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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.15069 of 2021

&

Crl.M.P(MD)Nos.4277 of 2022 & 8057 of 2021

1. T.Balasubramaniam

2. Kothainayaki ... Petitioners/ Accused Nos.1 &2

Vs.

1. The State represented by
The Inspector of Police,
All Women Police Station,
Tallakulam,
Madurai District.
(Crime No.30 of 2020)

... 1st Respondent/Complainant

2. Amirthapriya

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the Charge Sheet in C.C.No.562 of 2021 on the file Judicial Magistrate Additional Mahila Court, Madurai and quash the same.

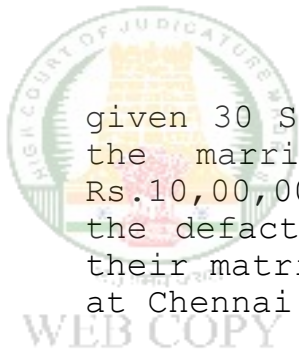
For Petitioners : Mr.M.Ajmal Khan
Senior Advocate
for M/s.Ajmal Associates

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Criminal Side)
for R.1
Mr.R.Alagumani for R.2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.562 of 2021, on the file Judicial Magistrate Additional Mahila Court, Madurai.

2. The case of the prosecution is that the second respondent / Defacto complainant had given a complaint against the petitioners before the first respondent police alleging that she got married with one Balasubramanian / 1st petitioner herein on 16.05.2019. At the time of marriage, as per the demand made by the 1st petitioner and his family members, the parents of the defacto complainant have



given 30 Sovereigns of jewels, as dowry. Further they had accepted the marriage expenses and spent the same to the tune of Rs.10,00,000/- (Rupees Ten Lakhs only). After the said marriage, the defacto complainant as well as the 1st petitioner have started their matrimonial life along with the 1st petitioner's family members at Chennai.

3. From the first day of the marriage, the defacto complainant had met with so many physical and mental torture by the petitioners without any valid reason. During their matrimonial life, the defacto complainant came to know that one, Supraja, has developed relationship with her husband / 1st petitioner. On account of the said illegal relationship, the 1st petitioner always used unwanted words of hatred as against the defacto complainant and picked up quarrels with her. The 2nd petitioner had always probed the 1st petitioner's action and induced the 1st petitioner to harass the defacto complainant on numerous occasions. Further, with a malicious intention, the defacto complainant has been wrongly connected with one unknown person by the petitioners and tried to tarnish the chastity of the defacto complainant.

4. In view of intolerant of the above said harassments made by the petitioners, the defacto complainant had committed two suicide attempts by way of cutting nerves on her left hand with blade and by consuming poison. At the instance, the defacto complainant rescued by the petitioners and she had threatened that to give false statement before the police officials regarding her suicidal attempts. On account of such threatening, the defacto complainant had given false reasons to the police officials. Further, under this pandemic situation of Covid-19, the dowry to the tune of Rs.40,00,000/- (Rupees Forty Lakhs only) has been demanded. Regarding the said exorbitant demand, it was questioned by the defacto complainant, for which, she was attacked by the petitioners and the defacto complainant had sustained injury on her nose. Hence, on the strength of intolerant of the said persecution, the defacto complainant voluntarily left from her matrimonial home on 27.03.2020 and stayed at her relation's home. Hence the defacto complainant lodged the present complainant in Crime No.30 of 2020, as against the petitioners.

5. The learned Counsel appearing for the petitioners would submit that the petitioners are innocent and they had not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.30 of 2020 as against the petitioners and the same has been taken cognizance in C.C.No.562 of 2021 on the file Judicial Magistrate Additional Mahila Court, Madurai. Hence they prayed to quash the same.

6. The learned Government Advocate (Criminal Side) would submit that the trial has been commenced and some of the witnesses have



been examined in this case.

7. Heard both sides and perused the materials available on record.

8. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent



jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

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10. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.562 of 2021 on the file of the Judicial Magistrate Additional Mahila Court, Madurai. The petitioners are at liberty to raise all the grounds before the trial Court. The personal appearance of the second accused alone is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the second accused shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt

<https://hccservices.e-courts.gov.in/fcservlet> of a copy of this Order.



12. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

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Sd/-

Assistant Registrar (C.O)

// 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

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

+1 CCToM/s.AJMAL ASSOCIATES, Advocate (SR-18465[F] dated 13/04/2022)

ORDER MADE IN
Crl.O.P(MD)No.15069 of 2021
&
Crl.M.P(MD)Nos.4277 of 2022 & 8057 of 2021
12.04.2022

PKP/13.05.2022/5P/5C