

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.16195 OF 2020

AND

CRL.MP.NOS.6208 OF 2020

1.Thiraviyam
2.Vasantha
3.T.Rajeswari
4.Somasundaram
5.P.Chandrasekaran
6.T.Sundarajan
7.T.Mohanraj

... Petitioners

Vs.

1. State by
The Inspector of Police,
W-8, All women Police Station,
Thirumangalam, Chennai.

2. S.Sujana

... Respondents

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.54 of 2017, on the file of the X Metropolitan Magistrate, Egmore, Chennai and quash the proceedings.

For Petitioners: Mr.V.Prem Kumar
for V.V.Sairam

For Respondents: Mr.A.Gopinath
Government Advocate (Crl. Side)
for R1

O R D E R

This Criminal Original Petition has been filed, invoking Section 48 Cr.P.C seeking orders to call for the records pertaining to C.C.No.54 of 2017 pending on the file of the X Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2. The petitioners have been arrayed as accused A2 to A7 in Cr.No.54 of 2014 on the file of the first respondent police for the offences punishable under Section 498A, 406, 420, 294B and 506(ii) of IPC. Subsequently, the first respondent has filed charge sheet in C.C.No.54 of 2017 before the learned X Metropolitan Magistrate, Egmore, Chennai.

3. The case of the prosecution is that on 29.06.2011 the marriage was solemnized between the defacto complainant and one Sivaraj who is the son of the first and second petitioners. After marriage, the said Sivaraj who is working in a foreign country was able to stay in India only for 10 days along with his wife. After 10 days, he left abroad. Thereafter, the petitioners herein and the defacto complainant's husband Sivaraj have harassed the defacto complainant by demanding more dowry and threatened her. Hence, the complaint.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the first respondent police.

4. A perusal of the charge sheet reveals that there are specific allegations against each and every petitioners herein to attract the offences under Sections 498A, 406, 420, 294b and 506(ii) of IPC. That apart one of the grounds raised by the petitioners is misappropriation of funds and it cannot be considered in this quash petition filed under Section 482 of Cr.P.C and hence, this petition is liable to be dismissed.

5. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by

the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

6. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in Crl.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

7. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in Crl.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of

the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

8. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.54 of 2017 on the file of the X Metropolitan Magistrate, Egmore, Chennai. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners, the personal appearance of the petitioners are dispensed with before the trial Court. However, the trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

8. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
W-8, All women Police Station,
Thirumangalam, Chennai.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.16195 of 2020
and
Crl.MP.Nos.6208 of 2020

NRL(CO)
PM/20/07/2022