



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM:

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

Crl.O.P.(MD)No.6674 of 2022

and

Crl.M.P(MD) No.4619 of 2022

WEB COPY

1. Theivarani @ Theivanai

2. Kannan

... Petitioners/Accused No. 3 & 4
Vs

1. The Inspector of Police

AWPS Police Station

Theni, Theni District

... 1st Respondent/Complainant

2.Sumithra

... 2nd Respondent/
Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records pertaining to the case in Crime No.60 of 2021 dated 21.11.2021 on the file of the first respondent and quash the same as illegal as against the petitioners.

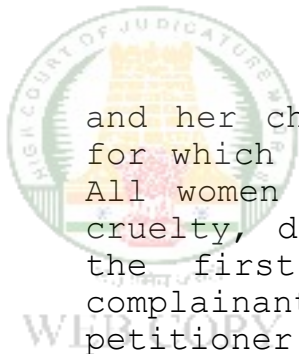
For Petitioners : Mr.T.IndraChithu

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.60 of 2021 on the file of the first respondent police.

2. The prosecution case is that the marriage between the first accused and the defacto complainant was solemnized on 30.10.2017 as per Hindu rites and Customs and at the time of marriage, 15 sovereigns of gold jewels and other household articles were given as dowry. The first accused used to consume alcohol frequently and did not take care of the defacto complainant. He also further demanded additional dowry of 10 sovereigns and cash of Rs.1,00,000/- and started harassing her. Meanwhile a male child was born to them on 18.08.2018 and thereafter he also abandoned the child also. Due to which the defacto complainant went to her parental home and the petitioner herein filed a divorce petition before the Sub Court Periyakulam in HMOP No.79 of 2017 seeking divorce. This prompted the second respondent to file maintenance case in MC No.182 of 2018 before the learned Judicial Magistrate Court, Periyakulam seeking maintenance and the same was allowed, ordering the first accused to pay a monthly maintenance of Rs.6000/- to the defacto complainant



and her child. Further the first accused is trying for remarriage for which the second respondent has also given complaint before the All women Police Station, Theni levelling various allegations of cruelty, demanding of additional dowry and in the enquiry to agree the first accused agreed to re union and took the defacto complainant and the child to his home. In the meanwhile, the petitioner for execution in Cr.M.P. No.4021 of 2019 in MC No.182 of 2018 was withdrawn by the second respondent on the pressure mounted by the first accused. Despite this the first accused again driven away the defacto complainant and the child from the matrimonial home. This has led the second respondent to once again give a complaint before the first respondent against the first accused and the in-laws. Hence the present case came to be registered.

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.

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.**, where in it is held 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.

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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.....

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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

<https://hcservices.ecourts.gov.in/hcservices/>



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. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (Crl Side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police
AWPS Police Station
Theni, Theni District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(20.04.2022) 4P 3C