



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:29/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.5850 of 2019

and

Crl.MP(MD)No.3752 of 2019

WEB COPY

Rajeswari : Petitioner/A4
Vs.
V.Sahaya Jaculin : Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.244 of 2012 pending on the file of the Judicial Magistrate No.2, Nagercoil and quash the same in so far as the Petitioner herein/ Accused No.4 is concerned.

For Petitioner : Mr.A.Saravanan
For Respondent : Mr.M.P.Senthil

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.244 of 2012 pending on the file of the Judicial Magistrate No.2, Nagercoil.

2.The case of the respondent in brief:-

On 19/08/2007 at about 12.00 noon, the Inspector of Police, attached to All Women Police Station contacted her over phone and asked her to come to All Women Police station, Nagercoil, in connection with the complaint given by her husband. So, she went to the police station with her mother and also with one Ambika at about 4.30 pm. The accused persons arrived in the police station by two Cars, A1 and A2 are in the police uniform and A2 took the complainant to the Inspector of Police. When her mother tried to accompany her, A2 prevented her mother. A2 called A3 and A4 to the room. A1 threatened her to withdraw the case in CC No.95 of 2015 pending on the file of the Judicial Magistrate, Boothapandy, which was filed by her against her husband and others. She also threatened the complainant that the deceased gave a statement and the accused took the jewels. But the complainant replied that the jewels are in the hands of the accused persons. But they started threatening her. She also assaulted and insulted. A2 kicked her with her shoes and also assaulted with hands. The private complaint filed by the respondent was taken on file by the Judicial Magistrate No.2, Nagercoil and assigned CC No.244 of 2012.

3.Heard both sides.

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



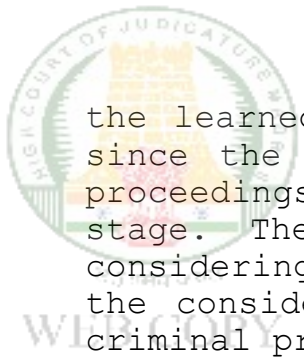
4. On perusal of the records, it is seen that there was a continuous dispute between the husband and wife, over the matrimonial issue and because of that, more than one cases have been registered and this private complaint was lodged in 2008 and this petitioner has arrayed as A4.

5. Without going into the previous facts, let us straightway go to the specific allegation that has been made against this petitioner in the complaint.

6. In the complaint, it is stated by the respondent that this petitioner also joined with the other accused persons, abused her in filthy language and assaulted her with hands repeatedly. They also tried to twist her hands by holding her hands with their hands. This specific allegation that has been made against the petitioner. Whether this allegation is true or not is a matter for consideration in this petition. But however, this petition has been filed on the ground that absolutely, it is a *mala fide* exercise on the part of the respondent in making allegation against not only this petitioner, but also against other accused persons.

7. As mentioned earlier, perusal of the records shows that more than one cases have been registered on the basis of the complaint given by either parties. CC No.45 of 2005 was filed on the basis of the complaint given by this respondent against several persons including her husband and in-laws etc. The copy of the judgment is enclosed herewith and this petitioner is arrayed as 4th accused in the above said case. In that case, it was stated that on 02/02/2004, this accused also joined hands with the co-accused and caused assault and demanded Rs.3,00,000/-. The offences alleged are under sections 498-A, 406 IPC and section 3,4 and 6 of Dowry Prohibition Act. All the accused persons have been acquitted by the trial court, by order, dated 30/10/2009. So it appears that during the pendency of the above said trial process, the present occurrence said to have been taken place in the police station, on 19/08/2007. So on that ground, the learned counsel appearing for the petitioner has stated that it is a clear case of *mala fide* exercise of the private vengeance. But she has produced the medical records, which shows that she was taken to the hospital for treatment and also stated the complaint pain before the Doctor. So, as mentioned earlier, she was in physically assault in this matter. On the ground of *mala fide* nature, this petitioner cannot be discharged.

8. The second ground, that is urged by the respondent is that on the date of the occurrence, she was not available in the police station, where the alleged occurrence said to have been taken place, but was attending the Camp arranged by the Primary Health Centre and was staying in Department Health Centre from 19/08/2009 to 20/08/2009. Now the present occurrence said to have been taken place, as mentioned earlier, on 19/08/2007 at about 12.00 noon. So



the learned counsel appearing for the respondent would submit that since the plea of *alibi* raised, it can be tried only during the proceedings of the trial and that cannot be considered at this stage. The plea of *alibi* cannot be raised and decide, while considering the petition filed under section 482 Cr.P.C. So I am of the considered view that this is not a fittest case to quash the criminal proceedings.

9.In the result, this criminal original petition is **dismissed**. But however, considering the fact that the petitioner is a working woman, her personal appearance is dispensed with. Within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that she will appear as and when required by the court and she must ensure that she is properly represented by an Advocate. Since the case of the year 2012, the trial court is directed to expedite the trial process and dispose the same within a period of three months from the date of receipt of a copy of this order and report the same to the Registry forthwith. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

Judicial Magistrate No.2,
Nagercoil.

COPY TO:

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

+1 CC to M/s.A.SARAVANAN, Advocate (SR-15005[F] dated 29/03/2022)
+1 CC to M/s.M.P.SENTHIL, Advocate (SR-15278[F] dated 30/03/2022)

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RD(09.05.2022) 3P 5C