



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.10904 of 2019

and

Crl.MP(MD)Nos.6852 and 6853 of 2019

1.S.Rajithkumar
2.S.Tamilarasi
3.Xavier

: Petitioners/A1 to A3

Vs.

1.State through
Inspector of Police,
All Women Police Station,
Kamuthi,
Ramanathapuram District.
(Crime No.1 of 2019)

: R1/Complainant

2.Annal

: R2/De-facto complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in the case in CC No.72 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Kamuthi and quash the same in respect of the petitioners 1 to 3.

For Petitioners	:	Mr.G.Mariappan
For 1 st Respondent	:	Mr.SS.Madhavan Government Advocate (Criminal side)
For 2 nd Respondent	:	Mr.R.Babu Jaganath

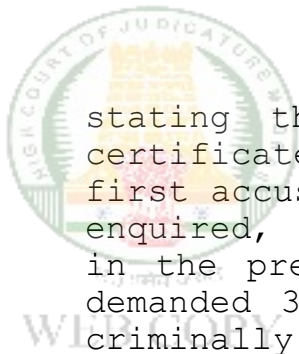
O R D E R

The petition has been filed seeking quashment of the case in CC No.72 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Kamuthi.

2.The case of the prosecution in brief:-

On 07/12/2018, the de-facto complainant was married to the first accused at Thiruchendhur Murugan Temple. On 22/12/2018, the 3rd petitioner, who is the father of the first accused took him

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stating that for the purpose of transferring the registration certificate of the two wheeler, he was taking him. Thereafter, the first accused did not return to the matrimonial home. When that was enquired, the accused persons refused. So a panchayat was arranged in the presence of the elders. At that time, the accused persons demanded 30 sovereigns of gold jewels and a two wheeler. She was criminally intimidated and also assaulted. Based upon the complaint given by the de-facto complainant, a case in Crime No.1 of 2019 was registered for the offences under section 498(A) IPC and section 4 of the Dowry Prohibition Act. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.72 of 2019 by the District Munsif-cum-Judicial Magistrate, Kamuthi.

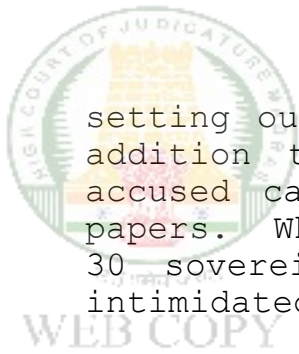
3. Seeking quashment of the same, all the accused persons filed this petition mainly on the ground that within few days of the marriage, the de-facto complainant went away from the matrimonial home and on two previous occasions, complaints have been given by her and subsequently, it was closed. Now the de-facto complainant, eloped with some other person and got married also.

4. Heard both sides. Even though the second respondent was represented by a counsel, he informed the court that he could not contact the 2nd respondent. The learned Government Advocate (Criminal side) also submitted that the second respondent is not available in the address given in the complaint.

5. It is submitted by the petitioners that as mentioned earlier, the second respondent got married to some other man and delivered a child also. So according to them, the second respondent is not interested in pursuing the matter further. But in the absence of any material to show that the second respondent got married and lived with a child, no observation can be recorded by this court.

6. Perusal of the records shows that totally, three complaints have been given by the second respondent. The first complaint was closed on the basis of the undertaking given by the first accused to put up a separate residence and that was also put up and they started living together. Again, it appears that trouble arose between them and the second complaint has been lodged by the second respondent on 07/01/2019, which was also enquired in CSR No.6 of 2019 and that complaint was given against the petitioner A1 and A2, wherein she has stated that the first accused was taken by A3 from the matrimonial home and thereafter, the first accused did not return to the house. Again that was closed, on the basis of the undertaking given by the first accused. The undertaking was to the effect that on or before 10th February 2019, he will arrange a separate house. That was closed, on 06/12/2019.

7. It appears that again trouble started between them. Based on the present complaint has been given, on 22/04/2019



setting out the very same facts as stated in CSR No.6 of 2019. In addition to that, she has also stated that on 20/04/2019, the accused came to her house and asked her to sign in the divorce papers. When that was objected, they stated that they will not give 30 sovereigns jewels, apart from the bike. She was criminally intimidated and also assaulted.

8. When we compare the contents of the complaint, that was given on 06/09/2019, it is seen that it is verbatim reproduction of the allegations. In the previous complaint, there was no allegation to the effect that the parents of A1 demanded dowry. But in the present complaint, the above said allegation has been made.

9. It is further seen that the de-facto complainant gave a statement in the said CSR No.6 of 2019 that the first accused promised to take her to a separate residence. That was accepted by her. Based upon the above said compromise only, it was closed on 24/06/2019. It appears that pending the above said enquiry, the present complaint has been given, on 22/04/2019 stating that they demanded dowry. How the present FIR has been registered, when CSR No.6 of 2019 was pending is not clear on record. It appears that without noticing the pendency of the CSR No.6 of 2019, the present FIR has been registered. This clearly shows that registration of the FIR itself is not proper and without any basis. So on that ground, the entire prosecution is liable to be quashed.

10. Even without going into the merits of the allegation, that has been made by the second respondent in the complaint, it is a clear abuse of process of law and court. If the grievance of the de-facto complainant is that the first petitioner is not returning to the matrimonial home, she ought to have initiated action under the provisions of the Hindu Marriage Act. Without resorting such a remedy, it appears that she has given a false complaint exaggerating the facts. In the facts and circumstances of the case, it is nothing, but abuse of process of law.

11. In the result, this criminal original petition is allowed. The impugned proceedings in CC No.72 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Kamuthi, is quashed in respect of the petitioners. Consequently, connected Miscellaneous Petitions are closed.

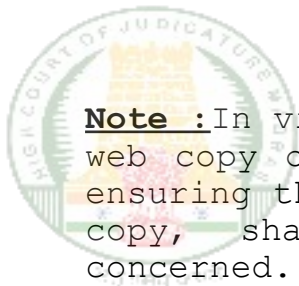
Sd/-

Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)



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.

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To,

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

+1 CC to M/s.G. MARIAPPAN, Advocate (SR-21778[F] dated 27/04/2022)

**Crl.OP(MD)No.10904 of 2019
27.04.2022**

NSN (CO)
GC(08.06.2022) 4P 5C