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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01/04/2022**

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.16529 of 2018

and

Crl.MP(MD)No.7305 of 2018

P.Anto Ajith : Petitioner/A5

Vs.

1.The State rep. By its
The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District,
(In Crime No.5 of 2015) : R1/Complainant

2.Jebasudha : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.130 of 2015 on the file of the Judicial Magistrate, Eraniel and quash the same in respect of the petitioner.

For Petitioner : Mr.C.Mayilvahana Rajendran

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

For 2nd Respondent : Mr.J.John Jayakumar

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.130 of 2015 on the file of the Judicial Magistrate, Eraniel.

2.The case of the prosecution in brief:-

The first accused married the de-facto complainant. A2 is the mother of A1. A3 is the sister. A4 is the father of A1. A5 is the brother of A1. The marriage between the parties was performed, on 24/10/2011 as per the christian customary rites. Even at the time of marriage arrangement, they demanded money and jewels. After the marriage, the first accused was not properly maintaining the de-facto complainant. He did not spend the money even for domestic and house-hold expenses. The other accused were also supporting A1. A



compromise was reached between the parties, by which, A1 promised to arrange separate house at Karankadu. He also took away the child. But when the de-facto complainant went to the matrimonial home, the accused 2 and 3 did not permit her. They also assaulted her stating that she must bring Rs.2,00,000/-. A1 also assaulted her in a drunken mood. He pledged the jewels and misappropriated the money. On 09/06/2014, A1, A2 and A4 assaulted her demanding Rs.2,00,000/-. A complaint was lodged, on 16/07/2014, which was enquired in CSR No.199 of 2014. During the enquiry, A1 promised to return the gold jewels and money. But failed to keep his promise. On the basis of the complaint given by the de-facto complainant, a case in Crime No.5 of 2015 was registered for the offences punishable under sections 498(A), 406 IPC and sections 3, 4 and 6 of Dowry Prohibition Act and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.130 of 2015 by the Judicial Magistrate, Eraniel, which is challenged by this petitioner, who is arrayed as A5 in the final report.

3.Heard both sides.

4.It is a matrimonial dispute between the husband and wife. The husband is not before this court. A5, who is the brother of A1 is before this court.

5.The learned counsel appearing for the petitioner would submit that even as per the final report that has been filed by the first respondent after investigation, no specific overtact has been attributed against this petitioner. According to him, he being the brother-in-law has been falsely implicated.

6.From the narration of facts, it is seen that against this petitioner, allegation has been made to the effect that A1 received the jewels from the de-facto complainant at the instance of A2 to A5, pledged the same and later sold and spent the money lavishly. This is the only allegation that has been made against this petitioner. How this petitioner is involved in the matrimonial dispute between the husband and wife, no sufficient material has been collected during the course of investigation. Except the bald and baseless allegation that only at the instigation of this petitioner and the accused 2 to 4, her jewels has been received by A1, no other specific overtact has been attributed.

7.During the course of hearing, it has been brought to the notice of this court that the divorce has been granted by the Additional District and Sessions Judge, (Fast Track Court), Kanyakumari at Nagercoil, in DOP No.59 of 2017 and DOP No.223 of 2015, dated 05/10/2018, by imposing certain conditions upon the accused persons. The date of the order is 05/10/2018. One of the conditions is that the husband must pay a sum of Rs.8,00,000/-



24% interest per annum must be levied, apart from Rs.5,000/- per month towards maintenance. With regard to the custody of the child and visiting right has also been resolved and DVOP No.6 of 2016 was also agreed to be withdrawn. But what happened after that is not clear on record.

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8. But the learned counsel appearing for the 2nd respondent would submit that none of the condition, that has been imposed upon the husband was complied. When that was brought to the notice of this court, this court advised the petitioner to contact A1 and inform the court about the development. On that ground, it was repeatedly adjourned. In-spite of adjournment, the learned counsel appearing for the petitioner was not in a position to contact A1, but promised this petitioner will advise A1 to comply the order that has been passed in the matrimonial proceedings.

9. No doubt that A1 has not complied the condition. On the fault that has been committed by A1, the case of the petitioner should not be affected, independently all the disputes between the husband and wife.

10. As mentioned earlier, no specific overtact has been attributed against this petitioner, except bald statement to the effect that this petitioner also demanded dowry. Repeatedly, it has been held by the Hon'ble Supreme Court more particularly in **Preethi Gupta' case**, the tendency of the wife to rope the in-laws into the matrimonial issue must be properly addressed. When we apply the observation of the Hon'ble Supreme Court to this case, in so far as the petitioner is concerned, I am of the considered view that the observation of the Hon'ble Supreme Court in **Preethi Gupta's** case squarely applies to the present factual circumstances. So on the sole ground, this petition is liable to be allowed.

11. In the result, this criminal original petition is **allowed**. The impugned CC No.130 of 2015 on the file of the Judicial Magistrate, Eraniel is hereby quashed in respect of the petitioner. Consequently, connected Miscellaneous Petition is closed.

Sd/-

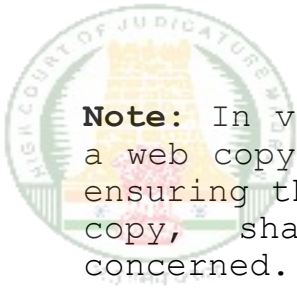
Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

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To,

- 1.The Judicial Magistrate,
Eranial,
Kanyakumari District.
- 2.The Inspector of Police,
All Women Police Station,
Colachel,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.MAYIL VAHANA RAJENDRAN, Advocate (SR-16647[F] dated 05/04/2022)

Crl.O.P. (MD)No.16529 of 2018
01/04/2022

RD(28.06.2022) 4P 5C