of Understanding and to co-operate for divorce. As on date, no steps were taken by A1 to take care of the minor daughters and to protect the defacto complainant, which is the essence of the Memorandum of Understanding. The defacto complainant opposed the quash application of the petitioners' for the reason that the petitioners' are the root cause who abetted A1 in commission of the offences. Further the jewels of the defacto complainant weighing 80 sovereigns were used by the petitioners' son for purchasing a property and he misappropriated the same. The defacto complainant was subjected to both mental and physical cruelty and suffered untold stories. The defacto complainant now at this young age has become a single parent with two young girl children to be taken care and brought up.

17.The learned Government Advocate (CrI. Side) submitted that on the complaint of the defacto complainant FIR came to be registered against eight persons for the offence under Sections 498 A, 406 and 506(i) IPC. After investigation charge sheet was filed against three persons viz., the petitioners and their son. Investigation took place in a transparent and fair manner. Since there was no material against the other persons, their names were dropped.

18.The petitioners are the parents of A1 and they were the root cause of defacto complainant to suffer cruelty and harassment within short period of her marriage. The defacto complainant deserted. On the intervention of the family members marriage life was restored for a short period. Thereafter, the petitioners and the other accused continued their harassment both physical and mental. The jewels of the defacto complainant was misappropriated by the petitioners' son. The petitioners have not taken any steps for the reunion of their son with the defacto complainant. The defacto complainant though had obtained the degree for Restitution of Conjugal Rights, due to



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adamant nature of the petitioners' and their son made the order of the Family Court otiose. Later defacto complainant approached the Social Welfare Officer for getting reliefs and protection orders. After conclusion of the investigation charge sheet was filed listing 14 witnesses LW1 to LW14.

19.LW1 is the defacto complainant; LW2 and LW3 are the parents of LW1; LW4 is the Mediator; LW5 to LW7 are the neighbours; LW8 is the Village Head; LW9 is the Accountant; LW10 and LW11 are the neighbours of the accused; LW12 and LW13 are the Sub Inspectors of Police who conducted the investigation; LW14 is the Investigation Officer, who had completed the investigation and filed the charge sheet.

20.The non fulfilment of the Memorandum of Understanding conditions would clearly prove the criminal intent of the petitioners' and their son. Further the points raised by the petitioners are factual in nature, which are to be decided during trial.

21.Heard both sides.

22.On perusal of the materials, it is seen that the petitioners' son and the defacto complainant both are well-educated and well-placed persons. The defacto complainant is an Engineering Graduate in Electronics and Communication. The petitioners' son/A1 is an Engineering Graduate (Mechanical). The defacto complainant was working in Infosys Technology Limited, Chennai. In fact during the marriage, the petitioners' son was working in Tata Consultancy Services Limited at Germany. The marriage was an arranged marriage and the marriage took place on 01.02.2009, within a month after the marriage i.e. on 05.03.2009, the petitioners' son left to Germany. The petitioners started interfering with the defacto complainant's life on a day-to-day basis and used abusive words. Thereafter, on their son returning from Germany, during the baby shower function a fight arose between them. The birth of the second girl baby was not welcomed by the petitioners', added to it they doubted the paternity of the child and thereby committed cruelty. The defacto complainant and the second petitioner were living in Singaperumal Koil. The petitioners' son was staying in Bangalore during the said period the defacto complainant was subjected to all forms of cruelty. The defacto complainant's stridana articles of 80 sovereigns jewels and other house hold articles were misappropriated. 80 sovereigns of gold jewels which were presented during the marriage was pledged by the petitioners' son to purchase a property in his name and now all the articles were misappropriated. The defacto complainant was forcibly taken to Ramanathapuram District during her second pregnancy, there she was confined and subjected to cruelty. The



birth of second girl baby was criticised, termed as arrival of bad Oman, further they questioned the paternity of the child which is a worst form of cruelty for any person to undergo. The defacto complainant was subjected to such form of cruelty. The petitioners and their son entering into the Memorandum of Understanding and thereafter not fulfilling the same, clearly expose the criminal intent of them. The petitioners' son is now living with his parents. The petitioners' being the parents of A1 participated and abetted in commission of the offence. The citations referred by the petitioners' are not relevant to the facts and circumstances of the case.

22. In view of the above, this Court is not inclined to entertain this quash petition. Hence, the quash petition stands dismissed. Since the offence is of the year 2011 and the case is pending trial for almost eight years without any progress, the trial Court is directed to take effective steps in concluding the trial, within a period of six months from the date of receipt of a copy of this order. In the event the petitioners' or the other accused adopt any dilatory tactics, coercive steps should be taken. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Judge,
Additional Mahila Court,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
W-18, All Women Police Station,
M.K.B. Nagar, Chennai.
3. The Public Prosecutor,
High Court, Madras - 600 104.

+1cc to M/s. Tatva Legal Chennai Sr No. 36136

CrI.O.P.No.1627 of 2013
and CrI.M.P.No.1 of 2013

VBM (CO)
PR (27/08/2021)