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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.O.P(MD)No.21847 of 2016

and

Cr1.MP(MD)No.11254 of 2016

1.Rajesh

2.Andrus Mariya John

3.Amaladass

4.Anitha

5.Amutha

: Petitioners / Accused Nos.3 to 7

Vs.

1.The State represented by
the Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.

2.Sheeba Selin Mary

: Respondent / *De facto* complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the Charge Sheet in C.C.No.96 of 2016 pending before the learned Judicial Magistrate, Eraniel Kanyakumari District, and quash the same as illegal.

For Petitioners : Mr.M.Maran

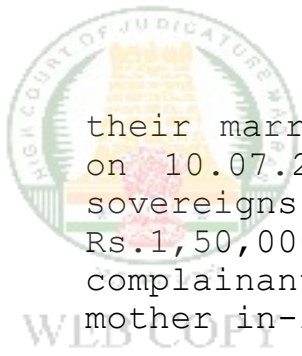
For Respondent No.1 : Mr.R.Anandharaj,
Additional Public Prosecutor

For Respondent No.2 : Mr.G.Aravinthan

ORDER

This petition is filed by the petitioner seeking to quash the proceedings in C.C.No.96 of 2016 pending on the file of the learned Judicial Magistrate, Eraniel Kanyakumari District,

2.The petitioners are accused Nos.3 to 7 in C.C.No.96 of 2016 pending on the file of the learned Judicial Magistrate, Eraniel. This calendar case is arising out of a complaint lodged by the second respondent as against her husband and other in laws that



their marriage with the first accused Christopher was solemnised on 10.07.2013. At that time of marriage, her parents gave 45 sovereigns of gold ornaments and household articles worth Rs.1,50,000/-. After the marriage the second respondent/ *defacto* complainant was living with the first accused Christopher and her mother in-law Rose Mary at Pattukottai in the matrimonial house.

3.The learned Counsel further submits that it is alleged that these accused and other in-laws have also demanded a sum of Rupees forty lakh and therefore she lodged a complaint as against all the accused before the first respondent Police on 06.11.2015 and the same was registered in Crime No.39 of 2015 as against these petitioners and two others for the offence punishable under Sections 498(A), 406 and 506(i) IPC and Sections 4 the Tamil Nadu Prohibition of Harassment of Woman Act. In conclusion of the investigation, the respondent Police filed a final report under Sections 498(A), 406 and 506(i) IPC and Sections 4 and 6 of the Dowry Prohibition Act as against accused Nos.1 and 2, under Sections 498(A) and 506(i) IPC and under Section 4 of the Dowry Prohibition Act, as against accused Nos.3 and 4 and under Sections 498(A) and 506(i) IPC as against accused No.5, and under Section 498(A) IPC as against accused Nos.6 to 9, before learned Judicial Magistrate, Eraniel and the same was taken on file in C.C.No.96 of 2016.

4.Agrieved over the final report, accused Nos.3 to 7 have filed the present petition to quash the proceedings pending against them in C.C.No.96 of 2016. The first petitioner is the sister of accused No.1, Christopher and second petitioner is her husband, third petitioner is paternal uncle of the first accused and fourth and fifth petitioners are their daughter - in-law and daughter respectively.

5.Mr.M.Maran, learned Counsel appearing for the petitioners submitted that there is no specific averment as against these petitioners except certain vague allegations and this false complaint has been lodged only in order to harass the petitioners / in laws of the *defacto* complainant. Even in the 161 (3) CrPC statement, the *defacto* complainant has made certain allegations as against the second petitioner that he has compelled her to wash his inner garments and the petitioners 2 and 3 have beaten her with stick. However, no specific date is mentioned as to when such occurrence has taken place. Similarly as against petitioners 3 to 5, allegations have been made as if, accused No.5 has objected the *defacto* complainant, when she went to the land of her husband, abused her and criminally intimidated her. For this alleged incident also there is no specific date given as to when the incident had occurred.



6.The learned Counsel would further submit that there is no material placed on record that her husband Christopher was having any land. Based on these bald allegations, the respondent Police also registered the complainant and filed a final report as against these petitioners. Therefore, the learned Counsel for the petitioners submitted that the allegations are bald without specific date, time and place and therefore, the final report filed based on these vague allegations is liable to be dismissed.

7.The learned Counsel for the petitioner has also relied upon the following orders of the Hon'ble Supreme Court.

1.**Preeti Gupta and another Vs State of Jharkhand and another**, reported in **(2010) 7 SCC 667**.

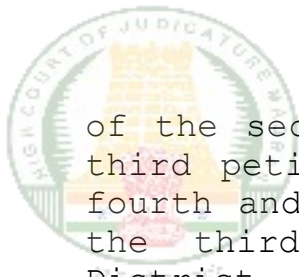
2.Sushil Kumar Sharma Vs Union of India and Others, reported in (2005) 6 SCC 281

8.Mr.R.Anandharaj, learned Additional Public Prosecutor, appearing for the State submits that based on the complaint of the second respondent, the first respondent Police conducted investigation and with the available materials, they have filed the final report as against accused Nos.1 and 2 under Sections 498 (A), 406, 506(i) IPC and Sections 4 and 6 of the Dowry Prohibition Act, as against accused Nos.3 and 4 under Sections 498(A) and 506 (i) IPC and under Section 4 of the Dowry Prohibition Act, as against accused No.5, under Section 498(A) and 506(i) IPC and as against accused Nos.6 to 9 under Section 498(A) IPC before learned Judicial Magistrate, Eraniel in C.C.No.96 of 2016 and the veracity of the evidences can only be tested during the trial and therefore, prayed for dismissal of the criminal original petition.

9.Mr.G.Aravidhan, learned Counsel for the second respondent *defacto* complainant has also relied on the 161(3) statement of the *defacto* complainant and would submit there are specific averments as against the petitioners that they have harassed the second respondent/ *defacto* complainant and also harassed by demanding dowry and therefore, the same can be tested only during the trial.

10.This Court paid its anxious consideration to the rival submissions and perused the materials placed on record.

11.A perusal of the records would show that the petitioners are in laws of the second respondent / *defacto* complainant. The marriage between the second respondent and the first accused Christopher was solemnised on 25.07.2013. Admittedly, the first accused was having business establishment at Pattukottai in Thanjavur District and he was having ready made shop even before the marriage. Admittedly after the marriage the second respondent was living with her husband and mother-in-law at Pattukottai. The first petitioner is the sister of Christopher and she is the wife



of the second petitioner and they were living at Coimbatore. The third petitioner is the paternal uncle of the first accused and fourth and fifth petitioners are daughter and daughter in-laws of the third petitioner and they were residing at Kanyakumari District.

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12. In this case, on 26.11.2020 a representation was made by the learned Counsel for the petitioners that the first accused and the second respondent *defacto* complainant got reunited, they also gave birth to another child and they are living at Pattukottai. Therefore, prayed that recording the same, the case may be closed. Based on the said submissions of the learned Counsel for the petitioners, this Court by earlier order dated 26.04.2020, directed the Registry to issue notice to the first accused and the second respondent by directing them to appear on 22.03.2021 before this Court and it was not taken for hearing on that day and therefore, by order dated 17.04.2021, this Court directed the parties to appear to before this Court video conferencing. Accordingly, the first accused Christopher and the second respondent appeared through the video conferencing. The first accused Christopher submitted that he has reunited with the second respondent *defacto* complainant and is living together with her. However, the second respondent is having certain difference as against these petitioners and in laws that she had some problems with her husband at the instigation of the petitioners. She also reiterated that the second petitioner insisted her to wash his inner garments. Further the third petitioner has objected to her entry into her husband's land at Kanyakumari District. She had expressed that she is not inclined to settle the disputes with the petitioners/ in-laws. Further she admitted the fact that she is living with her husband.

13. This Court has perused the complaint, 161(3) CrPC statement of the second respondent *defacto* complainant. The second respondent / *defacto* complainant has stated that the second petitioner has insisted her to wash his inner garments and the first petitioner is said to have assaulted her with broom stick. Neither in the complaint nor in the 161(3) CrPC statement, there is reference as to when and where this occurrence has taken place. Similarly, the allegations are made against the third petitioner/ paternal uncle of the first accused that he objected to her entry into the land of her husband, abused and criminally intimidated her. Even for these incidents also there is no specific date and place and the time have been mentioned. The prosecution was launched as against these petitioners on these vague allegations that these petitioners have also committed cruelty as against these second respondent *defacto* complainant.



Bhajan Lal and Others, reported in **1992 (1) SCC 335**, has held as follows:

"In the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) under Chapter XIV and of the principles of law enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised:

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings

and where there is a specific provision in the Code



or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

15. In **Preeti Gupta and another Vs State of Jharkhand and another**, reported in (2010) 7 SCC 667, the Hon'ble Apex Court has held as follows:

"32. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

33. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also



reflected in a very large number of cases.

35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon'ble Minister for Law & Justice to take appropriate steps in the larger interest of the society."

16. In case Nagawwa Vs Veeranna Shivalingappa Konjalgi, reported in 1976 AIR 1947, the Hon'ble Apex Court has observed that it may be safely held that in the following cases an order of the Magistrate issuing process against the accused can be quashed or set aside:

(1) Where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and .

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

<https://hcservices.courts.gov.in/hcservices> 17. In the case on hand, the complaint is lodged without even



minimum required details, such as date, time and place of the offence. Therefore, applying the ratio laid down by the Hon'ble Apex Court, the petitioners cannot be prosecuted merely on the vague allegations.

18. In view of the above discussion, this petition is allowed. The proceedings in C.C.No.96 of 2016 on the file of the learned learned Judicial Magistrate, Eraniel Kanyakumari District as against these petitioners is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL)

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/ /2021

Sub Assistant Registrar(CS)

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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 Judicial Magistrate,
Eraniel,
Kanyakumari District,
- 2.The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P(MD)No.21847 of 2016
29.04.2021

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SB(29.12.2021) 8P 4C