



Crl.O.P.(MD) No.7741 & 18046 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.07.2022

Delivered on : 23.08.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P.(MD).Nos.7741 & 18046 of 2019

and

CRL.M.P(MD)Nos.4739, 10616 and 10617 of 2019

CRL.O.P.(MD).No.7741 of 2019 :

1.P.Kaja Kamaludeen

2.S.Mydeen Beevi

: Petitioners

Vs.

Rasiya Begam

: Respondent

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in D.V.No.12 of 2016 on the file of the Judicial Magistrate Court No.II, Nagercoil and quash the same as against the petitioners.

CRL.O.P.(MD).No.18046 of 2019 :

1.P.Kaja Kamaludeen

2.S.Mydeen Beevi

: Petitioners

Vs.



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1. The Inspector of Police,
All Women Police Station,
Nagercoil,
Kanyakumari District.
(Crime No.17/2015)

2. Rasiya Begam

: Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the case in C.C.No.26 of 2019 on the file of the Judicial Magistrate cum Additional Mahila court, Nagercoil and quash the same as against these petitioners.

(in Crl.OP(MD)No.7741/2019)

For Petitioners : Mr.S.C.Herold Singh,

For Respondent : Mr. R. Maheswaran

(in Crl.OP(MD)No.18046/2019)

For Petitioners : Mr.S.C.Herold Singh,

For Respondents : Mr.B.Nambiselvan,
Additional Public Prosecutor, for R-1.

: Mr. R. Maheswaran, for R-2.

COMMON ORDER

Criminal Original Petition in Crl.OP(MD)No.7741 of 2019, has been filed invoking Section 482 of Cr.P.C, seeking orders to call for the records in

2/17



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D.V.No. 2 of 2016 pending on the file of the Court of the Judicial Magistrate No.II, Nagercoil and quash the same.

2. Criminal Original Petition in Crl.OP(MD)No.18046 of 2019, has been filed invoking Section 482 of Cr.P.C., seeking orders to call for the records pertaining to the case in C.C.No. 26 of 2019 pending on the file of the Court of the Judicial Magistrate cum Additional Mahila Court, Nagercoil and quash the same.

3. The petitioners are the Accused Nos.1 and 2 in D.V.No. 12 of 2016 on the file of the Court of the Judicial Magistrate No.II, Nagercoil and in C.C.No.26 of 2019 on the file of the the Judicial Magistrate cum Additional Mahila Court, Nagercoil.

4. The petitioners 1 and 2 are the husband and wife. The only respondent in Crl.O.P.(MD)No.7741 of 2019 and the second respondent in Crl.O.P(MD)No.18046 of 2019, Rasiya Begam claiming to be the second wife of the first petitioner, has filed the above complaint.



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5. The said Rasiya Begam has filed an application under Section 12 of the Protection of Women from Domestic Violence Act, 2005, claiming the reliefs under Sections 18, 19, 20 and 22 of the said D.V.Act. On the basis of the complaint lodged by the said Rasiya Begam, FIR came to be registered in Crime No.17 of 2015, dated 05.05.2015 against four persons including the petitioners for the offence under Sections 498(A), 406, and 506(ii) IPC and Section 4 of TNPHW Act. The first respondent/Inspector of Police, All Women Police, after completing the investigation, has laid a final report under Section 173 of Cr.P.C, dated 12.08.2015 against the petitioners for the offence under Sections 498(A), 406, 506(ii), 294(b) IPC and Section 4 of TNPHW Act and that the case was taken on file in C.C.No.26 of 2019 and is pending on the file of the Court of the Judicial Magistrate No.II, Nagercoil.

6. In the complaint filed under Section 12 of D.V. Act, the respondent has raised necessary averments, claimed maintenance, protection order and other reliefs.

7. The case of the prosecution in C.C.No.26 of 2019 is that the petitioners, who are the husband and wife, were living at Bahrain, that there



existed some dispute between them and hence, the first petitioner used to talk about his problems with the respondent, who is his nephew; that the first petitioner made lovely talk with the second respondent and believing his words, she consented for the marriage proposal of the first petitioner; that the respondent had left her husband and came to the first petitioner's house; that both of them got married in accordance with the Islamic Rites at Al Madeen Nagar Jummah Mosque; that in the school run by the first petitioner at Aaloor, Kanyakumari District, the respondent had acted as its Manager whereas the first petitioner was the Correspondent and that the respondent by gathering the amount from her relatives, has spent a sum of Rs.20 Lakhs for the welfare of the school.

8. It is the further case of the prosecution that thereafter, the second petitioner started to interfere with the relationship between the first petitioner and the respondent; that the second petitioner gave a complaint against the respondent to the Aloor Jamath Committee and the Committee enquired about it and found it to be vague and warned the second petitioner; that the second petitioner had thereafter, instigated her brother one Hussain, who in turn waylaid the respondent and uttered filthy words and tried to attack her for



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which, a complaint was given and that on 28.12.2103, the second petitioner went to the house of the respondent and abused her in filthy language and attacked her.

9. It is their further case that the respondent's son Sulaiman and his father-in-law have sent a sum of Rs.30 lakhs to the respondent to buy a house; that the said money was given to the first petitioner, who in turn cunningly bought a house at Pattariar koil Street at Kottar, Nagercoil in his name; that thereafter, the first petitioner had caused cruelty and refused to take care of the respondent; that on 25.03.2015, the petitioners went to the house of the respondent and abused her; that when the first petitioner tried to cut the respondent with sickle, she escaped and that thereafter, on 28.03.2015, the second petitioner went to the house of the respondent and threatened her that she cannot see the first petitioner again as he was sent to Bahrain and if she tried to see him, she would set her ablaze.

10. The case of the petitioners is that the first petitioner married the second petitioner and both of them were living abroad as husband and wife with their children; that the petitioners are owning property at Nagercoil and



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used to stay in the said house during vacation; that the second petitioner engaged the respondent to assist the petitioners for carrying out the domestic work; that since the respondent was having grown up children and they were in poverty and to tide over the financial needs, the petitioners permitted the respondent to carry out the household works and to maintain the property at Nagercoil; that the respondent at the time of joining work, had informed that she was married to one Sahul Hameed and he was working at Dharapuram in Thiruppur; that the respondent had thereafter created a document as if the first petitioner had married her on 14.12.2009 and yet another document was created as the marriage held on 20.08.2012 and that the respondent with *male fide* intention has created the marriage certificate in order to grab the property of the petitioners, who were employed and residing abroad for about 30 years.

11. It is the further case of the petitioners that the respondent has filed several cases including the Habeas Corpus Petition in H.C.P.(MD)No.1024 of 2015 for production of the first petitioner, who was at abroad, the respondent had also gone to the extent of creating the divorce certificate, dated 07.01.2012 from her husband Sahul Hameed, but the respondent holds the



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name of her husband Sahul Hameed in her passport and Air Ticket while she travelled abroad to take care of her children and that in order to grab money and cause inconvenience to the petitioners, the respondent claims herself to be the wife of the first petitioner and is trying to enrich herself with unlawful gain.

12. It is not in dispute that the respondent by alleging that the first respondent Police did not register the complaint lodged by her, approached this Court with a petition in Crl.O.P.No.6391 of 2015 and as per the directions of this Court, the above FIR came to be registered in Crime No.17 of 2015 against four persons and the Police, after investigation has filed the charge sheet only against the petitioners and thereby deleting the third and fourth accused, daughters of the petitioners.

13. The learned counsel for the petitioners would submit that the respondent is none other than domestic worker engaged by the second petitioner to carry out the cooking work, while the petitioners visited India; that the respondent had concealed the fact that she was residing along with her married sons aged 27 and 22 years respectively along their wives and



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children; that the respondent has created a document as if she had obtained divorce, vide document, dated 07.01.2012, but she had alleged that she had married the first petitioner on 14.12.2009 and that therefore, there is no marriage in the manner known to law was contracted; that the respondent had created documents as if she had married the first petitioner and as if she had divorced her first husband; that since the respondent is a resident of Kanyakumari District, there was no occasion for the first petitioner at the age of 68 years to travel all the way to the Tuticorin District for performing the marriage.

14. But the learned counsel for the respondent/defacto complainant would submit that the first petitioner had married the respondent on 20.08.2012 as per the Islamic Rites at Al Madeen Nagar Jummah Mosque and that she had been managing the School run by the first petitioner at Aaloor and that thereafter, the second petitioner had attempted to interfere with the relationship between the first petitioner and the respondent by lodging the complaint.

15. The Investigating Officer has recorded the statements of the respondent and six other persons.



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16. As rightly contended by the learned Additional Public Prosecutor, the main dispute between the parties is as to whether the first petitioner had married the respondent and as to whether the documents alleged to have been produced by the respondent are genuine.

17. No doubt, as rightly contended by the learned counsel for the petitioners, the respondent is entitled to lodge the above complaint only on showing that she is the wife of the first petitioner. Since the respondent has raised specific averments touching upon her divorce from her husband and her marriage with the first petitioner and the same have been disputed by the petitioners, these aspects cannot be gone into at this stage and the same are matter for trial.

18. As already pointed out, the respondent has raised so many allegations and charges against the petitioners. No doubt, the petitioners have disputed those averments and allegations and as such the same cannot be gone into at this stage and the same are to be decided only at the trial.



19. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Kaptan Singh Vs. State of U.P.**, reported in **2021 (3) Crimes (SC) 247**.

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers Under Section 482 Code of Criminal Procedure has quashed the criminal proceedings for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code. It is required to be noted that when the High Court in exercise of powers Under Section 482 Code of Criminal Procedure quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the Accused persons, has filed the charge-sheet before the Learned Magistrate for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition Under Section 482 Code of Criminal Procedure was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is



disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation / inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.



9.2. *In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers Under Section 482 Code of Criminal Procedure to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction Under Section 482 Code of Criminal Procedure though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers Under Section 482 Code of Criminal Procedure. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.*

9.3. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers Under Section 482 Code of Criminal Procedure.”*

20. As rightly contended by the learned counsel for the respondent and the learned Additional Public Prosecutor, this Court in exercise of its jurisdiction under Section 482 of Cr.P.C cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts.



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21. Upon careful perusal of the facts, circumstances and arguments advanced by both the parties, this Court is of the view that all the submissions made by the petitioners are directed towards the disputed questions of facts, which cannot be adjudicated by the Court under Section 482 of Cr.P.C. Hence, consequently, this Court concludes that the above, Criminal Original Petitions are devoid of merits and the same are liable to be dismissed. Since the D.V case is pending from 2016 onwards and the calender case from 2019 onwards, this Court is of the view that necessary directions are to be issued for early disposal of the cases.

22. However, the personal presence of the petitioners before the trial Court is ordered to be dispensed with, on conditions that they shall appear at the time of questioning under Section 313 of Cr.P.C., and at the time of passing judgment and on all the hearings, specifically directed by the trial court. The petitioners are further directed to give an undertaking in the form of affidavit that they will be duly represented by a counsel on all hearing dates and that the Counsel representing them will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioners shall



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not dispute the identity of the witnesses. The petitioners shall appear before the Court in the event their presence is insisted by the trial judge for the purpose of identification. If the petitioners adopts any dilatorial tactics, it is open to the Trial Court to insist for their appearance and deal with the petitioners in accordance with the judgment of Supreme Court of India, *in State of Uttar Pradesh Vs. Shambunath Singh*, reported in **2001 (4) SCC 667**.

23. In the result, these Criminal Original Petitions are dismissed. The trial Courts are directed to complete the trial and dispose of both cases as expeditiously as possible preferably within a period of three months from the date of receipt of copy of this order. Consequently, connected CRL.M.P(MD)Nos.4739 and 10616 of 2019 are closed.

23.08.2022

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Index:Yes/No
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To

- 1.The Judicial Magistrate Court No.II,
Nagercoil.
- 2.The Judicial Magistrate cum
Additional Mahila court, Nagercoil.
- 3.The Inspector of Police,
All Women Police Station,
Nagercoil, Kanyakumari District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
CRL.O.P.(MD).Nos.7741 & 18046 of 2019
and
CRL.M.P(MD)Nos.10616, 10617 and 4739 of 2019

23.08.2022