



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.11.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.O.P.(MD)No.6345 of 2021 and

CRL.M.P.(MD)No.3657 & 3658 of 2021

1. S.M.Babu @ Muthu
2. Sudalaimuthu
3. Samuthirakani ... Petitioners / Accused Nos.1 to 3

Vs.

1. The State of Tamil Nadu,
Rep. By the Inspector of Police,
All Women police station - Town,
Tirunelveli City,
Tirunelveli District.
(Crime No.5 of 2019)

... 1st Respondent/Complainant

2. C.Reka ... 2nd Respondent / Defacto Complainant

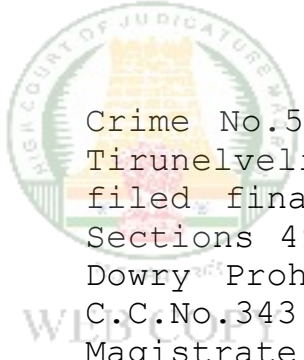
Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.343 of 2020 on the file of the Judicial Magistrate Court No.V, Tirunelveli and quash the same.

For Petitioners	: Mr.A.Gandiappan
For R-1	: Mr.T.Senthil Kumar, Additional Public Prosecutor.
For R-2	: Mr.C.Christopher

O R D E R

This criminal original petition has been filed for quashing the proceedings in C.C.No.343 of 2020 on the file of the Judicial Magistrate No.IV, Tirunelveli.

2. The second respondent C.Reka is the defacto complainant herein. Marriage between the first petitioner S.M.Babu @ Muthu and the defacto complainant took place on 12.12.2013. They had lived together at Mumbai for a while. Difference of opinion had arisen between them and they have been living separately since 09.06.2018. The first petitioner has also filed H.M.O.P.No.197 of 2018 on the file of the Family Court, Tirunelveli, seeking dissolution of his marriage with the second respondent. In the ~~event of~~ ^{meanwhile}, the second respondent filed a criminal case against the petitioners leading to registration of First Information Report in



Crime No.5 of 2019 on the file of the All Women Police Station, Tirunelveli Town. The first respondent investigated the matter and filed final report. Cognizance was taken for the offence under Sections 498(A), 406, 294(b) and 506(1) of I.P.C., and Section 4 of Dowry Prohibition Act, 1961 and the case was taken on file in C.C.No.343 of 2020 on the file of the Judicial Magistrate No.IV, Tirunelveli. To quash the same, this criminal original petition has been filed.

3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds.

4. He would point out that the second respondent had given a petition before one authority after another successively and the authorities enquired into the complaint and closed the same. Thereafter, the second respondent filed a private complaint and obtained a direction under Section 156 of Cr.P.C. and only thereafter, on 29.12.2018 the criminal case was registered by the first respondent police. The learned counsel submitted that the second respondent had abused the legal process and in the interest of justice, the impugned prosecution deserves to be quashed. He submitted that most of the list witnesses did not have any direct knowledge of the subject matter and they are only hearsay witnesses.

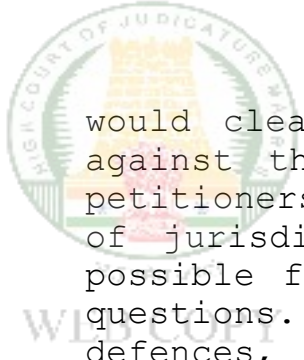
5. Per contra, the learned Additional Public Prosecutor appearing for the first respondent as well as the learned counsel appearing for the defacto complainant submitted that no case for quashing the impugned proceedings has been made out.

6. I carefully considered the rival contentions and went through the materials on record.

7. It is true that in H.M.O.P.No.197 of 2018 on the file of the Family Court, Tirunelveli, the defacto complainant filed I.A.No.4 of 2019 for return of her jewellery. The said I.A. was dismissed. According to the petitioners' counsel, there is nothing to show that the said order has been put to challenge or reversed. But it is only an interim order passed by the Family Court. In any event, it will not bind the criminal Court. It is well settled that the civil proceedings and criminal proceedings can go on independently and parallelly and the decision of one Court will not bind the other one. Therefore, I am not impressed by the submission of the petitioners' counsel that since in view of the dismissal of I.A.No.4 of 2019 filed by the second respondent, this Court should render a finding that no offence under Section 4 of Dowry Prohibition Act has been made out.

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

8. I went through the statement of the defacto complainant recorded under Section 161 of Cr.P.C. A mere reading of the same



would clearly indicate that specific allegations have been made against the petitioners herein. The forum for establishing the petitioners' innocence is only before the trial Court. In exercise of jurisdiction under Section 482 of Cr.P.C., it will not be possible for this Court to go into the contentious and contested questions. Leaving open the petitioners' rights, contentions and defences, this criminal original petition is dismissed. However, taking note of the overall facts and circumstances, the personal appearance of the petitioners is dispensed with. However, the petitioners have to appear before the Court below on the following three occasions:-

- i) To answer the charges,
- ii) at the time of examination under Section 313 of Cr.P.C. and
- iii) at the time of pronouncement of Judgment.

The petitioners also will have to appear when their presence is insisted upon by the trial Court and on all other occasions, the petitioners can be represented by their counsel. If the petitioners' counsel also fails to appear, the benefit of this order will stand vacated automatically. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

PMU

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 Judicial Magistrate No.V,
Tirunelveli.
2. The Inspector of Police,
All Women police station - Town,
Tirunelveli City, Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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