



Crl.O.P No.12475 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.12475 of 2021
and Crl.M.P. No.6957 of 2021

1. Joseph Jesudoss
2. J.Fathima
3. J.Augustin
4. J.Sahaya Mary

... Petitioners

Vs.

The State by
Inspector of Police,
All Women Police Station,
Tambaram.
(Cr. No.13 of 2008)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P. No.4888 of 2018 dated 26.10.2018 in C.C. No.390 of 2008 on the file of the Judicial Magistrate, Tambaram.

For Petitioners : Mr. R.Vijayakumar

For Respondent-1 : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed to set aside the order passed in Crl.M.P. No.4888 of 2018 dated 26.10.2018 in C.C. No.390 of 2008 on the file of the Judicial Magistrate, Tambaram.

2. The petitioners are the accused 1,3,4 & 5 in the case registered by the respondent police in Cr.No.13 of 2008 for the offences under Sections 498(A), 406, 506(ii) IPC. An impugned order in Crl.M.P. No.4888 of 2018 in C.C. No.390 of 2008 has been passed by the learned Judicial Magistrate, Tambaram on the petition filed by the respondent agency to recall P.W.1 to mark certain documents and the same was allowed. Aggrieved over the same, the petitioners have filed this Criminal Original Petition.

3. The learned counsel for the petitioners submitted that the petition to recall P.W.1 to produce additional materials have been filed with a delay of 8 years and after the trial, arguments were over; P.W.1 has not spoken about any of the documents now sought to be produced in her statement during investigation and the accused were also not given with the copies of the documents; the prosecution has filed a petition under Section 311



Cr.P.C. just to fill up the lacuna in their case and it should not be allowed.

In support of the his arguments, the learned counsel for the petitioner has relied upon the judgment of this Court in *M/s. Dandy Knit Garments and another Vs. M/s. Subiksha Spinners (P) Ltd.*, reported in **2000 CRI.L.J.624**.

4. The records would show that it is a case registered on the complaint given by the *de facto* complainant that she was married to the first accused and she was subjected to matrimonial cruelty and other allegations. On the basis of the said allegations, FIR has been registered by the respondent police against the petitioners in Cr. No.13 of 2008 for the offences under Section 498, 406, 506(ii) IPC. In the petition filed to recall P.W.1, it is stated by the respondent that the materials like photographs taken at the time of marriage, xerox copies of the birth certificate of her son Simon Rudes, and medical records have been given to the investigation agency but due to some inadvertence, these documents were not produced along with the charge sheet and marked at the time of examination of witnesses.



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5. I can only say that it is a gross negligence on the part of the prosecution to produce material documents which have been produced by the *de facto* complainant during the course of investigation itself. Even according to the submission of the learned counsel for the petitioner, the first accused denies his marriage with the *de facto* complainant. Unless the *de facto* complainant proves her marital status with the first accused, she cannot maintain a case for the offence under Section 498 A IPC. Though these documents would establish the factum of marriage, for the reason best known to the prosecution, these documents were not produced along with the charge sheet and due to which copies of the said documents were also not furnished to the accused. For the lapse on the part of the prosecution, the complainant cannot be made to suffer. The rightful course that should have been adopted is to file a memo to receive additional documents. It is the duty of the Court to furnish copies of documents to the accused before admitting them as documents during trial. It is needless to state that the material objects like photographs and CD's etc., should also be made available for the perusal of the accused.



6. The learned counsel for the petitioner submitted that evidence cannot be produced without any specified reason. It is up to the prosecution to comply the legal formalities at the time of filing electronic evidence. Whatever may be the case, the proof of factum of marriage between the *de facto* complainant and the first accused would go to the root of the case. Just because the respondent was indifferent in his approach and omitted to produce all those essential materials that have been produced by the *de facto* complainant, the ends of justice cannot be defeated.

7. The learned Magistrate has taken into consideration in the interest of justice and allowed the petition only on that ground. The petitioners are not deprived to cross-examine P.W.1 on the additional evidence which is sought to be now produced on behalf of the prosecution. However it cannot be said that the production of additional materials themselves is adverse to the interest of the petitioners. It can be different matter, if the first accused did not deny his marriage with the *de facto* complainant. In that case the prosecution has got no burden to prove the marriage between the first accused and the *de facto* complainant. Disallowing the petition on the ground of delay or any other legal formalities would definitely defeat the



ends of justice.

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8. The materials now sought to be produced before the Court cannot be considered as something which have been produced at the later point of time to fill up the lacuna. On the other hand, it is the negligence on the part of the prosecution which have been rectified now. Hence, I do not find any reason to interfere with the order of the Judicial Magistrate, Tambaram passed in Crl.M.P. No.4888 of 2018 in C.C. No.390 of 2008.

9. In view of the above, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

17.10.2022

Index : Yes/No
Speaking Order : Yes / No
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To

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1. Inspector of Police,
All Women Police Station,
Tambaram.
2. The Judicial Magistrate, Tambaram.
3. The Public Prosecutor
High Court of Madras.



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R.N.MANJULA, J.,

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