



CrI.O.P.No.22430 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2023
Pronounced on : 17.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.22430 of 2019

and

CrI.M.P. No.11670 of 2019

1. Dr. E. Babu
2. R. Ezhumalai
3. E. Jothi ... Petitioners

Versus

1. The State Rep., by
The Sub Inspector of Police
All Women Police Station,
Puducherry.

2. Seethalakshmi ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the entire records of the F.I.R.No. 2 of 2019 on the file of the Sub Inspector of Police, All Women Police Station Puducherry, quash the same and pass orders.

For Petitioners : Mr.K.Sukumaran
for M. R. Gokul Krishnan
For R1 : Mr. K.S. Mohan Das,
Public Prosecutor (Puducherry)



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For R2 : Mr.K. Sasindran

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ORDER

This Criminal Original Petition has been filed to quash the F.I.R in Crime No. 2 of 2019 on the file of the Respondent Police. The first petitioner is the husband, the second petitioner is the father-in-law and the third petitioner is the mother-in-law of the defacto complainant.

2.It is alleged in the F.I.R that;

(i) the defacto complainant got married to the first petitioner herein on 06.10.2011. At the time of marriage, the defacto complainant's parents gifted 50 soverigns of gold jewels and cash of Rs.5,00,000/- as Sreedhana. They further demanded 150 soverigns of gold, besides Ten lakhs in cash. Hence, the defacto complainant lodged a complaint in the year 2012 for the offences under Sections 498A, 406, 506(i) of I.P.C and Section 4 of Dowry prohibition Act, 1961 r/w 34 of I.P.C, in crime No.23 of 2012 on the file of Villianur All women Police Station. After investigation, the police filed a final report and the petitioners were tried for the said offences. During the pendency of the case, the petitioners approached the defacto complainant for a compromise and



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hence she withdrew the said complaint. Thereafter, the defacto complainant started living with the first petitioner. The second child by name Sachin was born thereafter.

(ii) It is further alleged that subsequently the petitioners demanded Rs.70 lakhs from the parents of the defacto complainant for purchasing a flat. The defacto complainant's parents paid Rs.50,00,000/- and assured to pay the balance amount in two months. However, the petitioners did not purchase any flat and when the same was questioned by the defacto complainant, the petitioners gave false assurances. Thereafter, the defacto complainant started living separately. The petitioners never allowed the defacto complainant to visit her first child who was living with the first petitioner. The petitioners purchased a flat in Chennai instead of Puducherry as promised by them. Hence the FIR, which is impugned in this quash petition.

3.The learned counsel for the petitioners submitted that:

(i) the F.I.R is vexatious and false. The allegations are inherently improbable. The Respondent Police had registered the F.I.R on the very



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same day of the complainant i.e on 16.07.2009, without conducting any preliminary enquiry as mandated by the Hon'ble Supreme Court in ***Lalitha Kumari' s case*** reported in ***(2014) 2 SCC 1***. Had the respondent conducted the preliminary enquiry, the petitioners would have placed certain facts, which would have shown that the entire complaint is baseless and an abuse of process of law.

(ii) The learned counsel submitted that the defacto complainant was in the habit of giving such false complaints and she had given a complaint earlier in the year 2012. The police on investigation filed a final report which was tried in C.C. No. 60 of 2013 on the file of Chief Judicial Magistrate, Puducherry. In the said trial, the defacto complainant in her cross examination admitted that she was not subjected to any torture on account of dowry demand by the petitioners and that she gave a complaint only because there were matrimonial disputes between her and the first respondent. Hence the learned Chief Judicial Magistrate, Puducherry, acquitted the petitioners.

(iii) Besides the above criminal case, a petition was filed by the



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first respondent praying for divorce in M.O.P.No.354 of 2015 before the Family Court, Puducherry. In the said divorce petition, a joint compromise memo was filed, wherein both the parties submitted that they had reconciled their differences and were living as husband and wife. In view of the said compromise the said M.O.P was dismissed on 03.02.2006.

(iv) The impugned complaint is nothing but an abuse of process of law meant only to harass and humiliate the petitioners. She was instrumental in publishing the FIR in News Papers. This conduct would show that the intention of the defacto complainant was not *bona fide*. The first petitioner and the defacto complainant are both Doctors and a matrimonial dispute is sought to be projected as a dowry harassment case only to armtwist the first petitioner and to wreak vengeance on him.

4. The learned Public Prosecutor for Puducherry submitted that it is true that earlier a complaint was given by the defacto complainant which ended in acquittal. However, even after reunion the petitioners had demanded dowry. It is a independent cause of action. There are



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allegations found in the F.I.R to implicate the petitioners and only an investigation would reveal the truth. The learned Public Prosecutor hence, prayed for dismissal of the quash petition.

5. The learned counsel for the defacto complainant would submit that the earlier complaint was true. However because of the advice of the elders and considering the fact that reunion was possible, she had deposed before the Trial Court that she was not subjected to cruelty. The learned counsel further submitted that merely because the earlier proceedings ended in acquittal the allegations in the impugned F.I.R cannot be said to be unfounded; that the petitioners had demanded dowry and had received a sum of Rs.50,00,000/- promising to purchase a flat in Pondicherry; and that they had purchased a flat in Chennai, contrary to their promise. Hence the learned counsel prayed for dismissal of the quash petition.

6. Heard learned counsel for the petitioners and learned Public Prosecutor appearing for the first respondent and the learned counsel for the defacto complainant.



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7. This Court finds that the marriage between the first petitioner and the defacto complainant was solemnized on 06.10.2011. Admittedly, the elder son is living with the first petitioner and the younger son is living with the defacto complaint. The earlier complaint given by the defacto complainant ended in acquittal. The defacto complainant had categorically stated in her cross examination that the accused did not torture her. The learned Chief Judicial Magistrate, Puducherry in his Judgment in C.C. No. 60 Of 2013, has observed as follows;

“During the cross examination PW1 would admit that accused had not tortured her and not demanded dowry since, there was misunderstanding between her and A1 she gave complaint, Indeed, Pw1 has given total go by to the prosecution case. PW2 also has given clean chit to the prosecution case in his cross examination”

The above observation would show that the allegation of dowry demand which was made earlier, was only because of misunderstanding between her and the first petitioner. The divorce petition filed by the first respondent also came to be dismissed, in view of the compromise entered into between the parties. Thereafter, the first respondent and the defacto



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complainant started living together.

8.The F.I.R dated 16.07.2019 is based on the complaint dated 16.07.2019. It is not known as to why the respondent police had not conducted any preliminary enquiry before registering the case. The F.I.R shows that the occurrence took place between 14.08.2016 and 16.07.2019. However, the learned counsel drew the attention of this Court to the summons issued by the Respondent police dated 06.07.2019 addressed to the first petitioner for his appearance on 10.07.2019. It is not known as to whether there was any other complaint which was lodged prior to 16.07.2019.

9. A plain reading of the complaint would show that it is only a matrimonial dispute between the first petitioner and the defacto complainant. Though there are vague allegations in the F.I.R that the parents of the first petitioner, namely the second and third petitioners demanded a sum of Rs.70,00,000/-, there are no details as to when such a demand was made. Further the defacto complainant had alleged that her parents paid a sum of Rs.50,00,000/- to her husband. However, the mode



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of payment and date of making the payment are not stated in the F.I.R. Therefore, the submission made by the learned counsel for the petitioners that the flat was purchased only out of the first petitioner's funds and the loan obtained from the Bank appears to be probable. He had produced documents in support of the same. Further, the impugned F.I.R also does not state as to whether there was any cruelty in connection with the dowry demand. The F.I.R only vaguely states that the petitioners continued to harass by abusing her in filthy bad words.

10.It is also brought to the notice of this Court, that the first petitioner had lodged a complaint in the year 2012 against the relatives of the defacto complainant that they manhandled the second petitioner herein. It is contended that the impugned First Information Report is to pressurise the first petitioner to withdraw that complaint.

11. This Court and the Hon'ble Apex Court have time and again stated that for a prosecution under Section 498 A I.P.C., such vague allegations cannot be accepted. Details of the alleged harassment such as nature and approximate date on which it occurred have to be specifically



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stated. In the impugned FIR, the allegations are vague. As stated earlier, even assuming that a demand was made for purchase of flat and the defacto complainant had paid Rs.50,00,000/- for the purchase of flats, her grievance is that the flat was purchased in Chennai instead of Pondicherry. Even accepting this averment to be true, it cannot be concluded that the defacto complainant was subjected to any harassment on account of dowry demand which is the essential ingredient of Section 498 A I.P.C. The allegations with regard to demand of dowry as stated earlier is bereft of particulars and highly improbable in the light of the finding of the trial Court in the earlier proceedings between the first petitioner and the de-facto complainant. Further, both the first petitioner and the defacto complainant are Doctors and have independent income. The complainant states that the petitioners prevented the defacto complainant from seeing her first son. Thus, on an overall appreciation of the case, it is clear that that there are serious matrimonial differences between the first petitioner and the defacto complainant and the present proceedings is only to wreak vengeance. Further as stated earlier, the contention of the learned counsel for the petitioners that the impugned complaint is only to armtwist the first petitioner to withdraw his



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complaint against the relatives of the defacto complainant cannot be brushed aside. In this regard, the dictum of the Hon'ble Supreme Court in *Bhajan Lal's* case is squarely applicable to the facts of the case. The relevant portion of the *State of Haryana and Others vs. Bhajan Lal and others* reported in *1992 Supp (1) SCC 335* is extracted for better understanding.

“102...

(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.”

12. For the reasons stated above, the impugned FIR deserves to be quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

17.03.2023



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Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No

To

1. The Sub Inspector of Police
All Women Police Station,
Puducherry.

2. The Public Prosecutor
High Court of Madras
Chennai – 600 104.

SUNDER MOHAN, J.

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