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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.1947 OF 2017

1. Mushtaq Ahamed
2. Musaraf Banu ... Petitioners/Accused No.2 & 3

Vs.

1. State, Represented by,
The Inspector of Police,
All Women Police Station,
(Central) Coimbatore.
2. Sumiya Banu ... Respondents/Complainant

[R2 impleaded as per order dated 15.07.2021
in Crl.M.P.No.6776 of 2021]

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.82 of 2015 on the file of Judicial Magistrate / Additional Mahila Court at Magistrate Level, Coimbatore and quash the same.

For Petitioners : Mr.P.Saravana Sowmiyan

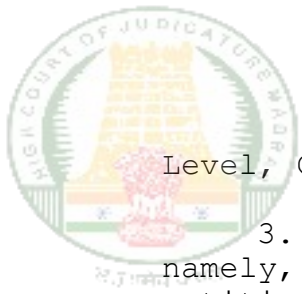
For R1 : Mr.E.Raj Thilak
Government Advocate (Crl Side)

For R2 : Mr.A.Raja Mohamed

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.82 of 2015 on the file of Judicial Magistrate / Additional Mahila Court at Magistrate Level, Coimbatore and quash the same.

2. The petitioners herein are arrayed as A2 and A3 and they have been charged for the offence under Sections 498(A) and 406 read with 114 of IPC in C.C.No.82 of 2015 on the file of Judicial Magistrate / Additional Mahila Court at Magistrate



Level, Coimbatore

3. The case of the prosecution is that the 1st accused, namely, Jameel Ahmed, along with 2nd and 3rd accused (Herein the petitioners) harassed and tortured the 2nd respondent / defacto complainant by demanding dowry. The further allegation of the prosecution is that the 1st accused tried to abort the child of the defacto complainant and the petitioners herein supported the same.

4. The petitioners have averred in the affidavit that they have not committed any offence as alleged by the prosecution and there is no specific allegations against them in the charge sheet. Only on the basis of the statement of the parents and relatives of the defacto complainant, the charge sheet has been laid against them which is against law and not sustainable. The defacto complainant did not prefer any complaint previously with respect to alleged harassment by them in earlier occasions which would create suspicion and the present complaint is a false one to harass them. The prosecution has not produced any independent witness to prove the guilt of the petitioners / accused. Hence the proceedings against them are illegal and liable to be quashed.

5. The petitioners have further averred in the affidavit that the ingredients of the offence alleged against them have not been made out by the prosecution and does not constitute the offence under the Act. Hence, the charge sheet laid against them is not sustainable in law. The implication of the petitioners on the basis of the statements of interested witnesses alone is contrary to law and suffers from serious infirmities and materials irregularities. The respondent has not made out any prima facie case against them to constitute the offence alleged against them and the charge sheet laid against them is purely an abuse of process of law and continuation of the same will result in serious miscarriage of justice.

6. The learned counsel appearing for the petitioners would submit that the petitioners are innocents and they have not committed any offence as alleged by the prosecution. Further, he would submit that there is no material on record to charge the petitioners under Sections 498(A) and 406 read with 114 of IPC. Hence, the same is liable to be quashed.

7. Heard the learned counsel on both sides and perused the materials available on record.

8. On perusal of the records, the allegation against the petitioners is that the petitioners along with 1st accused have demanded dowry from the 2nd respondent / defacto complainant and



given tortured to her physically and mentally. The further allegation against the petitioners is that the 1st accused has tried to abort the child of the defacto complainant and the petitioners herein have supported the same.

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9. In this regard, on perusal of the charge sheet filed by the 1st respondent, it is seen that the marriage between the 1st accused namely Jameel Ahmed and defacto complainant was solemnized on 28.06.2007 in Irumbukadai Pallivasal at Mettupalayam, and for both of them, it was 2nd marriage and the same was known by each other before the marriage itself. The marriage expenses were borne by the defacto complainant's parents. The defacto complainant started her marital life at No.5, Ganthipuram, Coimbatore, near Sri Devi Shop and lived as a joint family along her husband, father-in-law and mother-in-law. After the marriage, her mother-in-law had taken all the jewels from her stating that it should be kept safely and later she demanded the jewels at the time of shifting the house, her mother-in-law refused to give the same.

10. It is further seen from the charge sheet that from the date of marriage, the petitioners along with 1st accused caused cruelty to the defacto complainant by beating and abusing in filthy language without any reason and 1st accused tried to abort the child of the defacto complainant. Since the defacto complainant refused to abort the child, the A1 kicked up on her stomach. Due to which, she was not feeling well and admitted in hospital for 3 days. After discharge from the hospital, she went to her parents' house. Later, her parents advised and compromised her and left in her husband's house. A few months later, she came to know that a divorce case has been going on between her husband and his 1st wife in Salem Court. Hence, she asked the same to A1. The A1 threatened and abused her in filthy language and the petitioners herein also supported the same.

11. It is also seen from the charge sheet that the petitioners and A1 often demanded money from the defacto complainant and she also given by receiving the same from her parents several times. But, in spite of the same, they have not stopped to harass. Hence, she left the matrimonial house and went to her parents' house. At that time, she was 7 months pregnant. On 23.05.2008, she blessed with a female child. The petitioners and A1 have not visited to see the child even after one year. When her brothers questioned the same to A1, he stated that he doesn't have money and he would come and take back their sister only if they give Rs.2 Lakhs. Considering the future of defacto complainant, her parents given Rs.2 Lakhs to A1. After which, the A1 went and took back her and they both were resided in a separate house at Door No.67, Chinnathambi Gounder Street, Rathinapuri.



12. It is moreover seen from the charge sheet that after the defacto complainant and A1 came into a separate house, the A1 often went to his parents' house without giving money for expenses and without caring the defacto complainant and her child, and at one point of time, he stopped to go home. The defacto complainant went to her mother-in-law's house and enquired about A1, but they did not allow her to enter into the house and they sent out from the house. Since she suffered a lot without anybody's support, her parents taken her to Mettupalayam. After which, the A1 asked her to vacate the house at Rathinapuri. She stated that she would vacate the house only if he returns back the 2 Lakhs received from her parents. Thereafter, she came to know that the A1 broke the lock of the door and took all her things from the house at Rathinapuri and also he obtained the advance amount given to the landlord. When she enquired about the same to the landlord, he did not reply to her properly. Hence, she went back to her parents' house and later lodged a complaint against the petitioners and A1 before the 1st respondent police.

13. On going through the charge sheet filed against the petitioners, it is clear that there are specific allegations against the petitioners to attract the offence punishable under Sections 498(A) and 406 read with 114 of IPC. It is also clear that totally there are 10 witnesses in this case and the charge sheet has been laid only after recording the statement from the witnesses under Section 161(3) of Cr.P.C.

14. The defacto complainant has clearly stated in the complaint that from the date of marriage, she had been cruelled by the petitioners and A1 demanding dowry, and even though she had given all her jewels which was given as Seedanam to the 2nd respondent / mother-in-law after completion of marriage, she was often forced to get money from her parents and also threatened by the petitioners. Further, she has stated that the petitioners and A1 cheated her by suppressing the fact of pendency of the divorce case between A1 and his 1st wife before the Salem Court and moreover she has stated that after the A1 left out from the house at Rathinapuri, she went to her mother-in-law's house and asked about A1. But they did not allow her to enter into the house and they sent out from the house.

15. On going through the averments made in the petition, it is found that the petitioners have not made out any plausible ground for quashing the complaint in C.C.No.82 of 2015 on the file of Judicial Magistrate / Additional Mahila Court at Magistrate Level, Coimbatore. Even though it was stated by the petitioners that they have not caused any cruelty to the complainant, no document has been placed before this Court to



establish the same.

16. It is absolutely clear from the records that the allegations made against the petitioners would constitute an offence under Sections 498(A) and 406 IPC. Hence, this Court cannot go into the enquiry to decide this issue and it is for the petitioners to go before the Trial Court to establish their case.

17. It is now represented by the learned counsel for the petitioners that the petitioners are aged persons. Hence, the personal appearance of the petitioners before the Trial Court may be dispensed with by this Court.

18. In view of the submission made by the learned counsel for the petitioners, the personal appearance of the petitioners before the Trial Court are dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the petitioners for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C., as and when the Trial Court feels it necessary.

19. In the result, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. Judicial Magistrate / Additional Mahila Court
At Magistrate Level, Coimbatore
2. The Inspector of Police,
All Women Police Station, Central, Coimbatore.
3. The Government Advocate, High Court, Madras.

+2ccs to Mr.A.Raja Mohamed, Advocate, S.R.No.39205

CRL.O.P.No.1947 of 2017

RR(CO)
PM/06/10/2021