



CrI.O.P(MD)No.15274 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 27.10.2022

DELIVERED ON : 25.11.2022

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P(MD).No.15274 of 2022

and

CrI.M.P(MD).No.10018 of 2022

1. Prema
2. Thangaraj
3. Lalitha
4. Vanithaa

... Petitioners

Vs

N.Kanimozhi

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records in CC.No.54 of 2019, on the file of the Judicial Magistrate Court, Devakkotai, Sivagangai District, quash the same as against these Petitioners/Accused No.2 to 4.

For Petitioners : Mr.N.Mohideen Basha

For Respondent : Mr.K.K.Mahesh Raja



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ORDER

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This Criminal Original Petition has been filed seeking to quash C.C.No. 54 of 2019, on the file of the Judicial Magistrate Court, Devakkotai, Sivagangai District, as against the Petitioners herein.

2. The learned counsel appearing for the Petitioners submitted that the Petitioners 1 and 2 are the parents of the husband of the Respondent and the Petitioners 3 and 4 are the sisters-in-law of the Respondent. The marriage between the son of the Petitioners 1 and 2 and the Respondent was solemnized on 26.02.2018. As per the complaint of the Respondent, at the time of marriage, the Petitioners had demanded 58 sovereigns of gold jewels, household articles worth of Rs.5,00,000/- and Rs.2,50,000/- in cash as dowry for their son, namely, Deepak. The second petitioner took the weight of the gold and found one sovereign deficit. He asked the Respondent/complainant to bring five more sovereigns of gold as additional dowry. All the accused persons often abused the Respondent. After marriage, the accused persons did not allow the Respondent to go to work. All the accused persons abused the Respondent using filthy language and attacked her. On 02.05.2015, Deepak, who is the husband of the Respondent and son of the Petitioners 1 and 2, left the



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Respondent at bus stand and went to abroad. Thereafter, the Respondent went to her parents' house and resided there. Later, she came to know that her husband had come back to India. At that time, the elders of the both the family tried to resolve the issue. On 20.05.2019, the husband of the Respondent came to the house of the Respondent's parents' house and demanded Rs.40,00,000/- and asked the properties of the Respondent's father. He abused the Respondent and attacked her.

3. It is the submission of the learned Counsel appearing for the Petitioners that the Respondent had filed a complaint with false allegations that the dispute between the son of the Petitioners 1 and 2 and the Respondent arose as the son of the Petitioners 1 and 2 did not take the Respondent with him abroad due to Visa problem. Instead of understanding the same, the Respondent had created a false case and thereby, exaggerated the dispute and had given criminal colour to a domestic dispute with *malafide* intention. She had roped in the innocent Petitioners.

4. The son of the Petitioners 1 and 2, namely, Deepak had filed a petition for restitution of conjugal rights in H.M.O.P.No.159 of 2019, seeking a direction against the Respondent to join him in matrimony. The Respondent



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wife refused to join him in matrimony. Instead, she filed a criminal complaint.

The learned Counsel appearing for the Petitioners submitted that the second petitioner is a retired Army man, who fought for the Nation in Kargil War and was awarded for his excellent service rendered to the Nation. He had been falsely roped in this case. Further, he submitted that the Petitioners 3 and 4 had been residing separately. They too had been falsely roped in without any specific overt acts against them. Even according to the prosecution, there is no allegation against any of these Petitioners after 2018.

5.As per the Respondent's complaint, on 20.05.2019, her husband only demanded dowry and attacked her. The complaint is preferred only with malicious intention.

6.A bare reading of the complaint itself shows that no offence is made out against the Petitioners herein, namely, A2 to A5 and such continuation of the said proceedings against the Petitioners amounts to abuse of process of law. It is a classic case, where the beneficial piece of legislation to protect women from dowry harassment is being misused by the Respondent as defacto complainant. Therefore, the Petitioners had approached this Court seeking the inherent powers of this Court under Section 482 of Cr.P.C., to secure the ends of justice.



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7.The learned Counsel appearing for the Petitioners relied on the ruling of the Hon'ble Supreme Court reported in **2022 Live Law (SC) 141**, in the case of **Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.** Therefore, the learned counsel appearing for the Petitioners sought to quash the proceedings against the Petitioners.

8.The learned counsel appearing for the Respondent objected to quash the complaint on the ground that there are specific overt acts against each of the Petitioners herein. The private complaint was filed in 2019 and right from the date of marriage, what are all suffered by the Respondent/complainant had been narrated in detail by the Respondent in the complaint in CrI.M.P of 2019. After recording the statement of the complainant and the supporting witnesses, the learned Judicial Magistrate, Devakottai, had taken cognizance of the offence alleged by the complainant and numbered the case as C.C.No.54 of 2019. What are all stated in the arguments put forth by the learned counsel appearing for the Petitioners cannot be considered in invoking the powers of the High Court under Section 482 of Cr.P.C. It is to be considered as only available defence of the accused which should be considered on appreciation of the evidence by the trial Court and not by this Court to quash the proceedings. Even though the Hon'ble Supreme Court in the reported ruling in **2022 Live Law (SC) 141**, in the



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case of ***Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors.*** had observed that the matrimonial disputes are misused by the aggrieved wives to rope in the relatives, who are residing far away. Here, this is not the case that the Petitioners 3 and 4 are also residing nearby the residence of the Petitioners 1 and 2. It is clearly stated in the complaint that the Petitioners 3 and 4 also abused the defacto complainant joining the Petitioners 1 and 2. Even though the Petitioners 3 and 4 are residing in the next street, they used to visit the house of the Petitioners 1 and 2 and stay there for the night. It has been specifically stated.

9. Therefore, the learned Counsel appearing for the Respondent objected to the line of the argument for the Petitioners that the Petitioners 1 to 4, who are arrayed as Accused Nos. 2 to 5 had been falsely implicated by the complainant. It is not true that she is the person, who had suffered physical and mental torture at the hands of the Petitioners.

10. Therefore, the reliance placed by the learned counsel appearing for the Petitioners on the judgment made by the Hon'ble Supreme Court in the case of ***Kahkashan Kausar @ Sonam & Ors. Vs. State of Bihar & Ors*** reported in ***2022 LiveLaw (SC) 141***, will not apply to the facts of the case. Here, there are



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specific averments by the complainant that they joined together, prevented her from going to work and asked her to work as a maid. Only at the instigation of the Petitioners herein, the Respondent's husband left her at Devakottai Bus Stand and not left her in her parents' house. What are all submitted by the learned counsel appearing for the Petitioners are to be treated as valuable defence, which cannot be considered while quashing the complaint. The learned counsel appearing for the Respondent/complainant submitted that as per the reported ruling of the Hon'ble Supreme Court in ***State of Haryana vs. Ch.BhajanLal***, the powers under Section 482 of Cr.P.C. shall be used sparingly and not leniently. The High Court shall use it based on the guidelines issued by the Hon'ble Supreme Court in the very same judgment. In the said judgment, it has been stated that the averments in the complaint, the averments in the FIR, the averments in the charge sheet and other related materials adduced by the prosecution alone shall be considered for quashing the complaint, FIR and charge sheet. Nothing more and nothing extra shall be considered by the Court. Here, there are specific averments, whereas the Petitioners claimed that there is only omnibus allegation. It is not true. Therefore, the learned counsel appearing for the Respondent/complainant sought to dismiss this petition.



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11. On consideration of the rival submissions and on perusal of the complaint in C.C.No.54 of 2019 filed by the Respondent, it is found that there are specific averments as rightly pointed by the learned counsel appearing for the Respondent.

12. Whether the Respondent had filed the private complaint by contending on imaginary grounds cannot be considered at this stage. It has to be considered only during trial by the learned Judicial Magistrate through appreciation of evidence let in by the complainant and the other witnesses.

13. The contention of the learned counsel appearing for the Petitioners that the second petitioner is a retired Army man and he had been falsely implicated also will not hold good when there are specific allegations that they had abused her for not bringing dowry as per their demand. She had specifically stated in the complaint that each of the Petitioners herein had abused her in filthy language and prevented her from going to her job. Also, it is stated that the Petitioners 3 and 4 are residing in the next street where the Respondent and the Petitioners 1 and 2 are residing invariably and they slept in the house of the Petitioners 1 and 2. When there are such specific averments, this Court cannot ignore the said contention and exercise the inherent powers available to the



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High Court under Section 482 of Cr.P.C., to quash the proceedings, accepting the contention of the Petitioners. If the proceedings are quashed against the Petitioners, it will only amount to miscarriage of justice and thereby, preventing the Respondent from proceeding with complaint to its logical conclusion.

14.As rightly pointed out by the learned counsel appearing for the Respondent/complainant, as per the reported ruling in ***State of Haryana vs. Ch.BhajanLal***, the powers available to the High Court under Section 482 of Cr.P.C., shall not be used invariably and leniently. It shall be used only sparingly.

15.Also, as rightly pointed out by the learned counsel appearing for the Respondent, the facts of the case differ from the facts of the reported ruling cited by the learned counsel appearing for the Petitioners. Even though the offences alleged are the same, there are specific averments in this complaint made by the Respondent regarding the overt acts of each of the Petitioners herein. Whereas, in the reported ruling, it was an omnibus averment. It is a fact that invariably matrimonial disputes are converted as criminal complaint, but that cannot be taken for granted in all the cases and thereby quashing the complaint before ever evidence is recorded.



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16.The Petitioners having been specifically identified by the Respondent/complainant, they are exempted from personal appearance except on the directions of the learned Judicial Magistrate, Devakottai, for recording evidence, for framing of charges, for Section 313 Cr.P.C., proceedings, for judgment. They have to appear for four stages. Since the identification of the Petitioners are not disputed, the learned Judicial Magistrate, Devakottai, shall pass appropriate orders to dispense with their personal appearance. The learned Judicial Magistrate is directed to proceed with the trial when the first accused is available. In case, the first accused is not co-operating with the trial, the learned Judicial Magistrate shall issue warrant directing the Sivagangai Police to secure the first accused even if he is abroad. The Petitioners are directed to co-operate with the trial Court, thereby helping the trial Court to dispose of the case within a period of three months from the date of receipt of a copy of this order. The learned Judicial Magistrate is directed to proceed with the evidence on day-to-day basis. The power under Section 311 Cr.P.C., shall not be misused. The learned Judicial Magistrate shall adhere to the ratio laid down by the Hon'ble Supreme Court in ***Vinoth Kumar Vs. State of Punjab***, regarding exercise of powers under Section 311 of Cr.P.C.. to recall witnesses.



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16. With the above directions, this Criminal Original Petition is dismissed.

Consequently, the connected miscellaneous petition is closed.

In the result, this Criminal Original Petition is dismissed.

Consequently, the connected miscellaneous petition is closed.

25.11.2022

Index : Yes/No
Internet : Yes/No
LR

To

1. The Judicial Magistrate Court,
Devakkotai, Sivagangai District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

LR

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