



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.3144 of 2022

1. Bibin Stalin
2. Mrs.Rajam
3. Iedable

...Petitioners/Accused 1 to 3
Vs.

1. The Superintendent of Police
Kanyakumari District,
at Nagercoil.

2. The Inspector of Police
Kadaiyalumoodu Police,
Kanyakumari District.

...Respondent 1 & 2/Complainant

- 3.Mrs.Mary Merlin,

...3rd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records relating to Crime No.62/2021 pending investigation with the 2nd Respondent and quash the same.

For Petitioners : M/s.Sureshkumar.S

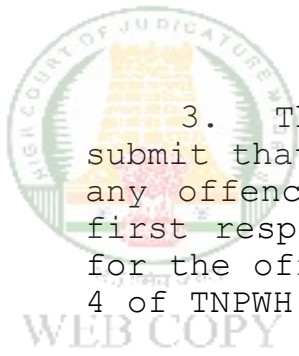
For Respondents : Mr.R.M.Anbunithi

No.1 and 2 Additional Public Prosecutor(Crl. Side)

ORDER

This petition has been filed seeking direction to call for records relating to Crime No.62/2021 pending investigation with the 2nd Respondent and quash the same.

2. The case of the prosecution is that the marriage between the petitioner and the third respondent was held on 27.08.2014 and out of the wedlock third respondent was blessed with a child on 24.05.2015. Though the petitioners have received the jewels and cash given by her parents at the time of marriage, they also harassed her and thereafter the petitioner has filed IDOP No.350 of 2018 before the District Court and the same is presently pending in IDOP No.445 of 2021 on the file of the Family Court and the petitioners are residing in Nagercoil even before filing the divorce petition and the third respondent was living along with her child at Kilathoor. While so on 26.08.2021 at about 10.00 pm., the petitioners have trespassed into the property and abused her in filthy language and also threatened her. Further they also caused damage to the door worth about Rs 5000/-. Hence the complaint.



3. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No. 62 of 20212 for the offences under Sections 427,448,294(b), 323,506i) of IPC and 4 of TNPWH Act as against the petitioners.

4. The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police are about to file the final report before the concerned court.

5. Heard both sides and perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegation as against the petitioners, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019 - Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the



offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

6.....

7.....

8.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

8. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)



To

1. The Superintendent of Police
Kanyakumari District,
at Nagercoil.
2. The Inspector of Police
Kadaiyalumoodu Police,
Kanyakumari District.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court

CrI.O.P. (MD) No.3144 of 2022
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MGJ(24.02.2022) 4P 4C