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Crl.O.P.No.23713 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.23713 of 2015

- 1.Karthikeyan
2. Kamalam
3. C.P.Shanmugasundaram
4. Vijaya
5. Sampathkumar

... Petitioners

Vs.

1. State by Inspector of Police,
All Women Police Station,
Avinashi.
Crime No.110 of 2015.

2. Surya Prabha

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.110 of 2015 on the file of the learned Judicial Magistrate, Avinashi and quash the same.

For Petitioner : Mr.V.Sairam

For Respondents

For R1 : Mr. A.Gopinath
Government Advocate (Crl. Side)

For R2 : Mr.C.S.Saravanan



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ORDER

This petition has been filed to quash the proceedings as against the petitioners in C.C.No.110 of 2015 on the file of the learned Judicial Magistrate, Avinashi.

2. The case of the prosecution is that the marriage between the first petitioner and the second respondent was performed on 07.06.2010. Due to their wedlock, second respondent gave birth to a male child. Thereafter, due to misunderstanding, they got separated. She also alleged that, she was not provided with food and essential requirements. Therefore, she lodged a complaint before the Lok Adalat. After negotiation, she was directed to live with her husband and the family members are advised to take care of the victim. Even then, they had failed to take care of the second respondent and as such, they got separated. Thereafter, first petitioner filed petition for divorce on the ground of cruelty. Thereafter, second respondent lodged a complaint before the respondent police on 13.04.2015 and the same was registered for the offence under Section 498 of IPC. After completion of investigation, first respondent filed final report for the offence under Section 498 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and the same has been taken cognizance in C.C.No.110 of 2015. There are totally five accused.

Petitioners are arrayed as A1 to A5. First Petition is the husband of the second



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respondent and others are in-laws.

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3. The learned counsel for the petitioner submitted that, though there are specific allegations as against the first petitioner, no allegations were not made as against the other petitioners namely A2 to A5. Infact, A4 and A5 are living separately and no way connected with A1 to A3. He further submitted that, the present complaint is nothing but a counter blast to the divorce petition filed by the petitioner. That apart, first respondent registered FIR without even conducting any enquiry. Petitioner was not served with any notice immediately after receipt of the complaint. Thereafter, first petitioner filed divorce petition on the ground of cruelty and it was duly contested by the second respondent. After considering the evidence on record, divorce petition was allowed on the ground of desertion and the marriage between 1st petitioner and 2nd respondent was dissolved. Thereafter, 2nd respondent had not filed appeal against the order of divorce. He further submitted that, only on her insistence, first petitioner had set up separate residence. Thereafter, first petitioner transferred to Bangalore and defacto complainant was taken to Bangalore. They lived separately and therefore, other petitioners are not living with the first petitioner.

4. Mr.A.Gopinath, learned Government Advocate (Crl. Side) submitted that, there are specific allegations as against all the accused persons to attract



the offence under Section 498 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. On 07.06.2010, 2nd respondent got married to the petitioner. Due to their wedlock, 2nd respondent gave birth to a male child. During their marriage, petitioner was provided with 51 sovereigns of gold jewels as dowry. On 20.06.2010, 1st petitioner had taken the 2nd respondent to Bangalore. They used to visit her in-law's house, who are the 4th & 5th petitioners herein. Thereafter, she got pregnant. Petitioners without even informing her parents, conducted baby shower function to her. That apart, they had not invited any of the family members of the second respondent. She delivered a female child and thereafter, she was not provided with proper meal and basic amenities. Therefore, she was not able to feed her child. Thus, he prays for dismissal of this petition.

5. The learned counsel for the second respondent submitted that, there was harassment by the petitioners as against the second respondent and there are specific allegations as against the petitioners to attract the offence under Section 498(A) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. Thus, he prays for dismissal of this petition.

6. The perusal of the statements of the second respondent revealed that, bald and vague allegations were made against the petitioners. Only on the



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instance of the second respondent, first petitioner had set up a separate residence and they were living separately not connected with their parents.

Petitioners 4 & 5 are living separately and there is absolutely no evidence to show that they were living with her parents. Infact, first petitioner was transferred to Bangalore. First petitioner had set up a house in Bangalore and 2nd respondent was taken to Bangalore on 20.06.2010. Thereafter, she got conceived and baby shower function was also conducted. The allegation is that, her parents were not invited for the baby shower function. She was also not provided with proper food and other basic amenities. There is no allegations about dowry harassment. Due to misunderstanding, 1st petitioner and 2nd respondent got separated and therefore, she stayed with her parent's house along with her children. On 27.03.2015, 1st petitioner filed petition for divorce in H.M.O.P.No.457 of 2015 on the ground of cruelty. After receipt of summons from the Family Court, Coimbatore, 2nd respondent lodged a complainant on 13.04.2015 as against the petitioners. Thereafter, first respondent registered an FIR, without even conducting any enquiry. Though the orders of the Hon'ble Supreme Court of India and this Court had repeatedly given guidelines that, before registering the FIR on the offences relating to family, concerned Officer to conduct preliminary enquiry, first respondent failed to conduct enquiry. The perusal of the FIR revealed that, 2nd respondent had already lodged a



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complaint on 09.10.2012 before the Lok Adalat, Tiruppur. On receipt of the same, enquiry was conducted and there was a settlement between the first petitioner and the second respondent and thereafter, they lived together. Thereafter, on 13.04.2015, 2nd respondent gave a complaint before the respondent police as against the petitioners. On receipt of the complaint, FIR was registered in Crime No.04 of 2015. It is nothing but a counter blast to the divorce petition filed by the first petitioner in H.M.O.P.No.457 of 2015 on the file of the Family Court, Coimbatore. Now, divorce petition filed by the first petitioner was allowed and as a result, marriage between the first petitioner and the second respondent had dissolved by a judgment and decree dated 30.08.2019. Infact, first petitioner also paying maintenance of Rs.14,000/- in favour of the second respondent.

7. The perusal of the allegations made in the FIR, it becomes pertinent to mention that incorporation of [section 498A](#) of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as [498A IPC](#) as instruments to settle personal scores



against the husband and his relatives. Most of this complaints are filed in the heat of the moment over trivial issues without proper deliberations and it is also filed with oblique motive.

8. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India reported in Crl.A.No.195 of 2022 in the case of Kahkashan Kausar @ Onam & others Vs. State of Bihar & others as follows:

18. this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

9. In the case on hand, admittedly, after filing divorce petition filed by the 1st petitioner in H.M.O.P.No.457 of 2015, second respondent lodged a complaint on 13.04.2015. First respondent without even conducting preliminary enquiry, straight away registered FIR on the very same day for the



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offence under Section 498 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

10. On reading of the FIR, this Court finds that there is no specific overt act as against the in-laws of the second respondent namely 2nd to 5th petitioners herein. Therefore, initiation of prosecution in the absence of specific allegations would result in abuse of process of law. Therefore, in the absence of the specific overt act as against the petitioners 2 to 5, if they are forced to go through the tribulations of a trial, i.e., general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. Therefore, the entire proceedings cannot be sustained as against petitioners 2 to 5 and it is liable to be quashed against them alone.

11. In view of the above discussion, the proceedings in C.C.No.110 of 2015 on the file of the learned Judicial Magistrate, Avinashi is hereby quashed as against the petitioners 2 to 5 alone.

12. Accordingly, this Criminal Original Petition is allowed in respect of Petitioners (2 to 5) and dismissed in respect of 1st petitioner.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order



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To

1. The Judicial Magistrate,
Avinashi.
2. Inspector of Police,
All Women Police Station,
Avinashi.
3. The Public Prosecutor,
Madras High Court.

G.K.ILANTHIRAIYAN, J.

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