



Crl.O.P.No.18606 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On: 12.07.2022

Delivered On: 06.10.2022

CORAM:

THE HON'BLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

Crl.O.P.No.18606 of 2021

and

Crl.M.P.Nos.10226 & 10231 of 2021

1. Mr.K.Gopinath
2. Mrs.Selvi
3. Mrs.Suganthi
4. Mr.Rajesh Kumar
5. Mrs.Deepa
6. Mr.Kasirajan ... Petitioners/Accused

Vs.

- 1.The State
Rep. By Inspector of Police,
AWPS-Neyveli
Cuddalore – 607802 ... Respondent/Complainant
2. Mrs.K.Kiruthiga ... 2nd Respondent/De-facto Complainant

PRAYER: Criminal Original Petition had been filed under Section 482 of Criminal Procedure Code, seeking to call for the records and quash the C.C.No.41 of 2021 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli – 2.

For Petitioner : Mr.A.Nagarajan



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for Mr.A and N Care Solicitors



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For Respondent 1 : Mr.L.Baskaran
Government Advocate (Crl. Side)
For Respondent 2 : Mr.A.M.Rahamath Ali

ORDER

This Criminal Original Petition has been filed to quash the case in C.C.No.41 of 2021 on the file of the learned District Munsif cum Judicial Magistrate, Neyveli – 2.

2. It is the contention of the learned Counsel for the Petitioners that the subject matter is not referred to Dowry Prohibition Act and the first Petitioner is A-1 in the FIR. He is an ITI holder, he is working Abroad and he had left India on 29.03.2016. The allegation against the Petitioners as per the Complaint commences from the month of June, 2017. Four years after the date of occurrence, the Complaint had been registered dated 03.10.2020. If what had been stated in the Complaint is true, the second Respondent/Defacto Complainant should have called her parents who are residing in the very same town where the matrimonial home of the Defacto Complainant is situated. The Defacto Complainant has delivered female



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child. If what had been alleged in the Complaint is true, the parents of the Defacto Complainant are also residing in the very same town and they will not keep quiet. The relevant portion is extracted hereunder:

“இதற்கு இடையில் என் நாத்நார் சுகந்தி என் மாமியார் செல்வி என்னைப்பற்றி தப்பு தப்பாக சொல்லி கொடுத்ததால் எனது மாமியார் செல்வி என்னை 2017 ஜூன் மாதத்தில் என்னை செருப்பாலும், பெல்ட்டாலும் அடித்து என்னை என் தாய் வீட்டிற்கு துரத்தி விட்டார்கள்.”

2.1. The learned Counsel for the Petitioners invited the attention of this Court to the deposit of amount under the scheme of Sukanya Samriddhi Yojana by the Petitioner in the name of his minor daughter and he had filed the proof regarding the deposit of the amount in the name of the child.

2.2. It is the contention of the learned Counsel for the Petitioners that the FIR had been registered by the All Women Police Station without holding any enquiry as per the reported ruling of *Lalita Kumari* case. After 4 years of occurrence till September 2020, FIR was not registered. This is nothing but cause of harassment on the husband of the second Respondent and his family and the child. On 03.10.2020, the Complainant had lodged the Complaint and she states that “குழந்தையைப் பார்த்தார்கள் வீட்டில்



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சேர்க்கவில்லை”, contrary to the allegations in the Complaint given to the Inspector of Police, All Women Police Station on 03.10.2020, the Complaint does not mention about the dowry prohibition and it was registered only under Sections 498 (A), 294 (b) and 506(ii) of IPC and not under the dowry prohibition act.

2.3. The learned Counsel for the Petitioners invited the attention of this Court to the copy of the Complaint preferred by A-2/Selvi/Petitioner-2/ mother in law of the second Respondent before the Deputy Superintendent of Police regarding the sufferings undergone by her and her family members and no offence under the Dowry Prohibition Act. Instead of lodging the Complaint by the mother of the first petitioner, the Police had laid the final report. On the basis of the Complaint, the Complaint itself recorded as statement. The second Respondent with an intention to cause harassment to the third Petitioner, she had sent registered Complaint to the third Petitioner's workplace i.e., School Authorities through email. In the meanwhile, the second Respondent had also filed a Domestic Violence Complaint before the learned District Munsif cum Judicial Magistrate,



Neyveli. Based on the Complaint dated 03.10.2020, FIR in Cr.No. 14/2020 and there is no mention of Domestic Violence Complaint. Therefore, the learned Counsel for the Petitioners seeks to quash the Criminal Case.

2.4. The learned Counsel for the Petitioner had also relied on the following rulings:

(I) **2022 Livelaw (SC) 141** in the case of **Khakashan Kausar @ Sonam & Ors Vs. State of Bihar & Ors**, the relevant portion is extracted hereunder:

Indian Penal Code, 1860 – Section 498A – Incorporation of Section 498 A of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498 A IPC as instruments to settle personal scores against the husband and his relatives.(Para 12)

19..... The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High Court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against



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them being general and omnibus, do not warrant prosecution.

22. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the Accused Appellants, it would be unjust if the Appellants are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the Complainant's husband are forced to undergo trial. It has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the Accused, and such an exercise must therefore be discouraged.

(ii) (2005) 3 SCC 507 in the case of **Ramesh and others Vs. State of**

T.N., the relevant portion is extracted hereunder:

Before we proceed to deal with the two contentions relating to limitation and territorial jurisdiction, we would like to consider first the contention advanced on behalf of the appellant-Gowri Ramaswamy. Looking at the allegations in the F.I.R. and the contents of charge-sheet, we hold that none of the alleged offence, viz., [Sections 498-A, 406](#) of the I.P.C. and [Section 4](#) of the Dowry Prohibition Act are made out against her. She is the married sister of the informant's husband who is undisputedly living in Delhi with her family. Assuming that during the relevant time, i.e., between March and October, 1997, when the 6th respondent (informant) lived in Mumbai in her marital home, the said lady stayed with them for some days, there is nothing in the complaint which connects her with an offence under [Section 498-A](#) or any other offence of which cognizance was taken. Certain acts of taunting and ill-treatment of informant by her sister-in-law (appellant) were alleged but they do not pertain to dowry demand or entrustment and misappropriation of property belonging to the informant. What was said against her in the F.I.R. is that on some occasions, she directed the complainant to wash W.C. and she used to abuse her and used to pass remarks such as "even if you have got much jewellery, you are our slave." It is



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further stated in the report that Gowri would make wrong imputations to provoke her husband and would warn her that nobody could do anything to her family. These allegations, even if true, do not amount to harassment with a view to coercing the informant or her relation to meet an unlawful demand for any property or valuable security. At the most, the allegations reveal that her sister-in-law Gowri was insulting and making derogatory remarks against her and behaving rudely against her. Even acts of abetment in connection with unlawful demand for property/dowry are not alleged against her. The bald allegations made against her sister-in-law seem to suggest the anxiety of the informant to rope in as many of the husband's relations as possible. Neither the F.I.R. nor the charge-sheet furnished the legal basis to the Magistrate to take cognizance of the offences alleged against the appellant Gowri Ramaswamy. The High Court ought not to have relegated her to the ordeal of trial. Accordingly, the proceedings against the appellant Gowri Ramaswamy are hereby quashed and her appeal stands allowed.

(iii) **(2017) 9 SCC 413** in the case of ***Varala Bharath Kumar and Another Vs. State of Telangana and another***, the relevant portion is extracted hereunder:

Criminal Procedure Code, 1973 – S.482 – Inherent power under S.482 CrPC or extraordinary power under Art. 226, Constitution – When can be exercised by High Court – Principles summarised – Case of initiation of criminal proceedings under Ss.498-A and 406 IPC by second Respondent (Complainant) lady against first appellant – accused (her husband) and second Appellant -Accused (husband's family member) – No ingredients of Ss.498-A and 406 IPC made out.

(iv) The Order of this Court made in **Crl.O.P.No.13949 of 2017** dated **03.01.2019**, the relevant portion is extracted hereunder:



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9. This Court, on going through the materials and the statement given by the witnesses, is able to see that substantial allegations have been made as against A1, viz., the husband and A3, viz., the motherinlaw. Insofar as other accused persons are concerned, only general allegations have been made and there is absolutely no materials to show the commission of offence by the other accused persons. This is a classical case where the entire family has been roped in and the respondent police have mechanically filed the final report as against all the family members without even collecting sufficient materials against them. Unfortunately, the Court below while taking cognizance, has not applied his mind to the materials available on record and the Court below is also mechanically taken the cognizance as against all the family members.

The judgment of the Hon'ble Supreme Court in the case of RAJESH SHARMA & OTHERS V. STATE OF U.P. Reported in 2017 (4) CTC 667. The relevant portions are extracted hereunder:

14. Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand.⁸ It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was



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warranted.

11. From the above judgments, it is clear that the Hon'ble Supreme Court has deprecated this practice of roping in all the family members as accused in the matrimonial disputes. The Hon'ble Supreme Court also took note of the fact that most of the complaints are filed in the heat of the moment over trivial issues and many of the complaints are not bona fide. The Hon'ble Supreme Court also took note of the fact that these complaints lead to uncalled for harassment to the family members of the husband, who have nothing to do with the dispute between the husband and wife.

(v) The Order of this Court made in **Crl.O.P.No.4373 of 2020 dated 30.09.2020**, the relevant portion is extracted hereunder:

12. It is also seen from the statements, all are stereo type and in fact the neighbours have stated that there was no dowry harassment. In fact, the pendency of the proceeding between the petitioner and the second respondent are not at all considered by the first respondent and since the second respondent and her supporting evidences did not even whisper about those proceedings. It is settled law that the offence under Section 498A is a continuous offence. But in this case on hand, there is no explanation for the delay in lodgement of complaint by the second respondent. Admittedly, she left the matrimonial home on 07.08.2016. Thereafter there are so many proceedings, including the domestic violence complaint between the petitioner and the second respondent. All the matters are now pending for trial before the respective Courts. The second respondent suppressing all those facts and lodged complaint without any date of occurrence, place of occurrence and without any specific overtact as against the petitioner. The first respondent registered the case on the receipt of complaint itself without conducting any enquiry on 20.06.2019 and on the same day the first respondent recorded the statement under Section 161(3) of Cr.P.C., from all the witnesses expect two witness. This Court and the Hon-ble Supreme Court of India repeatedly held that in the matter related to the family



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Court offences, the police official has to conduct preliminary enquiry and only thereafter if any cognizable offence is made out can register the case. In the case on hand, on the same day, everything has been done and filed final report. Fortunately, the first respondent deleted other accused persons viz., the parents and relatives of the petitioner herein from the charge sheet.

(vi) (2010) 7 SCC 667 in the case of **Preeti Gupta and Another Vs.**

State of Jharkhand and another, the relevant portion is extracted hereunder:

“35. 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.

37. 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. 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



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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.”

3. The learned Government Advocate (Crl. Side) appearing for the first respondent vehemently objected to the submission of the learned Counsel for the Petitioners stating that what had been argued by the learned Counsel for the Petitioners cannot at all be considered at this stage under Section 482 of Cr.P.C. The gist of the Complaint given by the second Respondent is regarding the occurrence which had taken place in the newly married woman in-laws house. The Domestic Violence Case is filed for shelter and food and not for any Penal Clause. In this case, after due investigation, in the final report, the names of the two persons were removed. There were eight accused in the FIR. The names of Rajendran and Palaniammal had been removed at the stage of filing the final report.

3.1. It is the further submission of the learned Government Advocate (Crl. Side) that the Investigation Officer had examined 11 witnesses. From the statement of witnesses, the offences alleged by the second Respondent



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had been made out. There are specific charges filed under Sections 294(b) and 506(ii) of IPC. What had been argued by the learned Counsel for the Petitioners is to be treated as valuable defence before the Court of the learned Judicial Magistrate and exercising powers under Section 482 of CrPC, this court cannot go into the defence of the Accused.

4. The learned Counsel for the second Respondent submitted that the contradictions in Domestic Violence case cannot be considered by this Court exercising power under Section 482 of Cr.P.C. The Domestic Violence case is not contradictory to Section 498(A) of IPC. Only in trial, contradiction can be considered as averments that are specific and they are not Omnibus. What is the probative value of statement of witness cannot be considered under Section 482 of CrPC. The statement of Complainant under Section 164 of Cr.P.C., where the Complaint is pending and where A-1 deposit amount in his minor daughter's account cannot be considered under Section 482 of Cr.P.C.

4.1. It is the submission of the learned Counsel for the Petitioners that the preliminary enquiry was not at all conducted. By way of reply, the

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second Respondent submitted that the *Lalita Kumari* case is not mandatory, it is only directory. Commission of offences alleged in the Complaint had been made out.

5. On perusal of the Complaint and the rulings cited by the learned Counsel for the Petitioners, it is found that the first Petitioner had already filed a Petition seeking divorce against the second Respondent. As observed in the ruling cited by the learned Counsel for the Petitioners, it is a counter blast to the Divorce Petition filed by the first Petitioner against the second Respondent. Considering the Domestic Violence Case also pending, the submission of the learned Counsel for the Petitioners that the first Petitioner and his father viz., Kasirajan were abroad and they could not have attacked the Defacto Complainant. Even though it is found to be reasonable, it is a subject matter of evidence that who are the persons had caused physical and mental abuse on the second Respondent/De-facto Complainant whether the first Petitioner and his father even though were in foreign country, they can influence the Petitioner's mother and sister who were prior to her/De-facto Complainant on instigated the matrimonial dispute. Those facts are to be considered only during trial and not at this stage while invoking power of the



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High Court under Section 482 of Cr.P.C.

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5.1. Also, the learned Government Advocate (Crl. Side) submitted that the delay is not fatal, occurrence had taken place in the matrimonial home. Therefore, it cannot be quashed by this Court while exercising powers under Section 482 of Cr.P.C. It is the subject matter of the evidence which is found to be reasonable and acceptable by this Court. Considering the submission of the learned Counsel for the Petitioners and the reliance placed by the learned Counsel for the Petitioners and it is found that the FIR is registered in the year 2020 for the alleged occurrence that had taken place in 2016 cannot at all be accepted. Considering the relationship between the parties concerned, after continuous harassment by the in-laws, who was involved, can be considered only after proper appreciation of evidence. As rightly objected by the learned Government Advocate (Crl. Side) and the learned Counsel for the second Respondent, the facts pointed out by the learned Counsel for the Petitioners cannot at all be considered by this Court while exercising powers under Section 482 of Cr.P.C., since the first Petitioner and the father of the first Petitioner are working abroad and the first Petitioner had instituted the Petition seeking divorce against the second



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Respondent which will result in miscarriage of justice. The learned District Munsif-cum-Judicial Magistrate, Neyveli is within his/her discretion to pass appropriate orders regarding the exemption from the appearance, since the Petitioners identity is not disputed by the De-facto Complainant/second Respondent. Therefore, the filing of the Domestic Violence case and the registration of the FIR leading to final report are to be considered along with HMOP filed by the first Petitioner herein against the second Respondent. Therefore, as rightly pointed out by the learned Government Advocate (Crl. Side) what are all argued by the learned Counsel for the Petitioners are to be considered only during trial by appreciation of evidence. Hence, the contentions of the learned Counsel for the Petitioners are rejected.

6.In the light of the above discussions, this Criminal Original Petition is liable to be dismissed.

In the result, this **Criminal Original Petition is dismissed.**



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WEB COPY The learned District Munsif-cum-Judicial Magistrate, Neyveli – 2 is directed to dispose of the case within a reasonable period of three months from the date of receipt of a copy of this Order. Consequently, connected Miscellaneous Petitions are closed.

06.10.2022

dh

Index : Yes / No

Internet : Yes / No

To

1. The Inspector of Police,
AWPS-Neyveli
Cuddalore – 607802.
2. The learned District Munsif
cum Judicial Magistrate,
Neyveli – 2.
3. The Public Prosecutor,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP., J.

dh

**Pre-Delivery Order made in
Crl.O.P.No.18606 of 2021**

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