

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.4677 of 2021 and
Crl.M.P.Nos.2984, 2985 & 10307 of 2021
and
CRL.O.P.No.7575 of 2021
and Crl.M.P.Nos.5034 & 5037 of 2021

1.Selvaraj

2.Padhma

3.Kanimozhi

4.Saravanasabarinathan

... Petitioners in Crl.O.P.No.4677 of 2021

5.S.Vinoth

... Petitioner in Crl.O.P.No.7575 of 2021

Versus

1.The State represented by,
Inspector of Police,
All Women Police Station,
Mannargudi,
Thiruvarur District.

2.Sindhu

... Respondents in both cases

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No.336 of 2020, on the file of Judicial Magistrate No.I, Manargudi, Thiruvarur and quash the same by allowing the Criminal Original Petition.

In both cases:

For Petitioners : Mr.Ar.L.Sundaresan, Senior Counsel for
Mr.S.Ratnakaran

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

For R2 : Mr.R.John Sathyan for
Mr.Swami Subramanian

COMMON ORDER

Criminal Original Petitions have been filed to quash the proceedings in C.C.No.336 of 2020, pending on the file of the Judicial Magistrate Court No.I, Mannargudi/trial Court.

2.Since the issues in both Criminal Original Petitions are similar, this Court decides to dispose the above petitions by way of common order. The petitioners are referred to as accused, as per their rank, in charge sheet.

3.Gist of the case is that the native of A1 is Meelathiruppalakkudi Village, Mannargudi Taluk, Thiruvarur District, who is presently working as Software Engineer in America. A1 got married the 2nd respondent on 18.10.2012 in Santhosh Marriage Hall at Mannargudi. A2, A3 & A4 are the father-in-law, mother-in-law and sister-in-law of the 2nd respondent respectively and A5 is the husband of A4. After the marriage, A1 and the 2nd respondent started their matrimonial life in America. On 18.08.2015, they were blessed with a male child Guru, who was born in Texas, America, hence, their son is an American citizen by birth. On 13.01.2018, A1, the 2nd respondent and their son Guru had come to India and were residing with A2 to A5. From 13.01.2018 to 02.02.2018, all the accused and the 2nd respondent were living together, at that time, the accused demanded delivery expenses incurred for Guru from the parents of the 2nd respondent and also ten sovereigns of gold chain and diamond ear stud. Earlier, on 14.01.2016, a general power of attorney was executed by the 2nd respondent in favour of A4 for availing housing loan and also to purchase properties. Thereafter, the accused insisted the 2nd respondent for executing yet another power of attorney, which was refused. During the ear piercing ceremony of Guru, the demand for diamond stud and ten sovereigns of gold chain were made by the accused, which was not agreeable and not complied with. Due to which, the dispute arouse and thereby, the 2nd respondent was abused, harassed and subjected to cruelty both physically and mentally.

4.It is further alleged that the accused planned an illegal design and made the 2nd respondent and Guru to stay in her parents house on the pretext that A1 would come and pick up on the date of departure to USA. On the contrary, there was no communication from A1. Later, on 07.02.2018, the 2nd respondent came to know that her husband is not inclined to take her back to USA. When she had gone to the house of the accused to enquire about the same, it was informed that A1 already left

India on 05.02.2018 leaving back the 2nd respondent and her son Guru. The other accused/A2 to A5 abused and thrown her away from the house, since she cancelled the power of attorney executed in favour of A4. The 2nd respondent was not in a position to reach America, as her husband had taken her passport and travel documents with him. When the 2nd respondent contacted her husband/A1, A1 reiterated that his family demand to be complied and thereafter he would consider in sending her passport and travel documents.

5.The 2nd respondent's son Guru is suffering from hearing problem and he was under speech therapy treatment in USA. The particulars of the medical treatment were taken and retained by A1 and he refused to send it back. In the absence of medical documents of Guru, the treatment could not be continued. Now, the 2nd respondent is not supported with any aid for herself as well as for her son Guru. Further, the marriage gifts and valuables were also retained by the accused and they refused to handover her valuables and belongings. Unable to tolerate any further, the 2nd respondent lodged a complaint to the 1st respondent Police and a case was registered in Crime No.2 of 2020, for offence, under Sections 498(A), 352, 379, 143, 120(b), 406, 149 & 109 of IPC, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015. After completion of investigation, charge sheet has been filed before the trial Court and the same was taken on file as C.C.No.336 of 2020, against which the present Criminal Original Petitions.

6.The learned Senior Counsel appearing for the petitioner/A1 in CrI.O.P.No.7575 of 2021 submitted that A1 and the 2nd respondent were residing in America after their marriage. On 13.01.2018, A1, the 2nd respondent and their son Guru had come to India for ear piercing ceremony and they were residing with A2 to A5 till 02.02.2018. On 02.02.2018, the 2nd respondent had gone to her parents house and she failed to join her husband/A1, despite knowing the date (05.02.2018) of departure to USA as planned. The 2nd respondent requested her husband/A1 that she would stay with her parents for some more time, hence, her travel plan was deferred and rescheduled to 04.07.2018. Admittedly, in this case, after the marriage in the year 2012, A1 and the 2nd respondent were staying in America. Only during the year 2018, for ear piercing ceremony, they had come to India. During their stay in America, there was no dispute between A1 and the 2nd respondent and they were living happily and blessed with a male child Guru, who was born in the year 2015. Guru is suffering from hearing and speech problem, for

which he was given some medical treatment in America.

7.The learned Senior Counsel further submitted that the 2nd respondent made allegations only after she came to India. Since the 2nd respondent was not interested to return back to America, she created a false story as though the family members of A1, insisted her for delivery expenses, expenses for ear piercing ceremony and forced her to execute a power of attorney in favour of A4. Thus, the allegations are made with ulterior motive to stay with her parents and not to return back to USA. The allegations are made not only against her husband/A1, but also against A1's aged parents, sister and brother-in-law, who did nothing against the 2nd respondent. He further submitted that only on the request of the 2nd respondent, A1 rescheduled the date of her travel to USA. The return date of travel was very much known to the 2nd respondent. It is to be noted that at the time of leaving America, the return ticket was booked. While this being so, now making allegations as though without informing the 2nd respondent, A1 left India is far from truth. The allegation that A1 had taken away the passport and travel documents of the 2nd respondent and medical records of her son Guru, are also false.

8.The learned Senior Counsel further submitted that the 1st respondent Police failed to conduct any preliminary enquiry in a matrimonial dispute and failed to seek explanation from the accused and mechanically registered FIR against all the accused. According to the 2nd respondent, the dispute started during the month of January 2018 and the complaint in this case came to be given only on 22.02.2020 with delay of two years. The 1st respondent Police without finding the reason for delay, registered the FIR on 27.02.2020 within five days of lodging the complaint. The general power of attorney executed was of the year 2016. Since the 2nd respondent was adamant to stay back in India for continuing her son Guru's speech therapy treatment, her return ticket was rescheduled. Hence, he prayed for quashing of the proceedings against A1.

9.The learned Senior Counsel appearing on behalf of the petitioners/A2 to A5 in CrI.O.P.No.4677 of 2021 submitted that admittedly, the 2nd respondent and A1 were living in America from the year 2012 to 2018. During the year 2015, a male child Guru was born in America. A2 to A5 had no reason to make any demand from the 2nd respondent, more so insisting her to incur the delivery expenses. The delivery of baby took place in America in the year 2015. He further submitted that the 2nd respondent had come to India for ear piercing ceremony of Guru, which was

decided much earlier when she and A1 were in America. The ear piercing ceremony was held on 19.01.2018 at Melathirupalakudi Arulmighu Mathuraveeran Temple. The demand of diamond stud and gold chain by A4 is unreasonable. In fact the diamond stud was purchased by A4 on her own money during the year 2013 in Lalitha Jeweleries Mart. While being so, there is no reason for A4 to demand diamond ear stud. The power of attorney was executed by the 2nd respondent in favour of A4 on 14.01.2016 for availing housing loan in ICICI Home Finance Company Limited. On 04.01.2019, a notice was sent to A4 for cancellation of power of attorney. In the cancellation notice, dated 04.01.2019, the 2nd respondent only made bald allegations that A4 could have created encumbrance by using the power of attorney and nothing more.

10.The learned Senior Counsel further submitted that the 1st respondent Police not considered any of these facts and for the reasons best known, registered the FIR, completed the investigation and filed the charge sheet against the accused. Earlier, listing seven witnesses as LW1 to LW7, charge sheet was made ready by the 1st respondent Police. Thereafter, some more witnesses were examined, Sections were altered, which is not proper. In this case, A2 is a retired Police official, who is known for his integrity and honesty. A5 is a Bench Clerk in District Court, Thiruvavur. A4 is a Teacher working in a school at Mannargudi. A4 and A5 are living separately 15 kilometers away from the A1's house. At no point of time, they lived as joint family along with A1 and the 2nd respondent. He further submitted that to brook vengeance and on ulterior motive, the complaint was made against A2 to A5, who are in-laws of the 2nd respondent. The reschedule of flight ticket of 2nd respondent and Guru is not known to A2 to A5. This decision was taken by A1 and the 2nd respondent mutually for the purpose of their son's speech therapy treatment. Further, the 2nd respondent expressed her inclination to stay with her parents for some more time. The power of attorney was unilaterally cancelled by the 2nd respondent though it was executed by the 2nd respondent and A1. The cancellation of power of attorney is not mentioned in the complaint and that has been completely suppressed by the 2nd respondent.

11.The learned Senior Counsel further submitted that there might be some misunderstanding between A1 and the 2nd respondent, which is common in matrimonial relationship. As regards, A2 to A5, there is no iota of material to show that with common intention, they abetted A1 in any manner to harass the 2nd respondent. Since they happened to be father, mother, sister and brother-in-law of A1, they are falsely implicated in

this case to spite vengeance. In a matrimonial case, there would be exaggeration and vilification, which has to be analyzed in a fair manner. Only if there is any material, the in-laws can be arrayed as accused, which is the dictum of the Hon'ble Apex Court as well as this Court. The 1st respondent Police for the reason best known, not conducted any preliminary enquiry in this case, more particularly against A2 to A5. No enquiry was conducted to ascertain whether there was retention and detention of passport and travel documents of the 2nd respondent and medical records of Guru. A1 is very certain that he is not in possession of the same and filed affidavit, dated 28.11.2021 before this Court duly notarized in America. Hence, he prayed for quashing of the proceedings against A2 to A5.

12.The learned Senior Counsel for the petitioner filed typed set containing the copy of general power of attorney, flight tickets, diamond stud bill of A4, cancellation notice, dated 04.01.2019, invitation for ear piercing ceremony and other documents.

13.The learned Additional Public Prosecutor appearing for the 1st respondent filed counter and submitted that on the complaint of the 2nd respondent, a case in Crime No.2 of 2020 was registered against the accused, for offence under Sections 498(A), 352, 379 of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act. The prosecution case is that on 22.02.2020 at about 05.00 p.m, the 2nd respondent lodged a complaint before the 1st respondent Police narrating the events and details of cruelty suffered by her, details of the medical treatment of the child Guru, they coming to India on 13.01.2018, demand of dowry made by the accused and forcing the 2nd respondent to execute a fresh power of attorney in favour of A4 including some more clauses. The 2nd respondent averred in the complaint that in an illegal design, she was made to stay with her parents from 02.02.2018. Within three days, without informing her, A1 left to USA taking away the passport and travel documents of the 2nd respondent and medical records of Guru. During the matrimonial life in America, A1 was constantly ill-treated and abused the 2nd respondent. When the 2nd respondent approached A2 to A5 on 07.02.2018 seeking answer for A1 deserting her and her son, A2 to A5 abused, assaulted and chased her away.

14.The learned Additional Public Prosecutor further submitted that the demand of dowry made by the accused and subjecting the 2nd respondent to cruelty both mental and physical are clearly mentioned in the complaint and the same were also

confirmed by the witnesses in their statement recorded during investigation. The Doctor, who gave treatment to Guru confirms about the non-availability of the past medical records. He further submitted that email communications and whatsapp messages collected clearly confirms the demand of dowry as well as the retention and detention of passport and travel documents of the 2nd respondent and medical records of Guru. In this case, during investigation 14 witnesses were examined as LW1 to LW14. The statement of witnesses confirms the offence committed by the accused. On completion of investigation, charge sheet was filed by the 1st respondent Police before the trial Court. The trial Court on perusal of charge sheet, found prima facie material against the accused, took the case on file as C.C.No.336 of 2020 and issued summons for appearance of accused. A1 fled the country and now, he is absconding. On receipt of summons, the accused approached this Court and obtained stay of proceedings in C.C.No.336 of 2020. Due to which, the trial could not be progressed. The points raised by the learned Senior Counsel for petitioner are matter for trial, which are to be decided during trial and not in a Quash Petition. Hence, he prayed for dismissal of petitions with a direction to complete the trial within a stipulated time.

15.The learned counsel for the 2nd respondent filed counter in both petitions along with typed set. He submitted that in this case, A1 is working in Bloomington, Minnesota, USA, who came to India, married the 2nd respondent on 18.10.2012 at Mannargudi. After the marriage, the 2nd respondent and her husband/A1 were living in San Antonio, Texas, USA. Out of their wedlock, a male baby Guru was born to them on 18.08.2015 in Methodist Stone Oak Hospital, San Antonio, Texas, USA. The delivery expenses for the child was covered by USA insurance company. On 13.01.2018, the 2nd respondent, A1 and their son Guru came to India by Emirates Flight and landed in Chennai. On 19.01.2018, ear piercing ceremony was conducted for Guru. At that time, all the accused demanded gold and diamond ornaments. They forced the 2nd respondent to execute a fresh general power of attorney in favour of A4. Further, the delivery expenses were also demanded. Since the 2nd respondent has not complied the demand of the accused, she and her son were sent back to her parents house on 02.02.2018. Without informing the 2nd respondent, on 05.02.2018, A1 left India and went to USA taking away the passport and travel documents of the 2nd respondent and medical records of Guru. Only on 07.02.2018, the 2nd respondent came to know that A1 left India. When the same was questioned with A2 to A5, she was abused, assaulted, threatened and was chased away. Despite sincere steps being taken, the accused was

not inclined to take back the 2nd respondent and not facilitated her to return to USA and not handed back the passport, travel documents and medical records of Guru. All efforts went in vain. When the 2nd respondent contacted her husband/A1 by email and whatsapp, A1 admitted the retention of passport and travel documents and medical records of Guru and informed that he will not send the same to her and she has to lead her life till her last breath in her native along with her parents. Further, A1 blocked her number and he became inaccessible.

16.The learned counsel further submitted that the 2nd respondent continued treatment for her son Guru in Krishna Child Care Centre, Thanjavur, where Dr.Venkateshwaran gave treatment to her son and thereafter, referred her son to Dr.Lakshmi Narayanan, Senior Consultant for better treatment. The medical reports of Guru for speech therapy treatment in USA were retained and detained by A1. Without passport, the 2nd respondent's son Guru, a USA citizen, is residing overstay in India. Further, the 2nd respondent approached the authorities such as Ministry of External Affairs, New Delhi; Joint Secretary, National Commission for Women; Consulate General of India. All went in vain. Till date, the 2nd respondent is unable to get her passport and travel documents and and medical records of Guru. Due to the act of A1, the child Guru is denied of his rightful treatment. The 2nd respondent sent a representation to the Superintendent of Police, Thiruvarur and to the District Collector, Thiruvarur to get back the passport and medical records of Guru.

17.It is further submitted that A2 to A5 has not taken any steps to resolve the dispute and get back the passport and travel documents of 2nd respondent and medical records of Guru. On the other hand, they abetted A1 to continue his illegal act. A2 is a retired Police Official, who got influence with the Police in Thiruvarur District. A5 is a Bench Clerk in District Court, Thiruvarur and an office bearer of the Association. A5 by using his position, ensures the delay in progress of the trial and put the case on cold storage. Initially, the accused thwarted the progress of the investigation and now, they are attempting to delay the progress of the trial by all means. It is to be seen that in this case, despite specific complaint against the accused about the retention and detention of the passport and travel documents and medical records of Guru, the 1st respondent Police failed to take any effective step. On the other hand, allowed A2 to A5 to get anticipatory bail during investigation. He further submitted that A1 is now in America and he is not appearing before the trial Court. Though the 1st

respondent Police is aware about A1's address in America, no steps has been taken to send summons to him in his USA address through Indian Embassy officials. It would be appropriate to get warrant against the absconding accused and take steps to get issuance of Look Out Circular. The case is kept pending for the reason that if the summon could not be served on A1, the case would split up and thereafter, ti would be easy for other accused to get away from the case by shifting the entire blame on the absconding accused and to obtain favourable orders. Later using that favourable order, A1 will escape from this case. This illegal design is well orchestrated and implemented with the aid of A5, who is a Court staff.

18.The learned counsel for the 2nd respondent prayed this Court to transfer the case to some other Court and further sought direction for securing the presence of the accused by taking coercive steps and for completing the trial proceedings within a stipulated time.

19.In support of his contention, the learned counsel for the 2nd respondent relied on the decision of the Hon'ble Apex Court in the case of "Taramani Prakash Versus State of Madhya Pradesh and others reported in (2015) 11 SCC 260", wherein it had held that the question whether the victim was harassed and treated with cruelty is a matter for trial. The above decision of the Hon'ble Apex Court consistently followed in the cases of "R.Sivagnanam and others Versus State represented by Inspector of Police, All Women Police Station, Velore, Namakkal and another in Crl.O.P.No.26902 of 2012; Ayyavu and others Versus State rep., by All Women Police Station, Erode and another in Crl.O.P.No.3247 of 2013 and in the case of Hajera Hajira Fatima Versus State of Telungana reported in MANU/TL/0108/2021."

20.This Court considered the rival submissions and perused the materials available on record.

21.It is seen that the marriage between A1 and the 2nd respondent had taken place on 18.10.2012. Out of marriage, they have a male child Guru, who born on 18.08.2015. On 13.01.2018, A1, 2nd respondent and their Child Guru returned to India for ear piercing ceremony. At that time, the demand for dowry for diamond stud, gold chain and delivery expense were made by the accused. Earlier, a general power of attorney was executed by the 2nd respondent on 14.01.2016 in favour of A4 for availing housing in ICICI Home Finance Company Limited. Thereafter, the 2nd respondent was harassed to execute yet another power of attorney including some more clauses, which was not agreeable to

the 2nd respondent.

22.It is not in dispute that the minor Guru is suffering from speech problem and he is required to undergo continuous speech therapy treatment. The previous medical records of Guru is very much needed for continuing further speech therapy treatment, which is now denied at the instance of A1. The email and whatsapp communication between A1 and the 2nd respondent clearly confirms that the passport and travel documents of the 2nd respondent and medical records of Guru are in the custody of A1. Now, the 2nd respondent is running from pillar to post to secure her passport and travel documents and medical records of Guru. Despite sending communications to Ministry of External Affairs, New Delhi; Joint Secretary, National Commission for Women; Consulate General of India from the year 2018, till date she is yet to get back her travel documents and medical records of her son Guru. It is a well known fact that no person has got authority to retain and detain the passport, travel and medical documents of others. More so, in this case, the minor Guru is a patient, who is with speech problem, which cannot be brushed aside. A2 is a retired Police official and A5 is a Court staff, which also cannot be loose sight of.

23.The Email communications and whatsapp messages sent by A1 to the 2nd respondent is contrary to the affidavit of A1 produced before this Court. The affidavit, dated 28.11.2021 of A1 is extracted hereunder:-

"I, S.Vinoth, S/o, Selvaraj, aged about 41 years, Residing at No.18211, Bulverde RD, APT 4208, San Antonio, TX, 78259, United States of America, do hereby solemnly affirm and sincerely state as follows;

1.I am the Petitioner herein and I have been arraigned as the 1st accused in [C.C.No.](#) 336 of 2020, on the file of Judicial Magistrate, Mannargudi, Thiruvarur and as such I am well acquainted with the facts of the case.

2.I state that myself and the 2nd Respondent came down to Mannargudi on 13.01.2018 from the United States of America with our return tickets originally booked for 05.02.2018. We came to Mannargudi for our son's head tonsuring function which was scheduled to be held on 19 January, 2018. After the function, the 2 Respondent insisted that she will stay back in Mannargudi for my son's speech therapy treatment. Obliging her decision, the requisition for rescheduling the tickets to July 2018 was sent on

01.02.2018 itself, that is when the 2nd respondent was in my house. I had rescheduled the flight tickets of the 2nd Respondent and our son to 4th July, 2018. She went to her parents' house on 02.02.2018 with all her belongings.

3.As planned earlier I had left India on 05.02.2018 as per my original return tickets. I state that at no point of time, I was in possession of the passport of the 2nd Respondent and the Child. The Passport of my son and the 2nd Respondent is very much available with the 2nd Respondent.

4.I state that the 2 Respondent waited for two years i.e from 05.02.2018 to 20.01.2020 and then lodged the false complaint which is under challenge.

5. I state that the 2nd Respondent had falsely implicated my parents, sister and her husband in order to threaten us. In and by this affidavit, I swear that the passport of the 2nd Respondent and my son and the medical records of my son are not with me and are only with my wife, the 2 Respondent.

Hence it is therefore prayed that this Hon'ble Court may be pleased to allow the above CRLOP filed to quash the charge sheet in [C.C.No.336](#) of 2020, pending on the file of Judicial Magistrate No.1, Mannargudi, Thiruvavur and pass appropriate orders as this Hon'ble Court deems fit and thus render justice."

24.From the affidavit of A1, it is seen that A1 totally denies the possession of passport and travel documents of the 2nd respondent and also his son's medical records. The affidavit is contra to the email and whatsapp messages sent by A1 to the 2nd respondent. This is a serious matter to be looked into. Thus, the question whether the 2nd respondent was harassed and treated with cruelty by the accused is a matter for trial. At this stage, quashing of proceedings against the accused does not arise. Therefore, the points raised by the learned Senior Counsel appearing for the accused are necessarily to be decided during the trial.

25.In the light of the decision of the Hon'ble Apex Court in the case of Taramani Parakh (cited supra), and considering the facts and circumstances of the case, this Court is not inclined to quash the proceedings against the accused. Accordingly, both Criminal Original Petitions are dismissed.

26.It is surprising to see that from the year 2020, no effective steps were taken by the trial Court to secure A1. Hence, the trial Court is directed to take coercive steps to secure the absconding accused and complete the trial, within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petitions are closed.

27.The original of the affidavit of A1, dated 28.11.2021 filed before this Court to be forwarded to the trial Court. The trial Court to take appropriate action against A1, if the affidavit is found to be false.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vv2

To

- 1.The Judicial Magistrate Court No.I,
Manargudi, Thiruvarur.
- 2.Do Through The Chief Judicial Magistrate,
Thiruvarur.
- 3.The Inspector of Police,
All Women Police Station,
Mannargudi, Thiruvarur District.
- 4.The Public Prosecutor,
High Court, Madras.
- 5.The Section Officer,
Criminal Section,
High Court of Madras.

(Note: Registry is directed to send the original affidavit of S.Vinoth/A1 to the trial Court along with this order copy)

+2cc to Mr.S.Rathnakaran, Advocate SR.No.68913, 68912
+2cc to Mr.Swami Subramaniam, Advocate SR.No.12540, 12538

CRL.O.P.Nos.4677 & 7575 of 2021

SPD(CO)
GN(21/03/2022)