



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/01/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.8960 of 2020

and

Crl.MP(MD)No.4205 of 2020

1.T.Moulana Sait @ Mowlana Set

2.T.Rehmat Nisha

3.Asha Parveen

: Petitioners

Vs.

1.State rep. by

Inspector of Police,

All Women Police Station,

Uthamapalayam,

Theni District.

(Crime No.3 of 2020)

: R1/Complainant

2.S.Avasiya Banu

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.3 of 2020 on the file of the respondent police and quash the same.

For Petitioner : Mr.P.M.Vishnuvarthanan

For 1st Respondent : Mr.S.Manikandan

Government Advocate (Crl. Side)

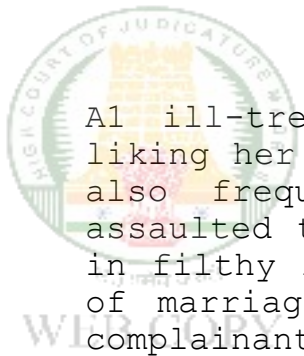
For 2nd Respondent : Mr.M.A.M.Raja

O R D E R

This petition has been filed by the petitioners seeking quashment of the case in Crime No.3 of 2020 on the file of the 1st respondent police.

2.It is a matrimonial dispute between A1 and the 2nd respondent, who is the de-facto complainant herein.

3.The 2nd respondent has filed a complaint with the following allegations:- On 02/02/2017, the marriage took place between the 1st petitioner and the 2nd respondent. At that time of marriage, 41 sovereigns of jewels and Rs.50,000/- was given. Apart from that, Rs.5,00,000/- worth of sridhana has also given by the parents of the de-facto complainant. After the marriage, they were residing at Madhavaram, Chennai. At that time, A1 was working in ICF, Chennai.



A1 ill-treated the de-facto complainant stating that he is not liking her and only for money and jewels, he married her. A2 and A3 also frequently visited the residence and demanded money. A1 assaulted the de-facto complainant and also demanded money, abusing in filthy language. So, within a short span of time from the date of marriage, 20/1-2 sovereigns of jewels belongs to the de-facto complainant was received by A1 to A3. Later, she become pregnant and a male child was also born. Now, he is aged about 1 year 9 month. Even after the birth of the child, ill-treatment continued. The matter was taken to Jamath. But A1 and A2 refused to attend the Jamath. So the de-facto complainant was residing with her parents in distress. A complaint was given to the ICF Senior Personal Officer (Welfare) and counselling was also given. After the above said counselling, A1 took the de-facto complainant and the child. Later also, there was no correction in his behaviour and demanded money. So, the de-facto complainant was driven out of the house on 16/09/2018. On a promise made by the sister of the de-facto complainant to transfer of Rs.1.10 Lakhs, the de-facto complainant was taken back to A1's house. Money was also paid by the sister of the de-facto complainant. That amount was also snatched by the accused persons. Again torture continued and even the child was torched with cigarette. Most of the jewels belongs to the de-facto complainant pledged by A1 and on 11/09/2019, again, she was assaulted by A1 to A3. She escaped from the house and went to Madhavaram Police Station at 7.00 pm. In a taxi arranged by the Police Officials, she went to her junior uncle house. The parents were informed that she was taken to Uthamapalayam, on 30.09.2019. She was also taken to Uthamapalayam Hospital. Since the occurrence took place in Chennai, she lodged a complaint on 18/09/2019 at Puzhal AWPS and that was forwarded to the Uthamapalayam Police Station. When such being the position, the mother of A1 was making arrangement for performing second marriage to A1. On 26/09/2019, a complaint was given to the Superintendent of Police, Theni. Both of them were enquired on 18/10/2019. Even though, A1 has promised to take back the de-facto complainant, he pronounced Talque through whatsapp. Even after the above said attempt, no proper action was taken. So the de-facto complainant filed a petition under section 156(3) of Cr.P.C before the Judicial Magistrate, Theni, which was ordered and on the basis of the above said order, now the above said case has been registered.

4. Seeking quashment of the above said FIR, this petition has been filed by the above said accused persons mainly on the ground that the earlier complaint given by the de-facto complainant before the Madhavaram Police Station was closed, after due enquiry and suppressing the above fact, a false complaint has been given by way of filing a petition under section 156(3) of Cr.P.C.

5. Heard both sides. Intervener is also heard. Both of them also filed typed set of papers, narrating the entire dispute between



6.The entire CD file has been called for and the counter affidavit has also been filed by the 2nd respondent.

7.Narration of the events that has been mentioned in the complaint shows that there was continuous harassment to the de-facto complainant. The photograph of the child with an injury has also been produced by the intervener/de-facto complainant. According to the learned counsel appearing for the petitioners, that injury was not caused by A1. Regarding the assault on the de-facto complainant also, during the course of investigation, the accident registers have been collected, which is dated 30/09/2019. Before the Doctor, the de-facto complainant has stated that she was assaulted by known persons on 11/09/2019 in No.16, Thansingh Mastery Street, Madhavaram, Chennai. No external injury was found, but she was complaining about pain on the left hand. She was treated as out-patient in the Government Hospital at Uthamapalayam, Theni District. It has been brought to the notice of this court that A1 has performed second marriage with one lady on 13/07/2019. The talaque message, which was sent by A1 through whatsapp has also been enclosed in the typed set of papers.

8.According to the learned counsel appearing for the intervener, as per the Muslim Protection of Marriage Act, 2019, proper procedure has not been followed before performing the second marriage. On knowing about the second marriage proposal, continuous complaint has been given by the 2nd respondent to the higher officials of her husband. The whatsapp message, dated 04/10/2019 is also enclosed, wherein we find that talaque was pronounced by A1. But however, even then he continued to call the de-facto complainant as his wife. A1 has expressed some fear about the activities of the father of the 2nd respondent/de-facto complainant. Even before the whatsapp message between them, the second marriage took place on 03.07.2019. So what was the real problem between the husband and wife is a matter for investigation. Now the investigation has also been over and materials have been collected and final report is also made ready on 23/02/2021.

9.Further perusal of the case diary shows that continuous proceeding that has been undertaken by the Social Welfare Committee did not find any result, since both the A1 and the 2nd respondent did not attend the enquiry. The de-facto complainant has given a statement before the Social Welfare Committee that she must be restored with her jewels, which was taken by the accused persons. A counter allegation has been made by A1 before the Social Welfare Department. During the above said conciliation process, it has been made allegation that because of the matrimonial dispute, continuous false case has been given by the de-facto complainant and her father to the Department. He has also made some allegations against the second respondent with regard to her conduct.

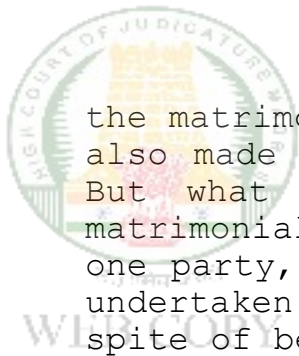


10. Whether the allegation made by the de-facto complainant is true or not, can be a matter for trial. It is also seen that in spite of best efforts, no conciliation was possible between the parties. Since allegations and counter allegations have been made, it may not be proper on the part of this court to veracity complaint, since the final report is also made ready. Unless strong ground is made in the petition, this petition cannot be entertained.

11. The learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court in the case of **Rajesh Sharma & others Vs. State of U.P & another [2017(4) CTC 667]**, which is a celebrated judgment on the typic of matrimonial issue. A detailed guideline has been given. According to the petitioners, those procedures are not followed before the registration of the FIR or final report. But on perusal of the entire records and CD file shows that all sayings are well within the husband and wife. Even during the existence of the first marriage, by pronounced Talaque, the 2nd marriage has been performed by A1.

12. As mentioned earlier, so far no strong ground has been made out by the petitioners. The argument of the petitioners that the earlier complaint given by A1 before the Madhavaram Police station came to be closed is also not established. It is also a matter for trial. As mentioned earlier, reading of the complaint shows that much effort was taken by the 2nd respondent to lodge a complaint before the Madhavaram Police Station. But that was transferred to Uthamapalayam Police Station only on jurisdiction point. More-over, closing of the earlier complaint in a matrimonial proceedings may not be a bar for giving the second complaint.

13. As mentioned earlier, the complaint has been lodged by invoking section 156(3) Cr.P.C of the jurisdictional Magistrate. When that being the position, the argument of the learned counsel appearing for the intervener/de-facto complainant that the second petition is not maintainable is without any substance and cannot be accepted. From the allegations, it is seen that now the jewels belongs to the 2nd respondent also lies with the hands of A1 and A2 and no proper explanation has been given by them with regard to the above said jewels. Regarding the enquiry by the above said Madavaram police, only xerox copy is available. The enquiry was undertaken in CSR No.359 of 2020. During the course of enquiry, A1 also appeared and given a statement that he will work out his remedy by filing a petition before the concerned court for restitution of conjugal rights, wherein it has been mentioned that the 2nd respondent also made a quarrel and left the matrimonial home, on 11/09/2019. In spite of best efforts made by him, the second respondent refused to come to the matrimonial home. He has also mentioned that when the de-facto complainant was six months pregnancy, without his consent, she was taken to the parental home by her father. Later refused to come to the matrimonial home. After a lapse of one year, she came to



the matrimonial home. This piece of statement shows that effort was also made by A1 at one point of time to bring peace to the issue. But what happened after that, is a matter for trial. In a matrimonial issue, it is always possible to make allegation against one party, that is why conciliation and mediation process are being undertaken to resolve the issue. Here, as mentioned earlier, in spite of best efforts, possibility of settlement between the parties could not be achieved.

14. But however, the learned counsel appearing for the petitioners would submit that the 3rd petitioner/A3 is no way connected in conducting the 2nd marriage to the 1st petitioner/A1. According to him, she was married in 2011 itself and was residing separately and she has been wrongly roped in the above said issue.

15. In the light of the above submission, now we will go to the issue of allegation or overtact that has been attributed against A3. This petitioner/A3 also joined with her husband and mother-in-law and the caused assault and beaten. Similarly, on 11/09/2019 also, all the three accused persons joined together and assaulted her. But, how the 3rd petitioner came to the matrimonial home has not been clearly stated by her. So the allegation that the 3rd petitioner was in the matrimonial home is highly doubtful.

16. The Hon'ble Supreme Court in more than one occasions, cautioned the courts, while entertaining dispute involving the matrimonial issue. When there is a possibility of roping in-laws. To show the residential address of the 3rd petitioner, she produced the Aathar card, Indane Gas connection card, wherein it has been shown that she is residing in No.19, 1st Street, Sowrastra Nagar, 9th Street, Choolaimedu City, Chennai.

17. As mentioned earlier, the Hon'ble Supreme Court starting from the case of Preeti Gupta Vs. State of Jharkand [2010(7) SCC 667] and Rajesh Sharma and others Vs. State of UP and another [2017 (4) CTC 667, has stated that the possibility of roping the in-laws in the matrimonial issue, the court must very cautious in its approach. When we take advise from the judgments apply to the factual issue against the 3rd petitioner, no materials are available. Only bald allegation has been made, which is also inherently improbable against the 3rd petitioner. But however, final report has been filed in CC No.277 of 2021 and taken cognizance on the file of the Judicial Magistrate, Uthamapalayam, Theni District.

18. Considering the above facts and circumstances of this case, this criminal original petition is **allowed in respect of the 3rd petitioner alone and accordingly (the FIR in Crime No.3 of 2020) CC No.277 of 2021 as against the 3rd petitioner alone is quashed.** In respect of the petitioners 1 and 2, this criminal original petition is **dismissed. (*)** the personal appearance of the second petitioner is



dispensed with before the trial Court with the following conditions:-

(i) the second petitioner shall appear before the trial Court, within 15 days from the date of receipt of a copy of this order and she shall file an undertaking affidavit that she will appear before the concerned Court as and when required, the attested photograph must be attached in the affidavit and she must ensure that she is properly represented by an Advocate.

Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

(*)Corrected as per the order of
this Court dated 29.04.2022

Sd/-

Assistant Registrar (W)

// 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,

(*)to be substituted to the order already despatched on 26.04.2022

- 1.The Judicial Magistrate,
Uthamapalayam,
- 2.The Inspector of Police,
All Women Police Station,
Uthamapalayam,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



COPY TO:

THE JUDICIAL MAGISTRATE, THENI.

+1 CC to M/s.M.VISHNUVARTHANAN, Advocate (SR-325[F]
dated 05/01/2022)

WEB COPY

CrI.OP(MD)No.8960 of 2020
04/01/2022

SRK(CO)
GC(21.04.2022) 7P 6C
TR(07.06.2022) 7P 6C