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Crl.OP.No.6052 of 2021

'IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM:

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

Crl.OP.No.6052 of 2021 and
Crl.MP.Nos.3952 & 3953 of 2021

Sivakami

... Petitioner

Vs.

1.The State rep. by
Inspector of Police,
All Women Police Station,
Kangeyam,
Tiruppur District
crime No.3 of 2020

2.Anju

... Respondents

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the charge sheet in CC.No.157 of 2020 on the file of the Judicial Magistrate Court, Kangayam and to quash the same insofar as the petitioner is concerned by allowing this criminal original petition.

For Petitioner

: Mr.R.Prabakar

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(Crl.side)

For R2

: Ms.G.Kiruthika



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ORDER

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This Criminal Original Petition has been filed to quash the charge sheet in CC.No.157 of 2020 on the file of the Judicial Magistrate Court, Kangayam taken cognizance for the offences under Sections 498(A), 294(b), 323 and 324 of IPC as against the petitioner and others.

2. There are totally four accused. The case of the prosecution is that the first accused got married the second respondent on 28.10.2018. During the marriage, she was presented with 60 sovereigns of jewels, 2 lakhs cash and other household articles. They lived as joint family. The accused persons demanded huge dowry from the second respondent. They also on so many occasions attacked her and harassed her to bring more dowry. That apart, the first accused is having illegal intimacy with the petitioner who is none other than his maternal aunt. On receipt of the said complaint, the first respondent registered FIR for the offence under Sections 498(A), 294(b), 323 and 324 of IPC in crime No.3 of 2020. After completion of investigation, they filed final report and the same was taken cognizance by the trial court.

3. The learned counsel for the petitioner would submit that



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uncharitable allegations are made as against the petitioner. She is none other than own maternal aunt of the first accused and she is like mother of the first accused. Therefore, allegations are baseless and only to maintain the charge sheet, the said allegations were made as against the petitioner. As such, no offence is made out as against the petitioner.

4. Heard, the learned counsel appearing on either side.

5. On perusal of records, revealed that specific requirements are available against the petitioner in order to attract the offence under Sections 498(A), 294(b), 323 and 324 of IPC. Non only the second respondent, as well as other witnesses also categorically deposed that the first accused had illegal intimacy with the petitioner and due to which all the accused persons used to harass the second respondent and also attacked her. Therefore, there are materials to constitute the offence under Sections 498(A), 294(b), 323 and 324 of IPC.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of



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Devendra Prasad Singh Vs. State of Bihar & Anr., wherein it is held as

follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section



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482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

8. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been



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complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

9. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.157 of 2020 in Crime No.3 of 2020 on the file of the first respondent. However, the petitioner is at liberty to raise all the grounds before the trial Court. Further, the personal appearance of the petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

10. Accordingly, this criminal original petition is dismissed. Consequently, connected miscellaneous petitions are also closed.



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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
lok

G.K.ILANTHIRAIYAN, J.

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To

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- 1.The Judicial Magistrate Court,
Kangayam
- 2.Inspector of Police,
All Women Police Station,
Kangeyam,
Tiruppur District
- 3.The Government Advocate,
High Court of Madras

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