



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2022

CORAM:

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

Crl.O.P.(MD) No.6802 of 2022

and

Crl.M.P(MD) Nos.4704 and 4706 of 2022

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1. V.Joseph Augustine

2. M.Lourdes Mary

...Petitioners/A2 & A3

Vs.

1. State Rep. by

The Inspector of Police,

All Women Police Station

Nagercoil, Kanyakumari District ...Respondent No.1/Complainant

2.Jaya Priya

...Respondent No.2/

Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in CC No. 24 of 2021 on the file of the Additional Mahila Court(Magisterial Level) Nagercoil and to quash the same in so far as the petitioners concerned.

Prayer in CRL MP(MD).4706 of 2022:

To dispense with the personal appearance of the petitioners in CC No.24/2021 on the file of Additional Mahila Court(Magisterial Level),Nagercoil,pending disposal of the Crl.OP.

Prayer in MP(MD).4704 of 2022:

To stay all further proceedings in CC No.24/2021 on the file of Additional Mahila Court (Magisterial Level), Nagercoil,in so far as the petitioners concern, pending disposal of the above Criminal Original Petition.

For Petitioners : Mr.R.J.Karthick

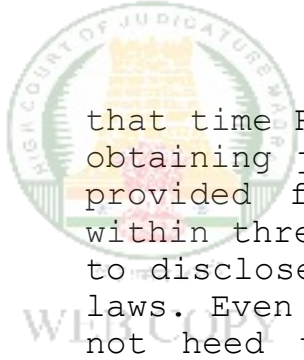
For Respondents : Mr.R.M.Anbunithi

No.1 Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to quash the proceedings in CC No. 24 of 2021 on the file of the Additional Mahila Court(Magisterial Level) Nagercoil

2. The case of the prosecution is that the petitioners/accused approached the parents of the complainant to arrange marriage for their younger son namely the first accused. Further they have also demanded Rs.10 lakhs cash, Rs.15 lakhs worth car, 200 sovereigns of gold jewels, Rs. 5 lakh worth household articles as dowry. On 08.07.2013 engagement was performed at her parents house and at



that time Rs.7,00,000/- cash was handed over to the petitioners. For obtaining job to the first accused, the defacto complainant father provided financial assistance and arranged job in Saudi Arabia within three months. It is also alleged that the first accused used to disclose the sexual affairs in the matrimonial life with the in-laws. Even after repeated request made by her, the first accused did not heed to her request. They also insisted the complainant to transfer all the properties of her parents in her name. In the meanwhile on 04.07.2014 a boy child was born and she took the child to Saudi Arabia where the first accused was working and thereafter when she visited India to take treatment for the child the accused 2 to 5 demanded additional dowry. Thereafter it is alleged that to purchase a house property at Ponnappa Nadar Colony and they have demanded Rs.30 lakhs as dowry. In turn the complainant's parents transferred Rs.30 lakhs to the credit of the first accused. With the money provided, the first accused purchased a dwelling house and Rs.5 lakhs worth household articles and at the influence of the father of the defacto complainant he was offered a job with salary of Rs. 5 lakhs. Thereafter the accused 2 to 5 have planned for divorce the complainant and arranged another marriage with several crores of dowry. In the mean while the defacto complainant conceived on four occasions and two times it ended in abortion. When the fourth accused came to India, she insisted the first accused to get the property or leave the complainant in her parent's house, hence the first accused has left the defacto complainant in her parents house and she did not go to the house of the accused persons. At this point of time another sum of Rs.50,00,000/- had been demanded to settle the loan or they will sell the property. Accepting the demand, Rs.95 lakhs was transferred by her father and the sale deed was executed in her father's name, but the accused persons did not accept the same and after several mediation accused persons permitted the complainant to reside in a room but no food has been provided and on 22.08.2019 her son was assaulted first accused which made the child get fainted. During the month of March 2020 they have driven the complainant and the child out of the home, 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 trial has been commenced and some of the witnesses have been examined in this case.

5. Heard the learned counsel appearing on either sides.

6. 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.**, wherein it is held 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 **Cr1.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 **Cr1.A.No.1817 of 2019** in the case of **M. Jayanthi Vs. K.R. Meenakshi & anr**, as follows:

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



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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. In view of the above discussion, this Court is not inclined to quash the proceedings in CC No. 24 of 2021 on the file of the Additional Mahila Court (Magisterial Level) Nagercoil. The petitioners are at liberty to raise all the grounds before the trial Court. However, the personal appearance of the petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

10. Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition in CrI.M.P(MD) No.4704 of 2022 stands dismissed and CrI.M.P(MD) No.4706 of 2022 stands allowed.

Sd/-

Assistant Registrar (As)

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To

1.The Judicial Magistrate,
Additional Mahila Court (Magisterial Level) Nagercoil

2.The Inspector of Police,
All Women Police Station
Nagercoil, Kanyakumari District

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

Cr1.O.P.(MD) No.6802 of 2022

and

Cr1.M.P(MD) Nos.4704 and 4706 of 2022

12.04.2022

MGJ(25.04.2022) 5P 4C