BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on	Pronounced on
20.07.2021	30.07.2021

PRESENT

The Hon`ble Mr.Justice G.CHANDRASEKHARAN

CRL OP(MD). Nos.18705 of 2016, 5239 of 2017 and 8033 of 2019
and
Crl.M.P.(MD)Nos.3698 and 3699 of 2017 and 1956 & 4957 of 2019

Crl.O.P.(MD) No.18705 of 2016:

James ... Petitioner/Defacto complainant

Vs

State represented by
The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District. ... Respondent/Complainant

PRAYER: Petition filed under Section 482 Cr.P.C., seeking a direction to the learned Judicial Magistrate, Additional Mahila Court, Tirunelveli, Tirunelveli to expedite the trial in C.C.No.140 of 2013, on its file and complete the same within the time limit as fixed by this Court.

For Petitioner : Mr.A.Thiruvadikumar

For Respondent : Mr.E.Antony Sahaya Prabahar,
Government Advocate(Crl.Side)

Crl.O.P.(MD) No.5239 of 2017:

1.Leo Joseph
2.Elizabeth ... Petitioners/Accused 2 and 3

Vs

1. The State through
The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District. ... Respondent/Complainant

2.James ... Respondent/Defacto complainant

PRAYER: Petition filed under Section 482 Cr.P.C., seeking to call for records in C.C.No.140 of 2013, on the file of the learned Additional Mahila Court (Magisterial Level), Tirunelveli and quash the same as against these petitioners.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondent : Mr.E.Antony Sahaya Prabahar,
Government Advocate(Crl.Side)
for R.1
: Mr.A.Thiruvadikumar
for R.2

Crl.O.P.(MD) No.8033 of 2019:

Leo Vinod Marcus Antony ... Petitioner/Accused No.1

Vs

1. The State through
The Inspector of Police,
All Women Police Station,
Palayamkottai,
Tirunelveli District. ... Respondent/Complainant

2.James ... Respondent/Defacto complainant

PRAYER: Petition filed under Section 482 Cr.P.C., seeking to call for records in C.C.No.110 of 2013, on the file of the learned Additional Mahila Court (Magisterial Level), Tirunelveli and quash the same as against the petitioner.

For Petitioners : Mr.G.Prabhu Rajadurai
for Mr.V.Kannan

For Respondent : Mr.E.Antony Sahaya Prabahar,
Government Advocate(Crl.Side)
for R.1
: Mr.B.N.RAja Mohammed
for R.2

COMMON ORDER

Crl.O.P.(MD)No.18705 of 2016 is filed seeking a direction to the learned Judicial Magistrate, Additional Mahila Court, Tirunelveli, Tirunelveli District to expedite the trial in C.C.No.140 of 2013, on its file and complete the same within the time limit as fixed by this Court.

2. Crl.O.P.(MD)No.5239 of 2017 is filed seeking to call for records in C.C.No.140 of 2013, on the file of the learned Additional Mahila Court (Magisterial Level), Tirunelveli and quash the same as against these petitioners.

3. Crl.O.P.(MD)No.8033 of 2019 is filed seeking to call for records in C.C.No.110 of 2013, on the file of the learned Additional Mahila Court (Magisterial Level), Tirunelveli and quash the same as against the petitioner.

4. The case of the prosecution in brief is as follows:

The defacto complainant's daughter Fathima Shanthi is M.E., Computer Science graduate. She was working as a lecturer in National Engineering College, Kovilpatti. The first accused is her husband. The second and third accused are her parents-in-law. The marriage between Fathima Shanthi and the first accused was arranged in 2006. The accused demanded 250 sovereigns of gold jewels, Rs.5,00,000/- cash, fridge, washing machine, cot, mattresses, mixi, grinder. The defacto complainant provided whatever they demanded. Betrothal was celebrated on 23.09.2006 at the expenses of the defacto complainant. After betrothal, the second and third accused informed the defacto complainant that they have better offer for their son and therefore, they demanded another 100 sovereigns of gold and Rs.2,00,000/-. In addition to that, they also demanded Rs.5,00,000/- for purchasing household articles and asked them to pay the loan due for the purchase of Maruti Alto Car to an extent of Rs.2,00,000/-. With great difficulty, the defacto complainant accepted to provide 250 sovereigns of gold jewels, Rs.5,00,000/- cash and household articles and Rs.2,00,000/- towards car loan. He also undertook to meet the remaining demand, after the marriage is over. The marriage was celebrated on 30.05.2007. Immediately after the marriage, the second and third accused demanded remaining dowry. Since the defacto complainant was not in a position to give them immediately, the accused started harassing his daughter. She left USA with the first accused on 07.06.2007. The accused told the defacto complainant that if he is not able to arrange for the balance dowry demand, they asked him to settle the house at Vannarpettai, worth Rs.30,00,000/- in the name of the first accused. The second and third accused visited USA on 12.08.2009 and harassed his daughter, demanding the dowry. They prevented their son to have family life with his daughter for the reason that the balance dowry was not given. His daughter came to India on 08.09.2010 and told them about the harassment meted out to her and requested the defacto complainant to settle the house in favour of the first accused. Subsequently, the defacto complainant and his wife met the accused 2 and 3 and they told them that their son is going to divorce his daughter. His daughter went to USA on 07.10.2010. There, she was physically abused and harassed by the first accused for the reason since the house was not settled in his name. On 29.11.2010, the defacto complainant and his wife met the accused with a request not to harass their daughter. They scolded them and forced them out of the house. Therefore, this case came to be registered.

5. After the investigation, final report has been filed in this case. The case was taken on file in C.C.No.110 of 2013, as against the first accused and in C.C.No.140 of 2013 as against the second and third accused, on the file of the learned Additional Mahila Court (Magisterial Level), Tirunelveli.

6. The petitioners in this case, who are the accused 1 to 3 have filed two quash petitions, one by the first accused and other by the other two accused. The main ground on which the quash petitions are filed is that there was a Marital Dissolution Agreement entered into between the first accused - Leo Vinod Marcus Antony and Fathima Shanthi James and that agreement was filed before the Circuit Court of Hamilton Country, Tennessee. In the said agreement, there was a term with regard to the monetary payment. As per this term, the first accused - Leo Vinod Marcus Antony, has to pay a sum of 7500 dollars in consideration of dissolution of their marriage, division of property and to assist in her relocation and anticipated education expenses. There is one stipulation that "Fathima Shanthi James agreed that her husband has not been guilty of any physical, verbal, or emotional abuse against her, that he has made no demands for monetary payment and he has not, at any time, removed her, or prohibited her from access to the marital apartment. The parties further stipulate and agree that both parties shall be mutually restrained and permanently enjoined from harassing, threatening, contacting or coming about the other person, or their family members and associates, whether in per or by proxy". This particular terms show that there was no physical, verbal, emotional abuse against the defacto complainant's daughter Fathima Shanthi James and there was also no demand for monetary payment from her. In terms of this agreement, final decree was passed on 11.08.2011 granting absolute divorce to the the first accused - Leo Vinod Marcus Antony and the defacto complainant's daughter Fathima Shanthi James. In view of this, marital dissolution agreement and final decree, nothing survives in this criminal case. Therefore, the learned Counsel appearing for the petitioners seeks quashment of C.C.No.110 of 2013 and C.C.No.140 of 2013.

7. In support of his submissions, he relied on the following judgments of the Honourable Supreme Court for the proposition that the Court can quash the charge sheet, when the matter ended in compromise between the parties, or when there is no possibility of conviction:

(i) In ***Mohd.Shamim and Others Vs. Nahid Begum (Smt) and another*** reported in ***(2005)3 Supreme Court Cases 302;***

(ii) In ***Ruchi Agarwal Vs. Amit Kumar Agrawal and others*** reported in ***(2005)3 Supreme Court Cases 299;***

(iii) In ***Jitendra Raghuvanshi and Others Vs. Babita Raghuvanshi and another*** reported in ***(2013)4 Supreme Court Cases 58***; and

(iv) In ***Swapnil and Others Vs. State of Madhya Pradesh*** reported in ***(2014)13 Supreme Court Cases 567.***

8. Per contra, the learned Counsel appearing for the defacto complainant strongly opposes the quash petitions on the ground that consent for divorce in the proceedings before the Circuit Court of Hamilton Country, Tennessee, was obtained by fraud. The accused are in possession of jewelry and other articles which were provided by the defacto complainant. The accused undertook to return the jewelry and articles, but they failed to return. Therefore, the marital dissolution agreement and final order passed thereon by the Circuit Court of Hamilton Country, Tennessee has no relevance in India. The foreign judgment has to be proved in accordance with law in the Indian Court. The dowry harassment was made not only against Fathima Shanthi James, but it was also against the defacto complainant and his wife and other family members. The witnesses in this case clearly and categorically stated about the harassment meted out to Fathima Shanthi James, the defacto complainant and his wife. The harassment started even before the conduct of marriage and it continued. It is also submitted that Indian is not a reciprocating Country with United States of America and therefore, the final decree passed by the Circuit Court of Hamilton Country, Tennessee, cannot be enforced here. Therefore, he seeks dismissal of these quash petitions.

9. In support of his contentions, he relied on the following judgments for the proposition that if the foreign judgment is obtained by exercising fraud, that judgment is not binding on the parties:

(i) In ***Smt.Satya Vs. Shri Teja Singh*** reported in ***(1975)1 Supreme Court Cases 120;***

(ii) In ***Sankaran Govindan Vs. Lakshmi Bharathi and Others*** reported in ***(1975)3 Supreme Court Cases 351***; and

(iii) In ***Bank of Baroda Vs. Kotak Mahindra Bank Ltd., made in Civil Appeal No.2175 of 2020, dated 17.03.2020.***

10. In reply, the learned Counsel for the petitioners submitted that the petitioners are not in possession of either jewelry or articles of Fathima Shanthi James. The marital dissolution agreement and final order was passed on 11.08.2011. However, the statement of Fathima Shanthi James was recorded only on 09.11.2012. She deliberately did not say anything about the marital dissolution agreement and final order passed by the Circuit Court of Hamilton Country, Tennessee. It shows the falsity in her statement. All the witnesses in this case are near relatives. Their statements are parrot like and repetitive. No independent witness had been examined. In view of the the final order passed by the Circuit Court of Hamilton Country, Tennessee, there is nothing survives in

this case. There is no possibility of recording conviction in the light of the order passed by the Circuit Court of Hamilton Country, Tennessee. The trial is unnecessary, abuse of process of Court and therefore, he seeks quashment of the criminal cases.

11. Heard the learned Counsel for the petitioners, the learned Counsel for the defacto complainant and the learned Government Advocate (Crl.Side) appearing for the State and perused the materials placed on record.

12. The main ground on which the petitioners filed these quash petitions is that Fathima Shanthi James and the first accused - Leo Vinod Marcus Antony had entered into marital dissolution agreement and final order was passed by the Circuit Court of Hamilton Country, Tennessee. The learned Counsel for the respondent submitted that there was a final decree of dissolution of marriage between the first accused - Leo Vinod Marcus Antony and Fathima Shanthi James in dissolving the marriage by a competent Court of jurisdiction at Tennessee. It is his case that the dissolution of marriage was done by fraudulent tactics adopted by the the first accused - Leo Vinod Marcus Antony. He further submitted that Fathima Shanthi James agreed for dissolution of marriage and consent had been obtained by fraud at the instance of the first accused - Leo Vinod Marcus Antony, whereby it was informed that he will return all gold jewels with sridhana articles and cash. The first accused had agreed to pay 7500 US dollars to the victim and other monetary relief coupled with distribution of properties among them. However, as undertaken, the gold jewels, sridhana articles and cash had not been returned. Therefore, the marital dissolution agreement and final decree passed by the Circuit Court of Hamilton Country, Tennessee, is not binding, as it is an order obtained by false representation, which amounts to fraud.

13. A reading of the judgment reported ***Smt.Satya Vs. Shri Teja Singh*** reported in ***(1975)1 Supreme Court Cases 120,*** shows that this is a case where a husband, who went to USA for further studies leaving his wife and children in India, filed a petition for dissolution of marriage in Navada Court and got a decree of divorce. Wife filed a petition for maintenance in India. The learned Jurisdictional Magistrate directed the husband to pay maintenance to wife and children. That was confirmed by the learned Additional Sessions Judge. However, the High Court of Punjab and Haryana set aside the order on the ground that " at the crucial time of the commencement of the proceedings for divorce before the Court in Navada, the petitioner was domiciled within that State in United States of America." When the matter came up before the Honourable Supreme Court, the Honourable Supreme Court, after analysing the position of law, finally observed that "the Courts shall have to exercise a residual discretion to avoid flagrant injustice for, no rule of Private International law could compel a wife to submit to a

decree procured by the husband by trickery. Such decrees offend against our notions of substantial justice". Thus, set aside the order of Punjab and Haryana High Court and allowed the appeal.

14. In another case involving partition and domicile of a person issue, the Honourable Supreme Court held as follows ***in Sankaran Govindan and Lakshmi Bharathi and others*** reported in ***1975 SCC(3) 351***:

> "The position, therefore, is that so far as the major respondents in ex. 56 proceedings were concerned, the court had jurisdiction since they submitted to its jurisdiction and the decision of the court would operate as res judicata. But, so far as the minor respondents to those proceedings are concerned, we are of the view, on the evidence in this case, which we have already discussed in detail, that Krishnan had no settled or definite intention to return to Travancore and that, as he was a resident in England and as his acts and conduct were consistent only with his intention to make it his permanent home, he died domiciled in England.We think that the High Court was right in its conclusion that the sale proceeds of the house in Sheffield has to be distributed accordingly to the English law. To this extent we uphold the judgment of the High Court but set it aside in other respects."

15. It is evident from the proposition laid down in these rulings that only if a foreign decree is shown to have been obtained exercising fraud, that decree is not binding on the parties. In the case before hand, the final decree dissolving the marriage between the first accused - Leo Vinod Marcus Antony and Fathima Shanthi James was passed on 11.08.2011. We are in fag end of July 2021. It is more than ten years since this decree was passed. Both parties are even now living in USA. If really, Fathima Shanthi James believes that this decree was obtained by exercising fraud, she should have filed petition before the competent Court for setting aside the final decree. That has not been done so far. Therefore, the claim of the learned Counsel for the respondent that the marital dissolution agreement and final decree passed by the Circuit Court of Hamilton Country, Tennessee, was obtained by fraud, cannot be accepted. It is binding on the parties to the final decree.

16. With regard to the submission of learned Counsel for the respondent that the foreign decrees can be executed only among the reciprocating Countries as per Section 44-A of the Civil Procedure Code, this Court is of the considered view that this Section applies only to the execution of decrees, especially money decrees. It is explained that the term decree means

> *"Explanation 2.-- "Decree" with reference to a superior Court means any decree or judgment of such Court under*

which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment."

Therefore, this Court is of the considered view that Section 44-A of the Civil Procedure Code is not applicable to this case.

17. The next question is as to whether the charge sheet in C.C.Nos.110 and 140 of 2013 can be quashed on the basis of this final decree.

(i) In ***Ruchi Agarwal Vs. Amit Kumar Agrawal and others*** reported in ***(2005)3 Supreme Court Cases 299***, the Honourable Supreme Court held as follows:

"7. It is based on the said compromise the appellant obtained a divorce as desired by her under Section 13 (B) of the Hindu Marriage Act and in partial compliance of the terms of the compromise she withdrew the criminal case filed under Section 125 of the Criminal Procedure Code but for reasons better known to her she did not withdraw that complaint from which this appeal arises. That apart after the order of the High Court quashing the said complaint on the ground of territorial jurisdiction, she has chosen to file this appeal. It is in this background, we will have to appreciate the merits of this appeal.

9. In view of the above said subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash proceedings arising from the Criminal Case No.Cr.No.224/2003 registered in Police Station, Bilaspur, (Distt.Rampur) filed under Sections 498A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of."

(ii) In ***Mohd. Shamim and others Vs. Nahid Begum (Smt) and another***, reported in ***(2005)3 Supreme Court Cases 302***, the Honourable Supreme Court held as follows:

"12. In view of the fact that the settlement was arrived at the intervention of a judicial officer of the rank of the Additional Sessions Judge, we are of the opinion, the contention of the First Respondent herein to the effect that she was not aware of the contents thereof and the said

agreement as also the affidavit which were got signed by her by misrepresentation of facts must be rejected. In the facts and circumstances of this case, we have no doubt in our mind that the denial of execution of the said deed of settlement is an afterthought on the part of the Respondent No.1 herein."

(iii) In ***Swapnil and others Vs. State of Madhya Pradesh*** reported in ***(2014)13 Supreme Court Cases 567***, the Honourable Supreme Court held as follows:

" 10. *The first appellant and second respondent had in fact solemnized their marriage at Arya Samaj Mandir on 16.06.2007 privately, as they were stated to be in love with each other for sometime. Thereafter only, in the presence of the family members, marriage was solemnized on 24.06.2009. It has to be seen that admittedly the second respondent has been living separately since April, 2011. Thereafter, she had lodged a complaint on 07.09.2011 before the very same police station. The same was duly enquired into and it was closed stating that the dispute is actually between the families which are to be otherwise settled in legal proceedings. If there are such differences between families which are to be settled in legal proceedings, how such differences would constitute and give rise to a successful prosecution under Sections 498A or 506 IPC or under Section 4 of the Dowry Prohibition Act, 1961, is the crucial question.*

11. The second respondent has been living separately since April, 2011and hence, there is no question of any beating by the appellants as alleged by her. The relationship having got strained ever since April, 2011, even application for restitution of conjugal rights having been withdrawn on 16.04.2012 as the second respondent was not interested to live together, it is difficult to believe that there is still a demand for dowry on 30.04.2012 coupled with criminal intimidation. The allegations are vague and bereft of the details as to the place and the time of the incident. We had called for the records and have gone through the same. The materials before the learned Judicial Magistrate First Class, Indore are not sufficient to form an opinion that there is ground for presuming that the accused appellants have committed the offence under the charged Sections. The Additional Sessions Court and the High Court missed these crucial points while considering the petition filed by the appellants under Section 397 and Section 482 of the Cr.PC respectively. The veiled object behind the lame prosecution is apparently to harass the appellants. We are, hence, of the view that the impugned prosecution is wholly unfounded."

It is seen from these judgments, some criminal proceedings can be quashed if there is a compromise and there is no possibility of recording a conviction.

18. The First Information Report in this case was registered on 05.11.2011. The defacto complainant in this case is not Fathima Shanthi James, but her father R.James. As narrated above, the case of the prosecution is that the second and third accused, who are petitioners in Crl.O.P.(MD)No.5239 of 2017, at the instigation of the first accused - Leo Vinod Marcus Antony, who is the petitioner in Crl.O.P.(MD)No.8033 of 2019 had demanded dowry and additional dowry and harassed the defacto complainant, his wife and also their daughter Fathima Shanthi James. Repeated allegations are made only against the accused 2 and 3 stating that they are the one, who had demanded dowry and additional dowry. On failure to pay, or meet their demand, they said to have harassed Fathima Shanthi James and insulted, caused cruelty against the defacto complainant, his wife and his daughter. Final report is filed under Sections 498(A) I.P.C., and Section 4 of Dowry Prohibition Act.

19. Section 498-A I.P.C., reads as follows:

> ***498A. Husband or relative of husband of a woman subjecting her to cruelty.***—*Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*
> *Explanation.—For the purpose of this section, "cruelty" means—*
> *(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or*
> *(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.*

20. The term "cruelty" includes harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand. The term "Any person" in this Section covers and includes the defacto complainant and his wife. Therefore, the harassment should not necessarily be only against wife of the accused, it also includes any person related to her, who may be parents or anyone else.

21. Similarly Section 4 of Dowry Prohibition Act reads as follows:

> **4. Penalty for demanding dowry.**—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees: 2[4. Penalty for demanding dowry.—If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees\:" Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

Thus it is clear from this Section, if any person demands directly or indirectly from the parents or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable.

22. As already indicated, the second and third accused, said to have demanded dowry from the defacto complainant and his wife. Normally the dowry is demanded only from the parents of the bride. Therefore, the persons really affected in this case are the defacto complainant and his wife. It is seen that Leo Vinod Marcus Antony was mostly in USA before marriage talk. The allegation of demand of dowry and harassment was made mainly against his parents. They are not parties to any compromise agreement with defacto complainant or his daughter. The marital dissolution agreement and final decree passed thereon, will only provide relief to the first accused - Leo Vinod Marcus Antony, but when it comes to the case of the defacto complainant and his wife, the fact that they are also affected party, in terms of Section 498-A I.P.C., and Section 4 of Dowry Prohibition Act, this Court is of the considered view that the charge sheet in C.C.No 140 of 2013 cannot be quashed, for the reason that the first accused - Leo Vinod Marcus Antony and Fathima Shanthi James had entered into marital dissolution agreement and their marriage was dissolved by the final decree.

23. With regard to other submissions that except one driver, other witness are close family members, no independent witness had been examined by the police to prove the charges of demand of dowry and dowry harassment, in these kinds of cases, demand of dowry, harassment in relation to dowry, would happen only within a closed circle, within four walls in a house. There may not be any possibility of third parties knowing about the demand of dowry and harassment, in connection with demand of dowry. Petitioners will have an opportunity of cross-examining the witnesses in this case for proving their innocence. They can produce their evidence. On merits, the criminal case can be quashed, only if there is

absolutely no material to frame a charge or record conviction. We have to assume that material filed in support of the prosecution case is true and even thereafter, if there is no case is made out, a case can be quashed. That situation is not present in this case. The witnesses to the prosecution case have given statement against the accused in this case, implicating them in demand of dowry and harassment. In such circumstances, this Court is of the considered view that the prayer for quashment of criminal proceedings in C.C.No. 140 of 2013 cannot be entertained and the petition in Crl.O.P.(MD)No.5239 of 2017 is dismissed. It is already stated that the final decree passed by the Circuit Court of Hamilton Country, Tennessee, on the basis of Marital Dissolution Agreement is binding on Fathima Shanthi James and Leo Vinod Marcus Antony and no useful purpose will be served by continuing the criminal prosecution and therefore, the criminal proceedings in C.C.No.110 of 2013 on the file of the learned Additional Mahila Court (Magisterial level), Tirunelveli is quashed.

24. In the result, Crl.O.P.(MD)No.8033 of 2019 is allowed and Crl.O.P.(MD)No.5239 of 2017 is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

25. Considering the fact that this case was registered on 05.01.2011 and pending in C.C.No. 140 of 2013 from the year 2013, this Court directs the learned Additional Mahila Court (Magisterial level), Tirunelveli to expedite the trial process and complete the trial as expeditiously as possible. Accordingly, Crl.O.P.(MD) No.18705 of 2016 is disposed of.

26. At this juncture, the learned counsel for the petitioners in Crl.O.P.(MD)No.5239 of 2017 would submit that petitioners are senior citizens and they are not able to attend the Court for every hearing and therefore prays that the presence of the petitioners before the court may be dispensed with.

27. In view of the above, the presence of the petitioners in Crl.O.P.(MD)No.5239 of 2017 herein before the trial Court shall be dispensed with on condition that they should be present for receiving copy of final report, for initial questioning and for answering charges, at the time of questioning under Section 313 of Cr.P.C and passing of judgment.

28.The petitioner is further directed to give an undertaking in the form of affidavit that the counsel representing them will cross examine the respondent / complainant and his witnesses on the day they are examined in chief. The petitioners shall not dispute the identity of the witnesses. The petitioners shall appear before the Court in the event if their presence is insisted by the trial Judge for the purpose of mediation. If the petitioners adopt any dilatory tactics, it is open to the trial court to insist for their appearance and deal with the petitioners in accordance with the judgment of Supreme Court of India, in ***State of Uttar Pradesh Vs. Shambunath Singh***, reported in ***(2001)4 SCC 667.***

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

SSL

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. Judicial Magistrate, Additional Mahila Court,
   Tirunelveli, Tirunelveli District.

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

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

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate SR-24619[F]
+1 CC to M/s.G.PRABHU RAJADURAI, Advocate SR-25018[F]

ORDER IN
CRL OP(MD) Nos.18705 of 2016, 5239 of 2017
and 8033 of 2019
Date :30.07.2021

se(CO)
TR(09.08.2021) 13P 6C