



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2022

CORAM:

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

Crl.O.P. (MD) .No.4136 of 2022

WEB COPY

1. R.Vivekanandhan
2. K.Ragupathi
3. R.Kalaiyarasi

... Petitioners/ Accused No.1 to 3
Vs.

- 1.State rep. by
The Inspector of Police,
V.K.Puram Police Station
Tirunelveli District

... 1st Respondent/ Complainant

- 2.Pavithra

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records and quash the final report filed against the petitioners in S.C.No.420 of 2021 on the file of the Sessions Judge, Mahila Court, Tirunelveli in respect of Crime No.87 of 2020 on the file of the first respondent police.

For Petitioners : Mr.V.S.Kishok Kumar

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

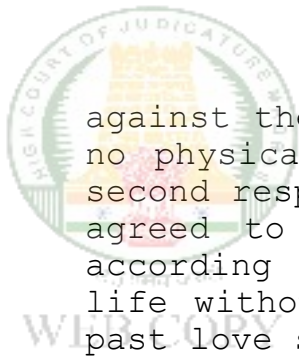
For R-2 : Mr.K.K.Uthayakumar

ORDER

The Criminal Original Petition has been filed to quash the proceedings in S.C.No.420 of 2021 on the file of the Sessions Judge, Mahila Court, Tirunelveli for the offences under Sections 417,376,294(b), 506(ii) of IPC and Section 4 of TNPHW Act as against the accused persons.

2. The case of the prosecution is that the first petitioner and the second respondent were in love for the past nine years and on false promise of marriage, the first petitioner had sexual relationship with her without her consent and willingness. Thereafter the petitioners took steps to conduct first petitioner's marriage with some other women. Coming to know this the second respondent insisted the first petitioner for marriage, due to which she was harassed, abused and criminally intimidated by the accused persons.

3. The learned counsel for the petitioners would submit that the no such occurrence had taken place and only to harass the petitioners the present false complaint has been registered as



against the accused persons. He would also submit that except love no physical relationship is between the first petitioner and the second respondent. Due to some difference of opinion they mutually agreed to depart their love and marry their respective spouse according to their own choice and lead a happy life and peaceful life without intervention of each other and without trace of their past love so as to avoid future complication in their marital life. He would also submit that the petitioners and the respondent being relatives have decided to amicable settle the issue and entered into compromise and also ready to file a compromise memo before this Court to quash the proceedings in S.C.No.420 of 2021 on the file of the Sessions Judge, Mahila Court, Tirunelveli.

4. The learned Additional Public Prosecutor would submit that in this case trial commenced. Further the petitioners have committed offence, hence he opposed to quash the proceedings.

5. Heard the learned counsel appearing for the petitioners, defacto complainant and the learned Additional Public Prosecutor.

6. It is seen that the petitioners and the second respondent have entered into compromise and they have filed compromise memo to quash the proceedings. The petitioners have committed serious offence under Section 376 of IPC, hence this Court is not inclined to accept the compromise memo filed by the petitioners. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. Recently, the Hon'ble Supreme Court of India dealing in <https://hcservices.ecourts.gov.in/hcservices/>



respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will



be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

9. Further the power under Section 482 of Cr.P.C cannot be exercised when the accused involved in heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc, such offences are not private in nature and have a serious impact of society, hence this Court is not inclined to quash the proceedings against the accused persons.

10. In view of the same, this Criminal Original Petition stands dismissed. The trial Court is directed to complete the trial proceedings within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (A.D.II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Sessions Judge, Mahila Court, Tirunelveli.

2. The Inspector of Police,
V.K.Puram Police Station
Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.V.S.KISHOK KUMAR, Advocate (SR-9979[F] dated 04/03/2022)

Crl.O.P. (MD) .No.4136 of 2022
03.03.2022

RD(15.03.2022) 4P 6C