



WEB COPY



CrI.O.P.Nos.5739 & 8139 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.10.2023

CORAM:

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

CRL.O.P.Nos.5739 & 8139 of 2021 and
CrI.MP.Nos.3707 & 5367 of 2021

CrI.OP.No.5739 of 2021

1.Eswaran
2.Radhamani

... Petitioners

Vs.

1.State rep. by the Inspector of Police,
All Women Police Station,
Pollachi,
Coimbatore District
(crime No.2 of 2021)

2.Dr.Poornamathi Kandeewaran

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in crime No.2 of 2021 on the file of the first respondent police and to quash the same.

For Petitioners : Mr.Kandhan Duraisami

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.Thomas T.Jacob

CrI.OP.No.8139 of 2021

1.Eswaran Vijayakumar @ Dr.Vijayakumar

... Petitioner



Crl.O.P.Nos.5739 & 8139 of 2021

Vs.

- 1.State rep. by the Inspector of Police,
All Women Police Station,
Pollachi,
Coimbatore District
(crime No.2 of 2021)
- 2.Dr.Poornamathi Kandeewaran

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the case in crime No.2 of 2021 on the file of the first respondent police and to quash the same.

For Petitioner : Mr.Kandhan Duraisami

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.Thomas T.Jacob

COMMON ORDER

Both the criminal original petitions have been filed to quash the proceedings in crime No.2 of 2021 on the file of the first respondent police registered for the offences under Sections 498(A), 406 & 420 of IPC as against the petitioners.

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



CrI.O.P.Nos.5739 & 8139 of 2021

3. The case of the prosecution is that the second respondent married

the first accused on 11.12.2005. After their marriage, they lived in England.

During the marriage, the second respondent was presented with 250 sovereigns of jewels, 20 lakhs cash, silver articles worth about Rs.6,00,000/- and silk sarees worth about 5 lakhs as sreedhana. While they were going to England, all the seedhana articles were entrusted with the in laws i.e. 2nd and 3rd accused. In the year 2013, when the first accused came to India for Holidays, without the knowledge of the second respondent, he filed divorce petition on the ground of cruelty in India in HMOP.No.2271 of 2013 on the file of the Sub Court, Pollachi. It was dismissed. Even while living together in England, without the knowledge of the second respondent, the first accused filed appeal before the appellate court in CMA.No.35 of 2007 and it was allowed and the marriage solemnised between the first accused and the second respondent was dissolved. When it was questioned by the second respondent, the first accused came to India. Thereafter, they were not living together. In the month of January, 2020, it was informed to A2 and A3 are being parents of the first accused. They also scolded her with filthy languages and she was driven back to her parents' house. They also threatened her and stated that the first accused got divorce and as such they were arranging marriage for the first accused with other person. Therefore, the second respondent lodged complaint on 29.09.2020



CrI.O.P.Nos.5739 & 8139 of 2021

before the All women Police Station, Pollachi and she was issued CSR No.34 of 2020. Even then, no FIR was registered. Therefore, the second respondent lodged another complaint and on receipt of the same, the first respondent registered FIR.

4. Admittedly, the first accused and the second respondent were living in England after marriage on 11.12.2005. There were a strained relationship between them and as such, the first accused filed divorce petition on the ground of cruelty in HMOP.No.2271 of 2013 on the file of the Sub Court, Pollachi. It was duly contested by the defacto complainant. After contesting, the trial court dismissed the divorce petition. Therefore, the defacto complainant had full knowledge about the divorce petition filed by the first accused. In fact, aggrieved by the order of dismissal, the first accused filed appeal in CMA.No.35 of 2007 on the file of the IV Additional District Judge, Coimbatore. It was also duly contested by the second respondent and the appellate court allowed the appeal and dissolved the marriage solemnised between the first accused and the second respondent. Aggrieved by the same, the second respondent also preferred appeal in CMSA.SR.No.9655 of 2020 before this Court along with condone delay petition and it is pending for hearing in CMP.No.1799 of 2020 to condone the delay of 418 days in filing the



CrI.O.P.Nos.5739 & 8139 of 2021

CMSA as against the order of Appellate Court in CMA.No.35 of 2017 on the file of the Fourth Additional District Court, Coimbatore. Therefore, the second respondent had full knowledge about the divorce petition filed by the first accused. That apart, both are living separately in England. Even according to the second respondent, immediately after the marriage, they went to England and were living there. At no point of time, they stayed in India and there is absolutely no evidence to show that she handed over all the jewels and other articles which were presented during her marriage to the mother in law and father in law i.e. accused 2 and 3 herein.

5. On perusal of records revealed that the laws i.e. A2 and A3 are living in a village and the first accused and the second respondent at no point of time were living with A2 and A3. In fact, the second respondent already lodged complaint before All women Police Station, Pollachi and she was issued CSR.No.34 of 2020. Thereafter, the Inspector of Police, All Women Police Station, Pollachi conducted detailed enquiry and closed the same. Once again for the very same set of allegations, the second respondent lodged another complaint on 23.02.2021. The first respondent without even conducting any enquiry, mechanically registered FIR on the very same day for the offence under Sections 420, 406 and 498A of IPC as against the husband and his



Crl.O.P.Nos.5739 & 8139 of 2021

parents. The first respondent also failed to comply with the provisions under

Section 41A of Cr.P.C. Though the Hon'ble supreme Court of India and this Court time and again directed the investigation officers to conduct enquiry before registration of FIR involving the offences related to matrimonial relationship, the first respondent failed to conduct any enquiry and straightaway registered the FIR, that too for the occurrence took place long ago. On perusal of FIR, all the allegations are bald and vague and no specific allegations made to attract the offences under Sections 406, 420 & 498(A) of IPC. The present complaint is nothing but clear abuse of process of law, since it was lodged only to wreak vengeance as against the petitioners.

6. In this regard, it is relevant to extract the judgement reported in **(1992) SCC Crl. 426** in the case of **Bajanlal v. State of Haryana**, wherein the Hon'ble Supreme Court of India has listed out the following categories of cases in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:

"102.....

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their



WEB COPY



Crl.O.P.Nos.5739 & 8139 of 2021

entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there



is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7. The above judgment is squarely applicable to the case on hand and as such, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners for further investigation since no offence is made out as against the petitioners.

8. Accordingly, the entire proceedings in crime No.2 of 2021 on the file of the first respondent police is quashed and both the criminal original



CrI.O.P.Nos.5739 & 8139 of 2021

petitions are allowed. Consequently, connected miscellaneous petitions are closed.

11.10.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
lok

To

1. Inspector of Police,
All Women Police Station,
Pollachi,
Coimbatore District
2. The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.

lok



WEB COPY



CrI.O.P.Nos.5739 & 8139 of 2021

CRL.O.P.Nos.5739 & 8139 of 2021

11.10.2023