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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.02.2022  
Pronounced on : 21.02.2022

CORAM : JUSTICE N.SESHASAYEE

Criminal Revision Case No.1108 of 2021  
and  
Crl.M.P.No.14194 of 2021

Nithya ... Petitioner / Defacto Complainant

Versus

1.The Inspector of Police,  
All Women's Police Station,  
Namakkal

...1<sup>st</sup> Respondent / Complainant

2.Babu

...2<sup>nd</sup> Respondent / Accused

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.683 of 2021 in C.C.No.649 of 2019 on the file of learned Judicial Magistrate Cum Additional Mahila Judge, Namakkal and set aside the order of Learned Judge dated 09.11.2021 dismissing the petition.

For Petitioner : Mr.V.Venkatesan

For Respondents : Mr.Leonard Arul Joseph Selvam  
for R1  
Government Advocate (Crl.Side)  
Mr.K.V.Sridharan for R2

O R D E R

The defacto complainant herein is the wife of A1 in Crime No.4 of 2017 on the file of first respondent Police. The second accused is stated to be a lady love of the first accused.

2. The quintessence of the allegations is that the defacto complainant and A1 were married and are blessed with two children. The elder child was staying and studying at



Coimbatore, and the rest of the family members were residing in Qatar where A1 was employed. Later, he developed an intimacy with A2 and leaving the Complainant and her son stranded, both A1 and A2 left for India. It is further specifically alleged that A1 had abused the defacto complainant and mentally tortured her. A case came to be registered in Crime No.4 of 2017 of the respondent.

3. The matter was taken up for investigation by the first respondent and a final report has been laid. In the final report, A2's name was dropped. The learned Magistrate took up the matter in C.C.No.649 of 2019 and framed charges against A-1, who is now the sole accused.

4. The revision petitioner/defacto complainant then moved the learned Magistrate in Crl.M.P.No.683 of 2021 questioning the decision of the investigator to drop the name of A-2 and also for seeking further investigation under Section 173(8) of Cr.P.C. This came to be dismissed by the learned Magistrate essentially on the ground that the final report does not disclose that A2, who was arrayed in FIR, was prima facie involved in the commission of the crime alleged.

5.1 Heard all the counsel including the learned Government Advocate (Crl.Side). The learned counsel for the revision petitioner/defacto complainant argued that in the complaint the revision petitioner had made a categorical accusation implicating A-2 in the crime, but that the learned Magistrate over looked the same.

5.2 The learned Govt. Advocate submitted that there is no allegations that the investigation was unprofessionally done. Since there was no specific allegation or overt act made against A2/ the second respondent herein, the final report was not laid against A2. Learned counsel for the second respondent submitted that even in the FIR, no specific overt act of physical or mental cruelty as falling within 498A IPC was made and only some sweeping statements were made towards the end of the FIR. He relied upon the judgment in the case of Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Another [2019 SCC Online SC 1346].

6. The rival submissions and the final report are carefully weighed. It is not just that in the complaint of the revision petitioner, but also in her 161(3) statement she has not whispered anything specific about the involvement of A2. And, it is not her case that even now that Sec. 161(3) statement which she is purported to have been given is not hers. Therefore, this Court does not find any prima facie material to come to any



firm conclusion as to the complexity or involvement of A2 ( as in the FIR) to order further investigation.

7. In conclusion, this revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

msv/ds

To:

1. The Judicial Magistrate Cum Additional Mahila Judge,  
Namakkal.
2. The Inspector of Police  
All Women Police Station  
Namakkal.
3. The Public Prosecutor  
High Court, Madras.

+lcc to Mr.V.Venkatesan, Advocate, S.R.No.11135  
+lcc to Mr.K.V.Sridharan, Advocate, S.R.No.11672

Criminal Revision Case No.1108 of 2021  
and Crl.M.P.No.14194 of 2021

SMI[co]  
NSK 10/03/2022