



Crl.O.P.(MD) No.18606 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 02.11.2022

PRONOUNCED ON: 25.11.2022

CORAM

THE HON'BLE MR.JUSTICE **SATHI KUMAR SUKUMARA KURUP**

CRL.O.P(MD)No.18606 of 2022

1.Dr.P.Hameed Farooq
2.Dr.Peer Mohammed
3.Dr.Saleema

...Petitioners

-VS-

1.The Superintendant of Police,
Office of the Superintendant of Police,
Nagercoil, Kanyakumari District.

2.The Inspector of Police,
All Women Police Station, Nagercoil,
Kanyakumari District in Cr.No.24 of 2020.

3.Dr.S.Naidya Manzoor

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to direct the second Respondent to conduct a fair investigation in connection with Cr.No.24 of 2020 on the file of the second Respondent and to proceed further by adopting the procedure by sending the complaint to Family Welfare Committee and file altered charge sheet within a time frame limit in accordance with law.



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For Petitioner
For R1 and R2

: Mr.S.Karthikeyan
: Mr.B.Nambi Selvan
Additional Public Prosecutor

ORDER

The learned Counsel for the Petitioners submitted that this Petition had been filed by the husband and parents of the husband of the De-Facto Complainant, the third Respondent in this Petition, seeking to conduct a fair investigation with regard to Cr.No.24 of 2020 on the file of the second Respondent by sending the complaint of the third Respondent/De-Facto Complainant to the Family Welfare Committee and file an altered charge sheet within a time frame.

2.It is the contention of the learned Counsel for the Petitioners that the first Petitioner married the third Respondent on 14.01.2011 at Nagercoil. The Petitioners are residing in Dindukal whereas the third Respondent is a resident of Kanniyakumari District. The Petitioners and the third Respondent are Doctors by profession. During the time of marriage, the first Petitioner was pursuing his study, M.S., at Pondicherry Institute of Medical Sciences, Puducherry. The third Respondent was undergoing a house surgeon at Mangalore,



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after completion of MBBS.

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3.After marriage, the third Respondent/De-Facto Complainant went to live with her husband, the first Petitioner, at the husband's parents' house at Dindukul. When the third Respondent was residing at Dindigul, the first child, P.H.Aydin Thameez was born. Thereafter, two daughters were born, namely, P.H.Saleema Aidah and P.H.Aira Elham. The second Petitioner being a medical practitioner, the entire family wanted the third Respondent to assist the second Petitioner in their hospital.

4.The first Petitioner had been appointed as Assistant Surgeon in a Government Hospital, Dingidul and District Nodal Officer for PG-DNB course, Dindigul District. The third Respondent with an intention to separate the first Petitioner from the family of the Petitioners, used to blame the Petitioners and the first Petitioner's another brother with a motive to separate the family. The third Respondent was not able to succeed in her entrance examination for higher studies and she threatened to commit suicide, if she failed to get a seat for higher studies on payment of capital fees. After that, the third Respondent's behaviour got changed towards all the



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Petitioners. She started to behave unreasonably.

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5. When the first Petitioner informed the behavior change of the third Respondent to her parents, they did not take steps to cure her. It changed in such a way that the entire property of the second and third Petitioners is to be partitioned and the first Petitioner's brother should not be given any share. The third Respondent behaved arrogantly and demanding the entire income of the first Petitioner. She subsequently consumed anti-anxiety tablets and pretended to end her life. Immediately, the first Petitioner informed the incident to the parents of the third Respondent. On the next day, ie., on 27.05.2018, the third Respondent left matrimonial home along with her parents. Mediation went on between the elders of two families.

6. The third Respondent returned to matrimonial home and wanted to reside in a separate house. At the request of the third respondent, the first Petitioner constructed a new house. On 05.10.2018, the third Respondent quarrelled with first Petitioner and wrote a confession letter expressing her desire to put an end to the marriage. The third Respondent left the matrimonial home along with three children to her parents' house on her own accord.



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7.The first Petitioner filed G.W.O.P.No.217 of 2019 seeking permanent custody of his three minor children under Sections 7, 9 and 17 of Guardians and Wards Act, 1890 before the learned Judge, Family Court, Nagercoil. Thereafter, the third Respondent preferred a complaint against the Petitioners before the second Respondent. The second Respondent registered a case against the Petitioners in Cr.No.24 of 2020 under Sections 498A and 406 of IPC and Sections 4 and 6 of Dowry Prohibition Act, 1961. After investigation, the second Respondent laid final report, which was taken cognizance by the learned Judicial Magistrate, Additional Mahila Court, Nagercoil and numbered as C.C.No.77 of 2021.

8.It is the submission of the learned Counsel for Petitioners that the second Respondent did not receive all the documents including the photos produced by the Petitioners. The investigation is not fair. Therefore, the Petitioners seek to order further investigation by the learned Judicial Magistrate under Section 173(8) Cr.P.C.

9.The learned Counsel for the Petitioners invited the attention of this Court to the civil suit pending between the Petitioners and the



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third Respondent in O.S.No.178 of 2021 pending before the Family Court, Kanniyakumari District, wherein, I.A.No.3 of 2021 in O.S.No. 178 of 2021 was dismissed by the learned Judge, Family Court, Nagercoil. The learned Counsel for the Petitioners invited the attention of this Court to the letter addressed by the third Respondent to the first Petitioner, which reads as follows:

"Dear Farooq

I know that you are struggling sole to keep both of us (you parents as well as me) happy. But being a wife, I can understand that sometimes I turn out to be very selfish. I shouldn't be.

I fee that your life would never be happy with me as your wife. That's y, I wanted to be away from you. As your parents feel, I am always a torture.

You need more rest and peace of mind.

I don't think I am giving you that.

Parents are very very happy important to us dear. I know that more than anyone else. I never wanted to separate u from your parents. In fact, I wanted to give way for u to be happy.

Also, you broke my trust once. You will never even understand how broken. I felt then any way you forgot that past. But dear, I couldn't and I wouldn't and that is spoiling my sleep every night.

Its better that we separate legally without any arguments or fights. I would never come asking for "rights" and my kids too. And don't worry about my parent. They will not disturb you again.

I can convince my parents. And when it comes to your parent, they would be happy to get rid of me.

Take your time to decide.

It took only few minutes to bring out your actual character. That is what you are you. May thank that you have changed, but deep within, you are still the same old Farooq. And I am very much afraid of that person. I hate him.

There are so many years ahead of us dear. You definitely have sooooo much to achieve. I will never be a burden. Wishing you all the best. Think wisely and decide.



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*Lets separate.
(Nadiya)
signed"*

10.The learned Additional Public Prosecutor vehemently objected to the submission of the learned Counsel for the Petitioners stating that after the learned Judicial Magistrate had taken cognizance of the offence and taken investigation on file and having it numbered as C.C.No.77 of 2021, this Court exercising the extraordinary jurisdiction under Section 482 of Cr.P.C., cannot order further investigation.

11.The learned Additional Public Prosecutor relied upon the judgment of Honourable Supreme Court reported in ***Crl.A.No.1768 of 2022*** in ***Devendra Nath Singh and State of Bihar and others.***

12.Considering the rival submissions and on perusal of the ruling cited by the learned Additional Public Prosecutor in ***Crl.A.No. 1768 of 2022*** in ***Devendra Nath Singh and State of Bihar and others***, it is found that the High Court exercising the power under Section 482 Cr.P.C., shall pass appropriate orders to render justice to the litigant. Here, the accused had stated that the third Respondent



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had with ulterior motive seeking to investigate the matter. At the same time, the third Respondent had sent a letter addressed the first Petitioner.

13.Under those circumstances, laying of final report by the first Respondent is found to be unfair without going into the facts by examining the persons with Family Welfare Committee. When the third Respondent had already left the matrimonial home on her own and also filing Petition with an ulterior motive, to cause harassment against A1 to A3, it is nothing but an abuse of process of law. Since the learned Judge had taken cognizance of the offence, the Superintendant of Police, Kanniyakumari District, is directed to nominate an Officer not below the rank of Deputy Superintendant of Police. The second Respondent is directed to conduct further investigation in the light of the averments made in this Petition by the Petitioners. The Officer nominated by the Superintendant of Police is directed to supervise the investigation conducted by the second Respondent.

14.In the result, this Petition is allowed. The learned Judicial Magistrate, Additional Mahila Court, Nagercoil, is directed not to



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proceed with the case in C.C.No.77 of 2021 till the supplementary charge sheet is filed by the second Respondent.

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Index:Yes/No

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To

- 1.The Judicial Magistrate, Additional Mahila Court, Nagercoil.
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SATHI KUMAR SUKUMARA KURUP, J.

cmr

Order made in
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