



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.21827 of 2018

and

Crl.MP(MD)Nos.10139 of 2018 and 4306 and 4307 of 2019

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1.M.A.Rafi Ahamed

2.Abdul Majith

: Petitioner/A1 and A2

Vs.

1.The Inspector of Police,
AWPS-Palayamkottai Police Station,
Tirunelveli District.
(Crime No.14 of 2017)

: R1/Complainant

2.Vaseela Banu

: R2/De-facto Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.344 of 2018 on the file of the Chief Judicial Magistrate, Tirunelveli and quash the same

For Petitioner : Mr.K.C.Maniyarasu

For 1st Respondent : Mr.P.Kottai Chamy

Government Advocate (Crl side)

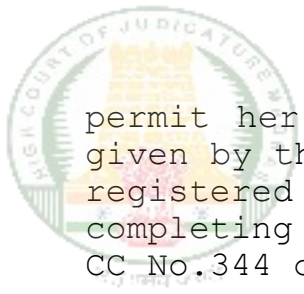
For 2nd Respondent : Mr.D.Srinivasaragavan

O R D E R

This criminal original petition has been filed by the petitioners seeking quashment of CC No.344 of 2018 on the file of the Judicial Magistrate, Tirunelveli.

2.The case of the prosecution in brief:-

The marriage between the de-facto complainant and A1 took place, on 14/03/2010 at Idhaya Thirumana Mahal, Tirunelveli, as per the customary rites. At the time of marriage, they have provided with 100 sovereigns of gold jewels and Rs.2,00,000/- worth sridhana articles and other house-hold articles. The de-facto complainant was working as Doctor in the Primary Health Centre and A1 was working as Cardiologist in a private hospital. After the marriage, they lived in Vannarapettai, Tirunelveli. During their joint living, the entire salary was taken by A1. A2 also ill-treated the de-facto complainant. Continuous trouble was made by A1. On 02/07/2017, A1 left the house to attend the marriage at Kadayanallur, but did not return and also pronounced talage through phone. The second accused also criminally intimidated the de-facto complainant and did not



permit her to enter into the house. So based upon the complainant given by the de-facto complainant, a case in Crime No.14 of 2017 was registered for the offence under section 498-A IPC and after completing the investigation process, final report has been filed in CC No.344 of 2018 before the Chief Judicial Magistrate, Tirunelveli.

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3.This petition has been filed by both the accused persons mainly on the ground that with the very same allegation, the second respondent filed DVC No.2 of 2018 before the Judicial Magistrate No.1, Tirunelveli. For the past two years, from the date of marriage, there was a problem between them and the respondent refused to have relationship with the 1st accused. Negotiations were held several times. Even though the de-facto complainant expressed her regret for the same, she did not turn to the matrimonial home.

4.Heard both sides.

5.It is an usual matrimonial dispute between the husband and wife, who are in the Medical Professional. It is unfortunate that trouble arose between them, after two years of marriage. For the first two years, there was no problem between them. But later, trouble has arisen.

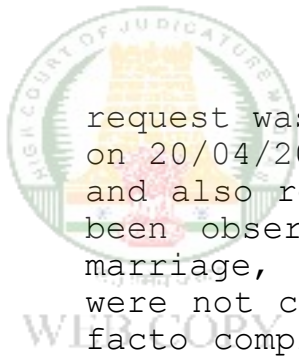
6.The learned counsel appearing for the petitioners would submit that because of the refusal on the part of the 2nd respondent for having relationship with A1, trouble has started and actually this must be construed as 'cruelty' upon the first petitioner by the 2nd respondent.

7.Now it is the turn of the 2nd respondent to make allegation against the petitioner stating that she requested the first petitioner to go for higher study and working. But the petitioner refused to accede to the same and because of that only, trouble has arisen between them.

8.The learned counsel appearing for the petitioner would straightway rely upon the report of the Social Welfare Officer, dated 15/06/2018.

9.Reading of the report shows that continuous trouble exists between the de-facto complainant and A1 regarding their professional issue. Twice negotiation was conducted by the elders. In the meantime, the first petitioner appears to have sent talaq notice to the de-facto complainant and the de-facto complainant gave a complaint seeking a direction to the first petitioner to resume the matrimonial life. Because of the matrimonial issue, it is seen that how the petitioner took the 100 sovereigns of jewels and house hold articles, apart from the Car, when the de-facto complainant was not available in the house. Over which, a case was registered and during the course of investigation, all the above said gold jewels and

<https://hccservices.tn.gov.in/case>



request was made by the de-facto complainant for reunion. But later, on 20/04/2018 she has stated that she is not willing to live with A1 and also requested to maintain and custody of the child. So it has been observed by the Social Welfare Officer that right from the marriage, when the de-facto complainant went for higher education were not cordial relationship between the husband and wife. The de-facto complainant also refused to have a conjugal relationship with A1. But the first accused insisted for conjugal relationship. But it was found that there was no dispute with regard to the demand of dowry etc. But the domestic violence was reported to be registered.

10.By pointing out this piece of document, the contention of the petitioners is that only the 2nd respondent committed cruelty upon the first petitioner and absolutely, there is no material on record to show that the petitioners committed the offence of cruelty upon the second respondent.

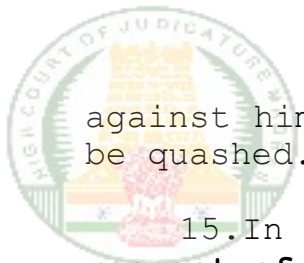
11.To show the definition of cruelty, the learned counsel appearing for the petitioners has relied upon the judgment of the Hon'ble Supreme court in the case of **Vidhya Viswanathan Vs. Kartik Balakrishnan (AIR 2015 SUPREME COURT 285)**, wherein it has been observed that refusal on the part of the wife to have a conjugal relationship will amount to cruelty.

12.Section 498-A IPC reads as follows:-

S.498-A.Whoever, being the husband or the releave of husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

13.Reading of the above said provision shows that a married woman is subject to cruelty, causing the mental or physical harm, then the offence under section 498-A IPC will be attracted. Here as per the case of the second respondent, right from the marriage, the first petitioner was not attending to his job properly, even her salary was taken by him. Even at one point of time, he took away all the house articles and Car and the jewels when he was in the house. Whether this will amount to cruelty or not, is a matter for consideration by the trial court. So the petitioners cannot take advantage of the report of the Social Welfare Officer to the effect that there was no dowry demand.

14.But however, from the fact and circumstances of this case, it is seen that the second petitioner is no way in the matrimonial dispute between the husband and wife. A bald allegation has been made, which it does not warrant a criminal apprehension



against him. So the criminal proceedings against him is liable to be quashed.

15. In the result, this criminal original petition is **allowed in respect of the 2nd petitioner/A2 alone and the impugned CC No. 344 of 2018 pending on the file of the Chief Judicial Magistrate, Tirunelveli is quashed as against him.** In respect of the **1st petitioner/A1, this criminal original petition is dismissed.** But however, considering the fact that the 1st petitioner is a Doctor, his personal appearance before the trial court is dispensed with. Within 15 days from the date of receipt of a copy of this order, the 1st petitioner/A1 must appear before the trial court and file an undertaking affidavit that he will appear as and when required by the court and he must ensure that he is properly represented by an Advocate. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2022

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.

To

1. The Chief Judicial Magistrate,
Tirunelveli.

2. The Inspector of Police,
AWPS-Palayamkottai Police Station, Tirunelveli District.

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

+1 CC to M/s.D.SRINIVASARAGAVAN, Advocate (SR-13712[F] dated 23/03/2022)

+1 CC to M/s.K.C.MANIYARASU, Advocate (SR-14113[F] dated 24/03/2022)

Cr1.O.P. (MD)No.21827 of 2018
22/03/2022