



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2022

CORAM:

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

Crl.O.P.(MD) No.4758 of 2022

and

Crl.M.P(MD)No.3340 of 2022

K.Balasubramanian

... Petitioner/Respondent

Vs.

1. Thanga Selvi

2.Minor.Mavo Tamil Arasu

3.Minor.Seguvera Prabakaran

... Respondents/Complainants

(Respondents 2 and 3 are minors,
represented by their mother and natural
guardian, Thanga Selvi)

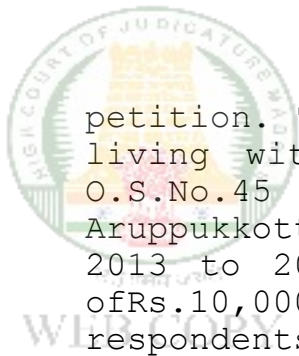
PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to quash the M.C.No.4 of 2017, pending on the file of the learned Judicial Magistrate No.I, Virudhunagar insofar as the petitioner is concerned.

For Petitioner : Mr.G.Thalaimutharasu

ORDER

The petition has been filed to quash the M.C.No.4 of 2017, pending on the file of the learned Judicial Magistrate No.I, Virudhunagar.

2.The gist of the case is that the petitioner is the husband and the 1st respondent is the wife of the petitioner and the respondents 2 and 3 are their minor sons. Due to matrimonial dispute, the 1st respondent has filed a petition in M.C.No.4 of 2017, before the learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District on 27.03.2017 alleging that the marriage between her and the petitioner was solemnized on 11.11.2002, as per Hindu Rites and Customs. Due to the wedlock, they were blessed with two sons / respondents 2 and 3 herein. In these circumstances, the petitioner had illegal relationship with one Rajeswari, who is the relative of the 1st respondent. While being so, in the year 2008, the petitioner has filed a Divorce Petition I HMOP.No.57 of 2008, on the file of the Sub Court, Aruppukkottai, and got an ex-parte order on 24.10.2009 in his favour. The 1st respondent has filed a petition in I.A.No.88 of 2012 on the file of the Sub Court, Aruppukkottai to cancel the divorce order in HMOP.No.57 of 2008, which got behind the back of the 1st respondent and on knowing the same the petitioner has convinced the 1st respondent and forced her to withdraw the said



petition. Thereafter, the petitioner married the said Rajeswari and living with her. Therefore, the 1st respondent filed a Suit in O.S.No.45 of 2014, on the file of the learned District Munsif, Aruppukkottai, sought for monthly maintenance for the period from 2013 to 2014. Further, the 1st respondent has sought for a sum of Rs.10,000/- for her food and shelter and Rs.10,000/- each for respondents 2 and 3 for their food, education and shelter, in total, Rs.20,000/- per month. Aggrieved by the same, the petitioner preferred this petition to quash M.C.No.4 of 2017.

3.The learned counsel appearing for the petitioner would submit that the 1st respondent has no right or nexus to file the petition for claiming maintenance, as the petition is filed with fully of false and concocted story with forged documents so as to tarnish the image of the petitioner. He would further submit that the 1st respondent is having illicit connection with one Arivazhagan in the year 2008 beyond the matrimonial life. When the petitioner warned the 1st respondent, she threatened the petitioner that she will make a false complaint before the All Women Police Station against the petitioner and his family members. Further, the 1st respondent has received a sum of Rs.1,50,000/- from the petitioner and received the summon the divorce case and not even appeared before the Court. Due to the non-appearance in the Divorce case in HMOP No.57 of 2008, the same was ordered unilaterally.

4.The learned counsel for the petitioner would further contend that the 1st respondent, to with the petition filed by her in I.A.No.88 of 2012 in HMOP No.57 of 2008, has sought for a sum of Rs.5,00,000/- from the petitioner for closing the case as 'Settled out of Court'. Therefore, the case was closed on 20.07.2012 by getting signature of the petitioner as well as the 1st respondent thereby confirming the Divorce order. Hence, the learned counsel prayed to quash the M.C.No.4 of 2017, pending on the file of the learned Judicial Magistrate No.I, Virudhunagar.

5.I have heard the learned counsel for the petitioner and perused the materials available on record.

6.Before advertng into the merits of the case, 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 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....."

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

10.Therefore, this Court is not inclined to entertain this petition. Accordingly, the criminal original petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

To

The Judicial Magistrate No.I,
Virudhunagar.

Crl.O.P.(MD) No.4758 of 2022
14.03.2022

RS (04.04.2022) 4P-2C