



Crl.R.C.No.1515 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 24.11.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.1515 of 2022

and

Crl.M.P.No.17721 of 2022

1. B.Rojaramani

2. B.Saraswathi

3. R.Boopathi

... Petitioners

Vs.

1. The State Represented by
The Inspector of Police,
AWPS Sankari,
Salem 637 301.

2. H.Bhagyalakshmi

... Respondents

Prayer:

Criminal Revision Petition filed under Section 397 read with 401 of Cr.P.C., to call for the records and set aside the impugned order dated 03rd November 2022 in C.M.P.No.1212 of 2019 in Calendar Case 285 of 2018 on the file of the Judicial Magistrate No.II, Sankari, Salem District.



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For Petitioner : Mr.T.Sivamani

For R1 : Mr.S.Sugendran
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed against the order dated 03.11.2022 passed in C.M.P.No.1212 of 2019 in C.C.No. 285 of 2018 on the file of the Judicial Magistrate No.II, Sankari, Salem District.

2. Petitioners are accused and the second respondent is the defacto complainant. The first respondent police registered a case against the petitioners herein for the offence under Section 498(A) and 506(i) IPC. After investigation, laid a charge sheet before the Judicial Magistrate No.II, Sankari, Salem District. The learned Judicial Magistrate taken the charge sheet on file in C.C.No.285 of 2018. During the pendency of the Calendar Case, the petitioners filed a petition in C.M.P.No.1212 of 2019 under Section 239 Cr.P.C., to discharge them from the abovesaid charges and the same was dismissed by the learned Magistrate. Aggrieved over the same, the petitioners have filed the present Criminal Revision Case.



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3. Learned counsel for the petitioners would submit that already DVC Case No.47 of 2018 had been registered on similar allegations and the same was decided. Once the second respondent filed the complaint against the petitioners and the same was decided by the competent court, similar complaint cannot be foisted for the same cause of action. It is nothing but double jeopardy as per 300 Cr.P.C., The learned Magistrate has also not given sufficient opportunity to the petitioners to putforth their defence and even the second respondent/defacto complainant has not filed any separate counter in the Criminal Miscellaneous Petition and there is no *prima facie* case has been made out as against these petitioners. The trial court failed to consider the fact that in the earlier matrimonial proceedings, it is mentioned that the petitioners insisted the defacto complainant to give ancestral properties, whereas, there is no ancestral properties are available with them, which itself falsifies the case of the prosecution. Pending matrimonial proceedings, the respondent demanded money and in order to get money from the petitioners, the second respondent filed a false case against them. Further, complaint has been lodged belatedly against the petitioners and



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charge sheet has also been filed beyond limitation period and the same was also not considered by the learned Magistrate. Hence the impugned order passed by the learned Magistrate is liable to be set aside.

4. Heard the learned counsel appearing for the petitioners and carefully gone through the materials available on record.

5. It is a well settled proposition of law that at the time of deciding the petition under Section 239 Cr.P.C., the Court has to see the allegations levelled in the final report filed by the Investigating Officer under Section 173 Cr.P.C., and the documents annexed therewith and the Court cannot conduct a roving enquiry on the materials before it and it cannot consider the defence taken by the accused. Therefore, when there is *prima facie* allegation which shows that there is a commission of offence under the abovesaid charges, the Court can testify whether the petitioners have committed offence or not and that can be decided only at the time of trial not at this stage. Therefore, in this case, on a perusal of the report filed by the prosecution under Section 173 Cr.P.C and also the documents annexed



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there with, *prima facie* there are allegations as against these petitioners.

Since charges have been framed against the petitioners and trial also commenced and P.W.1 was examined in chief, this Court does not find any perversity or illegality or irregularity in the order passed by the trial Court and there is no merit in the Revision Case and the same is liable to be dismissed. Accordingly, the Criminal Revision Case is dismissed at the admission stage itself. Consequently, connected miscellaneous petition is closed. The petitioners are at liberty to putforth their defence during trial.

24.11.2022

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Index:yes/No

Internet:yes/No



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P.VELMURUGAN, J.

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To

1. The Judicial Magistrate No.II,
Judicial Magistrate No.II Court,
Sankari,
Salem District.
2. The Inspector of Police,
AWPS Sankari,
Salem 637 301.
3. The Public Prosecutor,
High Court,
Chennai.

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