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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

CRL.O.P.NO.1156 OF 2017

AND

CRL.M.P.NOS.836 AND 837 OF 2017

1. Krishnan,
2. Chinna Ponnu @ Raja Amma,
3. Koolaiyan @ Madhu,
4. Vijaya
5. Madhan Kumar,
6. Magesan Kumar,
7. Pushpa,
8. Murugan,
9. Magesh,
10. Radha,
11. Karunagaran,
12. Sarasu

... Petitioners/
Accused-3 to 12

.Vs.

1. The State rep. by
Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.
(Crime No.03 of 2011)

... 1st Respondent/
Complainant

2. Mrs.Sumathi

... 2nd Respondent/Defacto
Complainant

PRAYER:-

Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in C.C. No.19 of 2012 on the file of the
Judicial Magistrate, Denkanikottai, Krishnagiri and quash the
same.

For Petitioner : Mr.M.Selvam

For Respondent-1 : Mr.E.Rajthilak
(Counsel for Govt.(Crl. 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 in C.C. No.19 of 2012 on the file of the Judicial Magistrate, Denkanikottai, Krishnagiri and quash the same.

2. The case of the prosecution is that the defacto-complainant one D.Sumathi has lodged a complaint before the 1st respondent police, stating that the defacto-complainant married one Maniyan in the year 1999. Subsequently, the said Maniyan and other petitioners demanded dowry and threatened the defacto-complainant. Hence, the defacto-complainant lodged a complaint against these petitioners to the respondent police, Denkanikottai, Krishnagiri District. The 1st respondent has registered the case in Crime No.3 of 2011 and after investigation, charge sheet was also filed in C.C. No.19 of 2012 on the file of the Judicial Magistrate, Denkanikottai, Krishnagiri District. Hence, the petitioners herein have filed the present Criminal Original petition to quash the same.

3. The learned counsel for the petitioner would submit that though the defacto-complainant-wife and her husband who is arrayed as Accused No.1 in the FIR, got married on 30.08.1999, both are living separately without joining with the petitioners herein who are family members of the husband. The petitioners did not interfere in the domestic affair of the defacto-complanant directly or indirectly.

4. It has been further submitted that the petitioners' name have been impleaded without any basis in the Charge sheet and they have been implicated only for the purpose of harrassing the whole family. Further, the 1st respondent police did not enquire the matter properly and rushed to file the present charge sheet even though stay petition in M.P. No.1 of 2012 in Cr. O.P. No.18092 of 2012 was ordered which has been preferred against the F.I.R. 3 of 2011.

5. 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. Without any base, the first respondent police registered a case in Crime No.3 of 2011 for the offences under Sections 498(A), 494, 506(i) of IPC, as against the petitioners and the same has been taken cognizance in C.C.No. 19 of 2012 on the file of the Judicial Magistrate, Denkanikottai, Krishnagiri. Hence they prayed to quash the same.

6. 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.

7. Heard Mr.M.Selvam, the learned counsel appearing for the petitioner and Mr.E. Rajthilak, the learned Government Advocate (Crl.Side) appearing for the first respondent.

8. 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.

9. 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, 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



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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."

10. 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.

11. On a perusal of the records and the statement made by the defacto-complainant, it is seen that the defacto-complainant has preferred M.C. No.3 of 2007 against her husband who has been arrayed as accused No.1, seeking for maintenance. Alimony of Rs.1500/- per month was ordered in favour of the defacto-complainant to be payable by the husband. Further, it has been stated that the accused No.1 has married one Sudha for the second time pending the maintenance case before the Family Court.



12. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.19 of 2012 in Crime No.3 of 2011 on the file of the Judicial Magistrate, Denkanikottai, Krishnagiri. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age and ailment of the petitioners, the personal appearance of the petitioners are 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. The trial Court is directed to complete the trial within a period of 12 months from the date of receipt of copy of this Order.

13. Accordingly, this criminal original petition is dismissed with the aforesaid directions. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

Lbm

To

1. The Judicial Magistrate,
Denkanikottai,
Krishnagiri.
2. The Inspector of Police,
All Women Police Station,
Denkanikottai,
Krishnagiri District.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

CRL.O.P.NO.1156 OF 2017 AND
CRL.M.P.NOS.836 AND 837 OF 2017

SJ(CO)
PBS/26/08/2021