



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

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Crl.O.P. (MD)Nos.12574 and 16046 of 2019

and

Crl.MP (MD)Nos.7833, 7834, 9538 and 9539 of 2019

K.Reghu Kumaran Thambi : Petitioner/A4 in
Crl.OP (MD)No.12574 of 2019

Geetha :Petitioner/A5 in
Crl.OP (MD)No.16046 of 2019

Vs.

N.R.Rekha : Respondent/De-facto Complainant
(in both cases)

Prayer: Criminal Original Petitions have filed under Section 482 Cr.P.C., to call for the records relating to CC No.117 of 2019 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District and quash the same against the petitioners.

For Petitioner/A4
(Crl.OP (MD)No.12574 of 2019) : Mr.M.Gnanagurunathan

For Petitioner/A5
(Crl.OP (MD)No.16046 of 2019) : Mr.K.Veilmuthu

For Respondent : Mr.A.Manikandan
(both cases) (Legal Aid Counsel)

COMMON ORDER

These petitions are filed seeking quashment of the case in CC No.117 of 2018 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District, respectively.

2.The case of the respondent before the trial court in brief:-

She was married to the first accused; the marriage was performed, on 02/02/2003 as per the community customs. After the marriage, she started the life in the matrimonial home along with the mother of first accused. The second accused is the sister of her husband and she along with her child is staying with them during the week ends, since the husband of the second accused was working in a remote place. After the marriage, within a week they started harassing the

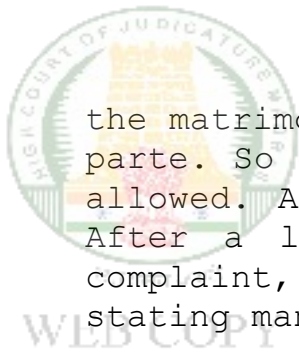


wife and she was treated as a slave in the matrimonial home. The first accused was also a drunkard. On one occasion, she attempted to commit suicide, because of the torture made by the Accused No.2 and 3. The mother-in-law also started ill treating the wife along with the second accused. Their intention is to get divorce and perform second marriage to the 1st accused with some other girl. Unable to bear the situation that was created by the accused, the complainant along with A1 and daughter shifted their residence to her parental home. Later, the husband namely the A1 started developing relationship with one Reghu Kumaran Thampi namely A4. This person is given money to A1 to take liquor and A4 was also forced A1 to sell the properties. A1 also assaulted her several times, sustained bleeding injuries. So she lodged a complaint before the Karungal Police station. When the police advised A1, the complainant asked the police not to prosecute the matter further. Later she shifted the residence to Thiruvananthapuram. In order to settle the 3rd accused, they demanded money. In the meantime, A1 was admitted to de-addiction Centre at Changumugham, Kerala State and by that time, she conceived; the second daughter was born, on 17/03/2015 at Nagercoil. Since she gave birth to a female child, again they started torturing her. At the time of marriage, A1 represented that he is a practising Advocate. But later turned out to be false. On 13/12/2015, she went to the matrimonial home, after delivering the child. At that time, she was scolded in filthy language. So because of the continuous assault, she suffered physical discomfort. Later, the first accused started threatening the respondent herein to withdraw the complaint. In the meantime, the first accused also filed a petition seeking divorce, with these allegations. The 5th accused is a marriage broker and also a pawnbroker. She is the relatives of A1. She arranged the marriage for A1. She is in the habit of causing injury to others. With these allegations, she filed a private complaint stating that all the accused persons have committed the offences under sections 498(A), 406, 323 and 354 IPC, which was also taken cognizance in CC No.117 of 2018 by the Judicial Magistrate, Eraniel, Kanyakumari District.

3. Seeking quashment of the same, the 4th and 5th accused are before this court.

4. Heard both sides.

5. It is a matrimonial dispute between the complainant and the first accused namely N. Narayanan Nair. The said N. Narayanan Nair filed O.S No.146 of 2016 before the Family Court, Thiruvananthapuram seeking divorce, wherein the first accused stated that the complainant left the matrimonial home, on 03/09/2013 without his consent and knowledge and started living with her parental home and she refused to come back. Thereafter, she did not return back to



the matrimonial home. The second respondent/complainant remained ex-parte. So on the basis of the evidence of the first accused, it was allowed. As mentioned earlier, the date of judgment is 22/09/2017. After a long gap, it appears that the complainant has filed a complaint, on 26/02/2018 implicating five persons as accused persons stating many things, as mentioned in the preamble portion.

6. Allegation and counter allegation in respect of the matrimonial dispute between the husband and wife. As mentioned above, it is the case of the first accused that only the complainant misbehaved and left the matrimonial home. But in the complaint, she has stated that the first accused was addicted to liquor and because of that only, problem arose between them. She has also denied the conjugal rights. So we need not go into the controversy much on the complainant and the first accused. In respect of the allegation made against the 5th accused, who is the petitioner herein, she is a marriage broker. She is related to A1. She arranged the marriage for brokerage fee. Except this bald allegation, no other allegation has been made against this petitioner/A5.

7. Regarding the matrimonial issue between the husband wife, the complainant has also mentioned, one or two incidents in the complaint. She has also stated that she was assaulted and her cloths were also torn. About that incident, she lodged a complaint with the Karungal Police station. She was also admitted in the hospital. But absolutely, no evidence has been produced by the respondent along with the complaint. In the sworn statement, she has stated that some-time six months prior to her complaint, this petitioner/A5 along with her husband/A1 came to her house and demanded that, she must give mutual divorce to her husband/first accused. She also assaulted her father, when he intervened. She was assaulted and dress was torn.

8. As mentioned earlier, already the divorce petition, which was filed by the first accused came to be allowed by the Family Court, Thiruvananthapuram, on 22/09/2017. The wife remained ex-parte before the Family Court, Thiruvananthapuram. When that being the position, the occurrence said to have been taken place, six months prior to the complaint can be termed nothing, but *mala fide* one and inherently improbable also.

9. As mentioned in the above said order, no document showing the treatment and admission in the hospital has been produced along with the complaint. Simply because, the petitioner/A5 is a marriage broker arranged the marriage between the husband and wife, roping her into the matrimonial issue is not proper.



10. So far as the 4th accused namely K.Reghu Kumaran Thambi is concerned, it is the specific allegation by the respondent in the complaint that he used to give money to the first respondent to take liquor and this has been purposely done by the petitioner to grab the property. He is making advise to A1 to divorce the complainant. By his behaviour, he has caused mental agony to her. This can be termed as nothing, but bald allegation. How this petitioner/A4 related to the parties and how, he is related to the matrimonial issue between the husband and wife, absolutely, there is no allegation or particulars. Simply because, the first accused and this petitioner/A4 are friends, roping him into the matrimonial issue is not at all proper and this allegation is also not supported by any evidence, which has been produced by the respondent. No evidence has been produced along with the complaint to show even *prima facie* connecting this petitioner/A4 into the matrimonial issue. I find that the complaint absolutely nothing, but abuse of process of court, not only regarding the 5th accused, but also to the 4th accused, who are not related to the matrimonial issue. So on the basis of the bald allegations, it will be illegal. On that sole ground, both the petitions are liable to be allowed.

11. In the result, both the criminal original petitions are **allowed**. The impugned CC No.117 of 2018 on the file of the Judicial Magistrate, Eraniel, Kanyakumari District is hereby quashed against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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/ /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,

The Judicial Magistrate,
Eraniel,
Kanyakumari District.

+1 CC to Mr.A.MANIKANDAN, Advocate SR.No.17592

+1 CC to Mr.K.VEILMUTHU, Advocate SR.No. 17319

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KS (CO)

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