

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.31035 of 2019

and

Crl.M.P.Nos.16897 & 16899 of 2019

1.Srisanth
2.Susila
3.Jaganathan
4.Mohanambal

... Petitioners/ Accused

Vs.

1.The Inspector of Police,
All Women Police Station, Perur,
Coimbatore District.

2.Indhumathi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.49 of 2018 on the file of the Additional Mahila Court (Magistrate Level), Coimbatore and to quash the same.

For Petitioners : Mr. Mr.C.Prabakaran
for Mr.A.Tamilarasan

For Respondents : Mr. N.S. Suganthan, for R1
Government Advocate
Mr. W.Camyles Gandhi, for R2

O R D E R

This petition is filed to call for the records in C.C.No.49 of 2018 on the file of the learned Additional Mahila Court (Magistrate Level), Coimbatore and to quash the same.

2. The petitioners herein are accused in C.C.No.49 of 2018 on the file of Additional Mahila Court, Coimbatore. The charge against these accused is that the defacto complainant, Indumathi married the first petitioner-Srisanth on 29.05.2013, as per Hindu Rites and Customs. At the time of marriage, 20

sovereigns of jewels and house hold articles were given as sridhana by the parents of the defacto complainant. The first petitioner and his parents, told her that first petitioner running a firm by name "Sorgha Agro Farm" but, however, after marriage, she came to know that he is not running any company and he is a jobless flatter besides a drunker. When this was complaint to the other accused, who are in-laws, she was threatened and put to harassment. He took away the 20 sovereigns jewels given during marriage and gave it to second and third accused. When she enquired about her jewels, she came to know that it was handed over to the husband of the fourth accused. When she demanded the jewels back, she was subjected to torture and cruelty. She was locked in the room and left without food. Her parents were providing the provisions for their livelihood. When she was conceived, she was not taken proper care by her husband and in laws and she was put under threat that if she does not bring Rs.2 lakhs from her parents, they will kill her and the child in the womb. Due to the cruelty, fetus got aborted. For the delivery expenses of the fourth accused, they demanded Rs.2 lakhs which has forced her to leave the matrimonial home and give complaint, which was originally taken as CSR.No.415 of 2016, later, FIR was registered and on completion of investigation, final report filed and taken cognizance by the Additional Mahila Court, Coimbatore in C.C.No.49 of 2018.

3. Learned counsel appearing for the petitioners would submit that the entire complaint is figment of imagination, the defacto complainant herein left the matrimonial home on her own and filed complaint against these petitioners. On investigation, police found that the allegations are false and frivolous. Thereafter, the petitioners approached the Judicial Magistrate and filed petition under Clause 156(3) Cr.P.C., which was taken up for investigation and final report filed under the pressure of the petitioners herein. Reading 161 (3) statement of the complainant and other statements, the learned counsel for the petitioners would submit that the imaginary allegations against the petitioners will not sustain the trial and therefore, the complaint is liable to be quashed.

3(i). As far as fourth petitioner who is the sister-in-law of defacto complainant, the counsel would specifically submit that during the alleged period, the fourth petitioner was residing in USA and she came to India for her delivery but she has been falsely implicated in this case as if, she demanded Rs.2 lakhs from the defacto complainant and her parents to meet out her delivery expenses and also would submit that the complete reading of her previous statement does not make out any case of cruelty or dowry harassment against in-laws. Further, the counsel would also submit that after this complaint, a petition for divorce filed by the first petitioner and pending

criminal case and divorce petition, the parties entered into compromise and the defacto complainant agreed to receive Rs.5,50,000/- and withdraw this complaint as well as filed petition for divorce under Section 13(b) of Hindu Marriage Act and dissolved the marriage by consent. However, after receiving Rs.4.5 lakhs and agreed to receive the balance sum of Rs.1 lakh, on withdrawing C.C.No.49 of 2018, she turned around and did not cooperate to pursue HMOP presented under Section 13(b) of Hindu Marriage Act which has forced the first petitioner herein to file again a petition for divorce and the same is pending.

3(ii). Relying upon the judgment of Hon'ble Delhi Court reported in 1999 1 Crimes 16 in Sathish Gathwal and Others Vs. State and Another, which followed the judgment of the Hon'ble Supreme Court rendered in State of Karnataka Vs. Munusamy and Others, the learned counsel for the petitioners submitted the whole proceedings vitiated by the second respondent is abuse of process of law. The relevant passage reads as below:-

9. The question is whether in these circumstances the proceedings arising out of the said. FIR should be allowed to be continued or not.

Section 482 of the Code reads as under:

"482. Saving of inherent powers of High Court-Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

It has also been held by the Hon'ble Supreme Court inter alia in State of Karnataka v. L.Muniswamy & Others that "In the exercise of the wholesome power under Section 482, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceedings to continue would be an abuse of the process of the Court or that the ends of justice requires that the proceedings ought to be quashed."

4. Learned counsel for the second respondent / defacto complainant per contra would submit that though the defacto complainant agreed for mutual divorce and withdrawal of the criminal complaint, on the promise by the petitioners herein to pay Rs.10 lakhs, while reducing the agreement in writing, they have mentioned only Rs.5.50 lakhs and paid Rs.4 lakhs. Therefore, she did not agree for mutual divorce and withdrawal of the complaint. Further, the learned counsel for the defacto complainant would also submit that the first petitioner is in a habit of deserting the defacto complainant and after a complaint, used to take her back to the matrimonial home only to

repeat his misconduct and torture the defacto complainant. Since there are material against all the petitioners to prosecute, the quash petition has to be dismissed.

5. On considering the statement recorded and relied by the prosecution, particularly, the statement of the defacto complainant in subsequent event which was recorded before the Court, and it admitted by both the parties, this Court is of the view that the order passed by the judgment of the Delhi High Court cited by the petitioners counsel, in an identical situation, is more relevant and appropriate, with small deviation in the fact of the case in hand. Since it is specifically alleged against him that he had subjected the defacto complainant causing mental cruelty by not providing her enough food and shelter. The allegations made as against the first petitioner/husband contains prima facie material for which the first petitioner is liable to face the trial, but not against the other petitioners against whom no material worth to prosecute placed. For the said reason, the petition is partly allowed. Consequently, connected miscellaneous petitions are closed. The case against the petitioners 2 to 4 quashed, the first petitioner ordered to face the trial.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

AT

To

1.The Additional Mahila Court (Magistrate Level), Coimbatore.

2.The Inspector of Police,
All Women Police Station, Perur,
Coimbatore District.

3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.W.Camyles Gandhi, Advocate SR. No. 36702

+1cc to Mr.A.Tamilarasan, Advocate SR. No. 36782

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GPL (CO)
PR (13/07/2022)