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Crl.O.P.(MD)No.17088 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.17088 of 2019

and

Crl.MP(MD)No.10111 of 2019

1.Amirthalingam

2.Thavamani

: Petitioners/A2 & A3

Vs.

1.The State of Tamil Nadu
rep. By through its
Sub Inspector of Police,
All Women Police Station,
Thanjavur,
Thanjavur District.
(Crime No.5 of 2019)

: R1/Complainant

2.Sumathi

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crime No.5 of 2019 on the file of the 1st respondent police and quash the same.

For petitioners : Mr.P.M.Vishuvarthanan

For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.T.A.Ebenezer



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O R D E R

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This criminal original petition is filed seeking quashment of the case in Crime No.5 of 2019 on the file of the 1st respondent police and quash the same.

2.The case of the prosecution is that the marriage between the de-facto complainant and A1 namely Parameshwaran was performed, on 22/05/2008 in Thanjavur. At that time, the husband was running a business of Tiles iron roll and Cement. She was provided with sreedhana and jewels. Even at that time of marriage, they demanded 40 sovereigns of gold jewels and Rs.cash of Rs.1,00,000/-, apart from also demanded a two wheeler. On 29/08/2009, a male child was born, he was also provided with jewels. Demanding balance jewels, she was frequently driven out of the house. On 19/05/2011, she was driven out of the house by retaining the jewels and the child. She lodged a complaint on 27/05/2021 and the child was restored to her. Later A1 filed HMOP No.138 of 2021, wherein, interim maintenance was ordered. Against which, appeal was preferred and that was also dismissed. The maintenance case in MC No.3 of 2016 is also stated to be pending. Now it is learnt that the accused persons performed second marriage



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to A1. They have a child. Based upon the above said complaint, the case has been registered. After completing the formalities of investigation, final report was also filed and it was taken cognizance in CC No.67 of 2020. This petition came to be filed during the investigation stage. But later, final report has been filed, since there was no stay order.

3.Heard both sides.

4.The learned counsel appearing for the petitioner would submit that HMOP is pending between the parties and maintenance has been ordered and regularly paid by the husband. Since final report has been filed, no challenge has been made by the petitioners with regard to the final report, now the matter has become infructuous. If the petitioners are aggrieved by the final report, then they have to work out their remedy through proper proceedings.

5.But however, the learned counsel appearing for the petitioners would submit that even though the final report has been filed, there is no bar for this court to consider this petition, since absolutely, no ground has been made out by the de-facto complainant to proceed against the petitioners.



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6.No doubt that filing of the final report may not be a bar for quashing the FIR, if no materials have been available. But the petitioners are not in a position even to substantiate their argument to the effect that no materials have been collected during the course of investigation process. They are not even ready to get the certified copy of the final report and produce before this court to substantiate their argument to show that no prima facie materials are available or collected.

7.It is contended on the part of the petitioners to the effect that the de-facto complainant has lodged a complaint, on 25/07/2011 , wherein it has been stated by her to the effect that there was no demand of dowry by the husband and his relatives. There was some petty domestic issue between them. So on the basis of the domestic issue, she gave a complaint and that was referred to the Mediation Conciliation Centre. In the Conciliation process, a compromise was reached. So they started living together. So the complaint given, on 25/07/2011 was withdrawn, on 06/10/2011. Later only, this complaint stated to be given on 12/11/2019 setting out the the different facts. So according to the learned counsel appearing for the petitioners, there is a *mala fide* intention on the part of



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the de-facto complainant, which is inherently improbable and false one. But what happened after the above said compromise between the parties is not clear on record.

8.As mentioned earlier, on 06/10/2011, the earlier complaint was withdrawn. But even before that, A1 appears to have filed a petition under section 13(1) of Hindu Marriage Act seeking divorce. It appears that it is also stated to be pending.

9.Further perusal of the FIR shows that there are serious allegations to the effect that these petitioners are retained the jewels of the de-facto complainant and also performed second marriage to A1. When there is a specific allegation with regard to non-returning of the jewels and performance of second marriage, then the offence got to be tried to its logical conclusion.

10.In view of the above discussion, the petitioners are at liberty to put forth their defence before the trial court at the time framing of charges.



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11. With the above said liberty, this criminal original petition **dismissed**. Since the final report has been filed before the concerned court, there shall be a direction to the trial court to complete the trial process within a period of five months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

04.08.2022

Internet:Yes/No
Index:Yes/No
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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.



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To,

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- 1.The Sub Inspector of Police,
All Women Police Station,
Thanjavur.

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



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