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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.09.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Cr1.OP.No.19295/2015 & MP.No.1/2015

1.B.Sathya Ganesh
2.B.Sankara Narayanan
3.K.L.Gandhimathy

..Petitioners/Accused

Versus

1. The Inspector of Police
All Women Police Station
Thirukkuvilloor,
Villupuram District.

2.S.Meera @ Geetha

..Respondents/Complainants

Prayer:- Criminal Original Petition filed u/s.482 of Cr.P.C., to call for all the records relating to CC.No.373/2014 pending on the file of the learned Judicial Magistrate, Thirukovillur, Villupuram District and quash the same.

For Petitioners : Mr.K.V.Anathakrushnan

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

- (1) The matter has been posted quite repeatedly from the year 2015 onwards . There were no appearance on behalf of the 2nd respondent. On the previous occasion, on 07.09.2021, a request was placed on the learned Government Advocate [Cr1.Side] to obtain information about the whereabouts of the 2nd respondent.



- (2) Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the 1st respondent very fairly stated that in spite of all efforts taken by the 1st respondent, the 2nd respondent could not be located.
- (3) The petitioners herein are two brothers and their mother. They are facing trial in CC.No.373/2014 on the file of the learned Judicial Magistrate at Thirukovilur in Villupuram District for offences u/s.498-A, 506[i] of IPC read with Sections 4 and 6 of Dowry Prohibition Act.
- (4) There has been no progress in the trial of the Calendar Case from the date when it had been taken cognizance by the learned Judicial Magistrate, Thirukovilur at Villupuram District.
- (5) Mr.K.V.Ananthakrushnan, learned counsel for the petitioners pointed out that the 1st petitioner and the 2nd respondent herein had entered into a compromise which had also been presented before the Sub Court, Tambaram, where OP.No.31/2012 was pending. The said compromise had been taken note of and recorded by the learned Sub Judge, and in accordance with the same, a decree for divorce had also been granted, dissolving the marriage between the 1st petitioner and the 2nd respondent herein.
- (6) There had been compliance of the terms of the compromise by the petitioners herein, which required the petitioners to hand over jewels, to hand over articles, to hand over cash and which according to the learned counsel for the petitioners, had all been done. There was one small compliance to be done by the 2nd respondent, viz., to withdraw the FIR in Crime No.16/2012 which had been registered based on the complaint lodged by her before the 1st respondent herein. She had not done that and subsequent to investigation, a Final Report was laid which had been taken cognizance, as stated, by the learned Judicial Magistrate at Thirukovilur.
- (7) The present petition has been filed seeking to quash the said Calendar Case on the ground that no effective progress will ever be made. However, the Calendar Case is made to be kept pending primarily because the 2nd respondent is not interested in prosecuting the offences. That the 2nd respondent is not interested in prosecuting the offences, according to the learned counsel for the petitioners, is made out by the fact that she had not appeared before this Court in spite of notices being issued. She could not also be traced by the 1st respondent police.



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(8) It is also stated by the learned counsel for the petitioners that the petitioners herein have complied with, as stated above, all the terms of the Memo of Compromise. For all effective purposes, there is no continuity in the relationship, either for good or for bad, between the 1st petitioner and the 2nd respondent.

(9) In similar circumstances, let me get the guidance from the decision of the Hon'ble Supreme Court of India reported in 2017 [9] SCC 641 [Parbatbhai Aahir Vs. State of Gujarat and Another], which had again been reiterated by the Apex Court in the decision reported in 2019 [2] MLJ [Cri] 10 [SC] : AIR 2019 SC 1106 [State of Madhya Pradesh V. Dhruv Gurjar and Others].

(10) The Hon'ble Supreme Court of India had given the following guidelines/principles for the High Courts to adhere to in cases where, quash of Calendar Cases or quash of criminal proceedings, is required:

1. Section 482 CrPC preserves the inherent powers of the High Courts. Section 482 CrPC preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.
2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding an offence, the power of the court is governed by the provisions of Section 320 CrPC. The power to quash under Section 482 is attracted even if the offence is non-compoundable.
3. In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.
4. While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the



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- ends of justice, or (ii) to prevent an abuse of the process of any court.
5. The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.
 6. In the exercise of the power under section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.
 7. As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as after exercise of the inherent power to quash is concerned.
 8. Criminal cases involving offences which arises from commercial, financial, mercantile, partnership or the similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.
 9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice ; and
 10. There is yet an exception to the principles set out in Propositions [8] and [9] above. Economic offences



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involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.''

- (11) These very points have been reiterated, as stated above, in the decision reported in 2019 [2] MLJ [Cri.] 10 [SC] : AIR 2019 SC 1106 [Dhruv Gurjar's case]. The Hon'ble Supreme Court of India had stated that inherent powers of the High Court to prevent an abuse of process of Court recognizes and preserves the powers which are already there in the High Court and invocation of the jurisdiction to quash under Section 482 of Cr.PC., is attracted even if the offences are not compoundable. The Apex Court had also held that the High Court should evaluate whether the ends of justice would justify the exercise of inherent power. It had also laid down that the High Court should exercise the inherent power to secure the ends of justice and to prevent an abuse of process of any Court.
- (12) In the instant case, I have no reasons to question the statements made by the learned counsel for the petitioners who stated that the 1st petitioner had returned all the properties which he had promised to return before the Sub Court, Tambaram, in divorce proceedings to the 2nd respondent. The 2nd respondent had, thereafter, removed herself from the family of the petitioners herein. The continuation of the Calendar Case in CC.No.373/2014 on the file of the learned Judicial Magistrate at Thirukovilur, would only be an empty formality and as stated, the possibility of conviction is very remote since the 2nd respondent herself is not available and even the 1st respondent does not know the whereabouts of the 2nd respondent. Further, continuation of such criminal proceedings would only cause oppression and prejudice to the petitioners.
- (13) In view of all these factors, I would exercise the inherent powers as available under Section 482 of Cr.P.C., and interfere with the further progress in CC.No.373/2014 now pending on the file of the learned Judicial Magistrate at Thirukovilur and quash the same.



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(14) Accordingly, this Criminal Original Petition stands allowed, quashing the proceedings in CC.No.373/2014 on the file of the learned Judicial Magistrate, Thirukovilur. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

AP

To.

- 1.The Judicial Magistrate,
Tirukovilur.
- 2.The Inspector of Police,
All Women Police Station,
Thirukkuvilloor,
Villupuram District.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.V.Anantha Krushnan, Advocate Sr No.48643

CrI.OP.No.19295/2015

NRL (CO)
PR (12/10/2021)