



Crl.O.P.(MD) No.14251 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.09.2022

PRONOUNCED ON : 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

**CRL.O.P(MD)No.14251 of 2022
and
Crl.M.P(MD)No.9189 of 2022**

Vinitha

...Petitioner

vs

**1.State represented by
The Inspector of Police,
All Women Police Station,
Thoothukudi District.
(in Cr.No.2 of 2022)**

2.Ponsha

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the FIR in Cr.No.2 of 2022 pending on the file of the Inspector of Police, All Women Police Station, Thoothukudi District and to quash the same so far as the Petitioner is concerned.

**For Petitioner
For R1

for R2**

**:Mr.R.L.Dhilipan Pandian
:Mr.B.Nambi Selvan
Additional Public Prosecutor
:Mr.Rageshwaran**



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ORDER

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This Criminal Original Petition is filed seeking to quash the FIR in Cr.No.2 of 2022 pending on the file of the Inspector of Police, All Women Police Station, Thoothukudi District.

2.Heard Mr.R.L.Dhilipan Pandian, learned Counsel for the Petitioner, Mr.B.Nambi Selvan, learned Additional Public Prosecutor appearing for the first Respondent and Mr.Rageswaran, learned Counsel for the second Respondent.

3.The learned Counsel for the Petitioner submitted that the Petitioner is alleged to have been in a relationship with the husband of the second Respondent/De-Facto Complainant prior to the marriage. The Petitioner is arrayed as A5. As per the contents of the FIR, the Petitioner is alleged to have been in a relationship outside the matrimonial relationship with the second Respondent's husband. The allegation against the Petitioner, as per the contents of the FIR, is that the De-Facto Complainant's husband exchanged pleasantries and was always in contact with the Petitioner herein, even when he is at home at odd hours with the second Respondent/De-Facto Complainant.



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4. Even if the contents of the FIR is presumed to be true, the ingredients of offences attracting Sections 498(A) and 406 IPC and Section 4 of Dowry Prohibition Act, are not attracted as against the Petitioner, who is arrayed as A5 in the FIR. The Petitioner cannot be held accountable or criminally liable for the offences under Sections 498(A) and 406 IPC and Section 4 of Dowry Prohibition Act, as the Petitioner is in no way the member of the family of the second Respondent's husband. It is the further contention of the learned Counsel for the Petitioner that the contents of the FIR in Cr.No.2 of 2022 is nothing but, malicious prosecution, as per the reported ruling of the Honourable Supreme Court in the case of ***State of Haryana and others vs Bhajan Lal and others***, reported in ***1992 AIR 604***, wherein, guidelines have been issued by the Honourable Supreme Court to the High Courts while exercising the extraordinary power to quash the FIR and charge sheet, not leniently, but sparingly and guidelines had been issued under what circumstances the FIR and charge sheet had to be quashed. The relevant paragraph in the said Judgment reads as follows:

"(g) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."



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5. Therefore, the learned Counsel for the Petitioner seeks to quash the FIR in Cr.No.2 of 2022 pending on the file of All Women Police Station, Tuticorin.

6. The learned Additional Public Prosecutor vehemently objected to quash the FIR against the Petitioner stating that the Petitioner is also one of the causes for the husband of the De-Facto Complainant indulging in the offences attracting Sections 498(A) and 406 IPC and Section 4 of Dowry Prohibition Act.

7. The learned Counsel for the second Respondent also vehemently objected to quash the FIR stating that the ingredients of Sections 498(A) and 406 IPC and Section 4 of Dowry Prohibition Act, are attracted, as the Petitioner is one of the reason for instigating the husband of the De-Facto Complainant, who had meted out the cruelty to the second Respondent/De-Facto Complainant/wife. Therefore, what had been alleged by the learned Counsel for the Petitioner cannot be considered by this Court by exercising the extraordinary power under Section 482 of Cr.P.C. Also, investigation is at the initial stage. Only on completion of investigation, if there are no sufficient



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materials available to prosecute the Petitioner/A5, the Investigation Officer has discretion to drop the name of the Petitioner/A5 from the final report. What are all argued by the learned Counsel for the Petitioner can be treated as valuable defence available to the Petitioner only on appreciation of evidence before the Trial Court and not at this stage by exercising the extraordinary power of this Court under Section 482 of Cr.P.C.

8.On consideration of the rival submissions and on perusal of the FIR, as rightly pointed out by the learned Counsel for the Petitioner, the ingredients attracting the offences under Sections 498(A) and 406 IPC and Section 4 of Dowry Prohibition Act, are not at all attracted, as the Petitioner is not a sister or mother or aunt of the husband of the De-Facto Complainant in influencing the husband. Therefore, the ratio laid down by the Honourable Supreme Court in the case of ***State of Haryana and others vs Bhajan Lal and others***, reported in ***1992 AIR 604***, is squarely applicable to the facts of this case.

9.In the light of the above discussion, the contentions of the learned Counsel for the Petitioner are accepted and the contentions of



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the learned Additional Public Prosecutor as well as the learned Counsel for the second Respondent are rejected.

In the result, this Criminal Original Petition is allowed. Consequently, FIR in Cr.No.2 of 2022 pending on the file of the Inspector of Police, All Women Police Station, Thoothukudi District, is quashed as against the Petitioner /A5 alone.

The Investigation Officer is directed to investigate and file a final report as against the rest of the accused before the Court of the learned Judicial Magistrate within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

25.11.2022

Index:Yes/No

cmr

To

The Inspector of Police,
All Women Police Station,
Thoothukudi District.



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SATHI KUMAR SUKUMARA KURUP, J.

cmr

Order made in
CRL.O.P(MD)No.14251 of 2022

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