



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2021

Delivered On: 21.10.2021

CORAM

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

Crl.O.P.(MD).No.1079 of 2021
and Crl.M.P.(MD).No.495 of 2021

Aswin

... Petitioner/Accused No.6

Vs.

1.The Inspector of Police,
All Women Police Station,
Alangulam,
Tirunelveli District.
(Crime No.11 of 2020)

... Respondent/Complainant

2.Mrs.Vijila

... Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to First Information Report in Crime No.11 of 2020 on the file of the respondent police and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.R.M.Anbunithi for R1
Additional Public Prosecutor

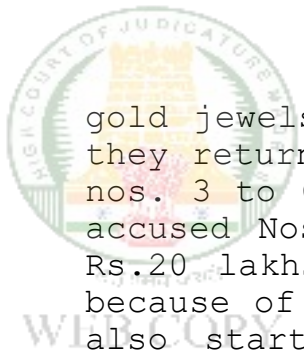
Mr.M.Suresh Legal Aid counsel for R2

ORDER

This petition is filed seeking quashment of FIR in Crime No.11 of 2020, dated 16.11.2020, which was registered for the offences punishable under Section 498A, 294(b), 406, 323, 506(i) IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act, 1961 and Section 4 of Dowry Prohibition Act, 1961.

2.The case of the prosecution in brief:

The petitioner is the 6th accused in the above said FIR. The second respondent was married to the first accused namely Palpandian on 18.03.2012. During the course of marriage dowry, seervarisai etc., were given. The accused Nos.2 to 5 demanded Rs.50 lakhs as extra amount as well as the extra jewels. The first accused demanded her to sell her 8 cents and give money. So that was also sold for Rs.32 lakhs and the money was given to the first accused. Totally 50 sovereigns of jewels and Rs.35 lakhs of cash was given as dowry. Because of the torture made by the accused Nos.2 to 5, they shifted their residence to Tirunelveli. Even during that time at the instigation of accused Nos.2 to 5, the first accused tortured the second respondent. He was lavishly spending money and selling the



gold jewels. So because of the financial position in February 2020 they returned to Tirunelveli and started to live along with accused nos. 3 to 6 in Keelapavur as joint family and during that time also accused Nos.2 to 5 were torturing her stating that she must bring Rs.20 lakhs more. She was assaulted by accused Nos.4 & 5. Later because of the torturing made by the accused Nos.2 to 5, her mother also started to live with her. Thereafter, also the very same torture continued demanding more money and jewels. Later the first accused filed H.M.O.P.No.103 of 2020 before Principal Sub Judge, Tenkasi, for divorce. When that was questioned, she was assaulted by the first accused and criminally intimidated by accused Nos.2 to 5. On 20.07.2020 at about 6.00 p.m. along with her mother, she was talking to neighbour in front of her house and at that time all the accused persons came there and started assaulting them. Her mother was also assaulted. She was also criminally intimidated. At the intervention of the neighbours all the accused persons left the place of occurrence.

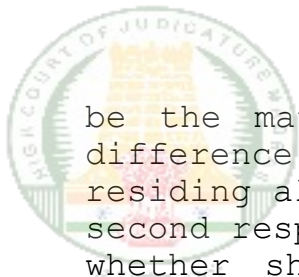
3. Based upon the complaint given by the second respondent a case in Crime No.11 of 2020 for the offences punishable under Section 498A, 294(b), 406, 323, 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Woman Harassment Act and Section 4 of Dowry Prohibition Act was registered.

4. Pending investigation, the 6th accused has filed this petition, seeking quashment of the FIR against him.

5. The ground on which the petition came to be filed is that he is no way involved in the matrimonial dispute that exists between the first accused and the second respondent herein. He was only aged about 17 years at the time of the alleged occurrence and also pursuing his studies. The petitioner's family was residing away from the defacto complainant and her husband. After a lapse of 20 days, the complaint has been given. Even as per the FIR the place of occurrence stated to be Keelapavur, Tenkasi, but the case was registered by AWPS, Tirunelveli. In July 2020 itself, the defacto complainant left the matrimonial house. After receiving the notice in H.M.O.P.No.103 of 2020, the false complaint has been lodged.

6. Heard both sides.

7. Matrimonial dispute between the husband and wife, in which all the relatives of the husband has been roped in. This petitioner is stated to be the brother's son of first accused, who is the husband of the second respondent. Even as per the first information report his age was stated to be 18 on the date of complaint namely on 16.11.2020. An allegation has been made against the petitioner that he also joined along with others in assaulting the second respondent and her mother on a particular day, which is mentioned in the complaint. But it is the case of the petitioner that in July 2020, the second respondent left the matrimonial house and thereafter, she did not return. Moreover this petitioner were residing away from the matrimonial house of the second respondent. Services were not in/house/



be the matter for discussion in this petition. Because of the difference of opinion, it is seen that the second respondent was residing along with her mother in a separate house. According to the second respondent only during that time this assault took place. But whether she and her mother sustained any injury is not clearly stated. As pointed out by the petitioner the alleged occurrence took place on 27.10.2020. But the case has been registered and complaint has been given only on 16.11.2020 that is after a lapse of about 20 days. There is no allegation to the effect that because of the assault she and her mother suffered injury and took treatment. So the date of filing of the complaint shows that his petitioner has been wrongly roped in the above said occurrence. It is the contention on the part of the petitioner that the husband of the second respondent filed a petition seeking divorce before the Sub Court, Tenkasi. Only after receiving the above said notice, this false case has been foisted. But the date of H.M.O.P. is not brought on record and not even a copy has been produced before this Court. But, what ever it may be, it is seen that the main dispute exists between the second respondent and her husband and this petitioner could not have involved in such a matrimonial occurrence. There is no material. So the false implication cannot be ruled out.

8.The Hon'ble Supreme Court in ***Preethi Gupta and another Vs. State of Jharkhand and another*** reported in ***(2010) 7 SCC 667***, has pointed out that in case of matrimonial dispute, it is too usual for the wife to rope all the relatives of the husband into occurrence and foist cases. So the Courts which are dealing this matters must be very careful in scrutinize the materials available on record. So when we scrutinize the materials available on record by taking this advice, this Court can easily come to the conclusion that with a malafide intention of roping all the relatives of the first accused, this petitioner has also been roped. But he was only aged 17 or 18 at the time of alleged occurrence. He would no way involved in the matrimonial dispute between the first accused and second respondent. There is no motive for him to assault the second respondent and her mother. Had it been true, she and her mother would have taken treatment in the hospital as above mentioned above. There is no such averment in the complaint. The entire CD file has also been called for and perused and perusal of the CD file also shows that no materials have been collected with regard to taking of treatment of alleged injuries.

9.Perusal of CD file shows that on the earlier occasion, the second respondent filed a complaint before the All Women Police Station, Alangulam, wherein, she made allegations against accused Nos.1 to 5 that the first accused after the marriage did not went for any job and was lavishly spending money and demanded extra money and also assaulted. It was dated 25.07.2020. Enquiry was undertaken and during the course of enquiry, the first accused namely husband undertook to pay Rs.20 lakhs in her account. A counselling was also arranged. So because of the counselling there was compromise arrived between the husband and wife and they started living together. But it appears that after the above said agreement and joint living,



later again trouble arose. So H.M.O.P.No.103 of 2020 was filed before the Principal Sub Judge, Tenkasi by the first accused on 11.08.2020. So what happened within a month from the date of agreement is a matter for investigation and trial.

10.It appears that only subsequent to this filing of the divorce petition, this complaint has been given. So only to wreck vengeance, this petitioner has also wrongly roped in the offence. The investigation is almost completed and final report also will be prepared in short time as pointed out by the learned Additional Public Prosecutor.

11.Considering these facts and circumstances of the case, this Court is of the view that this is a fit case which requires quashment of FIR so far as this petitioner is concerned.

12.Accordingly, this criminal original petition is allowed. The FIR in Crime No.11 of 2020 on the file of the respondent police is hereby quashed in respect of this petitioner alone and the investigation and the trial may go on against other accused persons. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
All Women Police Station,
Alangulam,
Tirunelveli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-32208[F] dated 22/10/2021)

Crl.O.P. (MD) .No.1079 of 2021

21.10.2021

MGJ/PM(01.11.2021) 4P 4C

<https://hcservices.ecourts.gov.in/hcservices/>