



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

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CrI.O.P.(MD)No.3165 of 2019

and

CrI.MP(MD)Nos.1764, 1765 of 2019 and 2569 of 2020

Mohamed Sharifudeen

: Petitioner/A1

Vs.

1.State through

The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.
In Crime No.29 of 2012.

: R1/Complainant

2.A.Nooru Nazrin

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.88 of 2013 on the file of the learned Judge, Additional Mahila Court (Magisterial Level), Tirunelveli and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.B.N.Raja Mohamed

For 1st Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

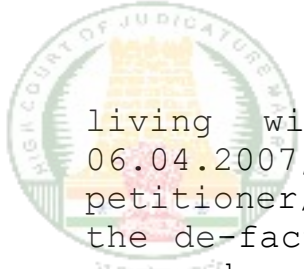
For 2nd Respondent : Mr.V.Kannan

O R D E R

This petition is filed seeking quashment of the case in CC No.88 of 2013 pending on the file of the Additional Mahila Court (Magisterial Level), Tirunelveli.

2.The case of the prosecution in brief:-

The first accused is the husband of the de-facto complainant, who is the 2nd respondent herein. A2 and A3 are the parents of A1. A4 to A6 are brothers of A1. The 2nd respondent/de-facto complainant lodged a complaint that she was married to A1 on 06.11.2005 and during the time of marriage, she was given 65 sovereign of jewels, apart from Sridhana. After marriage, she was



living with this petitioner/A1 under joint family and on 06.04.2007, a child was born. But the parents of this petitioner/A1 did not permit her parents to visit the child and the de-facto complainant was harassed by one maid servant and the accused persons also not permitted her parents to visit the 2nd child, who born on 09.01.2009. Even after the birth of the 2nd child, harassment continued. When they were separately living in Chennai, A1 demanded Rs.25,00,000/- for purchasing a house and thereby harassed her. Similarly A2 to A6 also harassed her. On 14.01.2009, she was driven out from the matrimonial house.

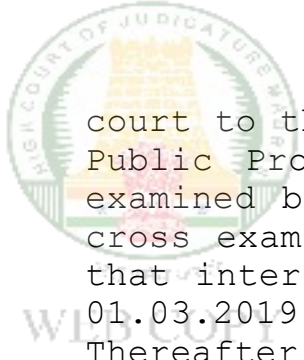
3. On the basis of the complaint given by the 2nd respondent, a case in Crime No.27 of 2012 was registered for the offence punishable under sections 498(A), 406 IPC and section 4 of Dowry Prohibition Act and section 4 of Harassment of Women Act. After investigation, final report has been filed before the Additional Mahila Court (Magisterial Level), Tirunelveli, which was taken cognizance in CC No.88 of 2013.

4. Seeking quashment of the final report, on the previous occasion, all the accused persons filed CrI.OP(MD)No.12837 of 2013 before this court. That petition filed in respect of this petitioner was withdrawn as dismissed. However, in respect of other accused persons, that petition was allowed and the proceedings pending in CC No.88 of 2013 on the file of the Judicial Magistrate No.1, Tirunelveli, (Now it has been transferred to Additional Mahila Court (Magisterial Level), Tirunelveli) was quashed in so far as A2 to A6 are concerned. After that, this petition came to be filed by A1 seeking quashment of the proceedings mainly on the ground that thalaq was pronounced by this petitioner/A1, on 11.04.2012, 10.05.2012 and 11.06.2012. That was also confirmed by Government Khazi, Tirunelveli, by his order, dated 03.09.2012 and there was a long delay on the part of the 2nd respondent in filing the complaint.

5. Heard both sides.

6. The first objection that has been made by the learned Additional Public Prosecutor as well as the 2nd respondent is that when the first petition filed by this petitioner was dismissed as withdrawn, no liberty was given to the petitioner to file a fresh petition for the same cause of action. So, perusal of the order shows that no such permission was granted to file petition for the same cause of action.

7. In response, the learned counsel appearing for the petitioner/A1 would submit that there is a clear change of circumstance in this matter and the earlier petition was not filed on the basis of 3rd Talaq that has been pronounced by him and only as a counter blast, the present complaint came to be filed by the 2nd respondent. For that purpose, he will draw attention of this



court to the dates and events. But however, the learned Additional Public Prosecutor would submit that so far four witnesses were examined before the trial court in chief, but they have not been cross examined by the petitioner. So perusal of the records shows that interim stay has been granted by this court, by order, dated 01.03.2019 and it has been periodically extended till 29.04.2019. Thereafter, the matter was not listed before this court. Perhaps, only after 29.04.2019, four witnesses would have been examined in chief before the trial court. Whatever it may be, even though the 2nd petition under Section 482 Cr.P.C, quashment of criminal proceedings will lie, but there must be change of circumstances or the facts and circumstances of the case must meet the ends of justice.

8.It has been well settled by the Hon'ble Supreme Court in the case of ***Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Mohan Singh and others (AIR 1975 SC 1002)*** that under the change of circumstances, second application is very well maintainable. As mentioned earlier, the only qualification is that quashment must be necessary to secure the ends of justice. Another qualification is there must be a change of circumstances. Here, absolutely there is no change of circumstance, except stating that the earlier application was not filed on the ground of Talaq, that was pronounced by this petitioner. So the matter requires disposal on merits, even though the technical objection is raised by the 2nd respondent.

9.The petitioner/A1 first relied upon the mental and health condition of the 2nd respondent. He has enclosed the medical treatment records in the typed set of papers wherein it has been mentioned that the 2nd respondent is complaining about the abnormal behavior, sad mood, etc. and now, she was suffering from Recurrent Depressive Disorder with Psychotic Features. She was also advised to undergo family counselling with the parents, family members and husband etc. So reading of this medical records shows that the 2nd respondent was suffering from the above said mental disorder. But what was important is that for the purpose of counselling, cooperation of the parents and husband was also recommended. But that was not extended to her.

10.In the complaint, dated 05.05.2010, the de-facto complainant has stated that her in-laws are not permitting to meet her husband. Another reasons have also been stated. Finding that the second marriage is going to be performed by the petitioner, the father of the 2nd respondent gave a complaint on 16.04.2012 for the Talaq notice, that has been issued by this petitioner. Later, the 2nd respondent/de-facto complainant moved Cr.MP No.6621 of 2012 before the Judicial Magistrate No.1, Tirunelveli under section 156 of the Criminal Procedure Code, seeking a direction to the police to register the case and investigate the matter. In



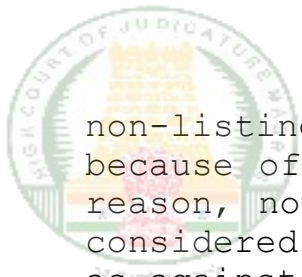
pursuance of which, the present FIR came to be registered and investigation has been undertaken. Now, 2nd respondent/de-facto complainant is having three children. Whether in the circumstance of the case, there was any harassment by the petitioner as stated in the complaint and in the final report, are the matter for trial.

11. In the written submission, the learned counsel for the petitioner submitted that even though the trial is commenced, there can be no bar for this court to entertain the petition filed under Section 482 of Cr.P.C. For that purpose, the learned counsel appearing for the petitioner relied upon the judgement of the Hon'ble Supreme Court in various, such as in the case of **Rashmi Chopra Vs. The State of Uttar Pradesh and Kamlesh Kumar Vs. State of Bihar and Anil Khadkiwala Vs. State (Government NCT of Delhi and another)**. So it is settled position of law that in the above judgment of the Hon'ble Supreme Court, it has been pointed out that mere commencement of the trial proceedings, may not be a bar for this court to entertain the petition under section 482 Cr.P.C. So there can be no quarrel on this proposition.

12. The learned counsel appearing for the petitioner further submitted that in view of the quashment of the criminal case against the co-accused in CrI.OP(MD)No.12837 of 2013, dated 10.12.2018, the same evidence, which are available in this matter, are one and the same. Naturally this criminal proceedings will also end in acquittal and so, he would submit that no purpose is going to be served. But I am unable to agree with the stand that has been taken by the petitioner.

13. It is settled proposition of law that when the parent case ended in acquittal, the split up matter can be quashed, when the evidence that let in before the trial court, in which the parent case is also one and the same and inseparable in nature and this position has been well settled by the Hon'ble Supreme Court in the case of **Sat Kumar Vs. State of Haryana, AIR 1974 SC 294** and it has been frequently quoted. That facts will be only applicable after full fledged trial in the parent case. Here there is no such full trial. More over, quashment was made only on the basis of the materials that have been collected during the course of investigation against the co-accused. But however, as mentioned above, when the matter was taken up for hearing, the petition filed by the petitioner was withdrawn, of course without any liberty. No new ground has been set out by the petitioner in this petition. So this argument cannot be accepted and it has been rejected.

14. The next contention put forth on the part of the petitioner is that originally stay has been granted by this court in CrI.MP (MD)No.1764 of 2019, but thereafter, it was not extended, due to



non-listing of the case. The trial court commenced the trial only because of the non-extension of stay order. But whatever may be reason, now the trial has commenced. Even on merits, I am of the considered view that it is not a fit case to quash the proceedings as against this petitioner.

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15.The next point that has been urged by the petitioner is that the order that has been passed by the Judicial Magistrate No.1, Tirunelveli in CMP No.6621 of 2012 is not valid under law and as observed above total non-application of mind, since the guidelines that have been issued by the Hon'ble Supreme Court in **Anil Kumar and others Vs. M.K.Aiyappa and another [2013(10)SCC 705]** has not been followed. But that order cannot be challenged by the petitioner belatedly. The petitioner ought to have moved this court even at the initial stage of registering the FIR. In fact, he has moved as mentioned above by way of filing Crl.OP(MD) No.12837 of 2013, but failed to canvass this point and instead chosen to withdraw the same. So the petitioner cannot be permitted to make the ground in a piecemeal manner. So all other grounds that have been raised in this petition and the written statement are purely a matter for trial.

16.It is true that the 2nd respondent is affected by Recurrent Depressive Disorder with Psychotic Features. As mentioned above, the 2nd respondent is suffering from such a nature of ailment, it is the duty of the petitioner being the husband to be with her, see that her ailment is cured by providing proper treatment, care and comfort. But he chose to pronounce triple thalaq. So I am of the considered view that it is not fit case to quash the proceedings.

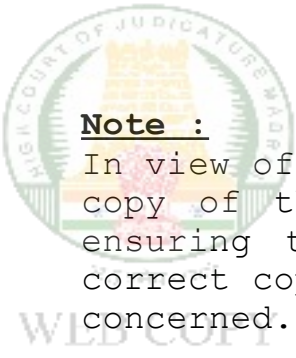
17.Since materials have been collected during the course of investigation and the trial process has also commenced, I am of the considered view that this is not a fit case to quash the proceedings. So the petitioner has to undergo the trial process.

18.In fine, this criminal original petition stands **dismissed**. Since the matter is of the year 2013, there shall be a direction to the trial Court to expedite the trial process and dispose of the same purely on merits and in accordance with law, within a period of five months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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**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 Magistrate,
Additional Mahila Court (Magisterial Level),
Tirunelveli.

2.The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District.

+1 CC to M/s.V. KANNAN, Advocate (SR-35520[F] dated 23/11/2021)

Cr1.OP(MD)No.3165 of 2019
19.11.2021

RK(02/12/2021) 6P 4C