



Crl.O.P.Nos.21974 of 2021 & 9174 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2023

Pronounced on :08.12.2023

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P Nos.21974 of 2021 and 9174 of 2023

and

Crl.M.P.Nos.11920 of 2021 and 5953, 5954 & 6890 of 2023

Crl.O.P.No.21974 of 2021:

1.Godwin

2.Sarojabai

... Petitioners

/versus/

1.The Inspector of Police,
W22, All Women Police Station,
Mylapore, Chennai-600 004.
(Crime No.7 of 2021)

2.Akshayaa Benjamin

... Respondents

Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in Crime No.7 of 2021 on the file of the 1st respondent, and quash the same.



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For petitioners : Mr.N.R.Elango, Senior Counsel
for Mr.A.S.Aswin Prasanna
For R1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)
For R2 : Mr.K.S.Dinakaran, Senior Counsel for
Mr.N.S.Sivakumar

Crl.O.P.No.9174 of 2023:

1.G.Allwin Chelliah
2.Godwin
3.Sarojabai ... Petitioners

/versus/

1.The Inspector of Police,
W-22, All Women Police Station,
Mylapore, Chennai-600 004.
(Crime No.7 of 2021)

2.Akshayaa Benjamin ... Respondents

Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in C.C.No.150 of 2023 on the file of the IV Metropolitan Magistrate, Saidapet and quash the same.

For petitioners : Mr.N.R.Elango, Senior Counsel
for Mr.A.S.Aswin Prasanna
For R1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)
For R2 : Mr.K.S.Dinakaran, Senior Counsel for
Mr.N.S.Sivakumar

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COMMON ORDER

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Akshayaa Benjamin and Allwin Chellaiah got married on 20/02/2020. The marriage was solemnised at Santhome Cathedral, Chennai, as per the customs and rites of Christian religion. They both are Advocates by profession as their father. They set up their matrimonial home at Chennai. Unfortunately, their marital life was short lived. Akshayaa left the matrimonial home on 08/08/2020 and rejoined with her parents. On 02/02/2021 she gave a complaint to the All Women Police Station at Mylapore against her husband and parents in law alleging dowry harassment, cruelty and misappropriation.

2. As per the complaint, on demand her father gave a Benz car, Diamond ring and gold jewellery totally worth few crores of rupees and conducted the marriage at his expense. The parents of Allwin promised to share the reception expenses, but gave only Rs.5 lakhs and her father was made to spend the rest about Rs.50 lakhs. Yet, her husband Allwin Chelliah was very unkind towards her and used to badly comment about her physic and behaviour by comparing her with other girls, particularly with one “X” with whom he had premarital relationship for more than four years and continued the affair even



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after marriage. Her husband on 08/08/2020 tried to have intercourse by force and when she resisted she was badly attacked and sustained injuries. After getting treatment for her injuries she went to her parents home. After her separation, the matter was informed to the parents of Allwin through email, SMS as well as directly through mediators. Her father who is also an advocate took efforts to reconcile directly and through common friends, but it went in vein. The parents of Allwin knowing fully well about the character of their son and his affair with “X” had suppressed the same and when they were informed about his abnormal behaviour and conduct, they instead of taking correction measures supported their son and threatened to upload the private photos and video clippings of Akshayaa in You tube.

3. Gist of the petition in Crl.OP 21974 of 2021 by A-2 and A-3 to quash the FIR:

This petition is filed by the parent’s-in-law of Akshayaa, who were shown as suspected accused number 2 and 3 in the FIR which was taken for investigation in Cr.No: 7 of 2021 on the file of All Women Police Station, Mylapore. This petition is to quash the FIR on the ground that the complaint averements are false and given with ulterior motive to extract money from them.



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These two petitioners are residents of Madurai. A2 practising at Madurai Bench of High Court. A-3 a retired Senior Officer in Electricity Board. Few days after the marriage they left to Madurai and thereafter they never met their daughter-in-law in person since, lock down was announced. The matrimonial discord between their son and daughter-in-law was due to conflict in faith. They belong to CSI faith and the defacto complaint family belongs to Roman Catholic Faith. After separation, complaint lodged after 6 months and same was enquired by the Deputy Commissioner of Police. All necessary documents and informations were produced with detailed written representation. Despite that, their son was illegally arrested, when he went to Sriperumputtur to attend the Court. The laptop and mobile phone of their son was seized and nothing to incriminate them found in the laptop or mobile phone. Since Akshayaa made weird baseless allegations, their son Allwin was forced to file divorce petition on 29/03/2021 before the Family Court, Chennai and same is pending as O.P.No:1822/2021

4. Contending that the complaint does not disclose any ingredient for offences against them which will attract section 420 , 406 or 498 A of IPC, the petition to quash the FIR is filed.

5. Pending the above petition, the first respondent police on



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completion of investigation had filed final report against (A-1) Allwin Chellaiah, (A-2) Godwin and (A-3) Sarojabai for offences under Sections 498A, 420, 406 and 354 (c) of IPC. The final report is taken on file by the IV Metropolitan Magistrate, Saidapet in C.C.No:150/2023. The said calender case is sought to be quashed by all the three accused in Crl.O.P.No.9174 of 2023.

6. Gist of the petition in Crl.OP 9174/2023 filed by A-1, A-2 and A-3 to quash the CC 150/2023:

The petitioners contention is that the defacto complainant has initiated the prosecution with a malicious intention. By giving criminal colour to the matrimonial dispute as she wants to settle her personal grudge, the first respondent police had mechanically filed the final report contrary to the dictum laid by Hon'ble Supreme Court in ***Nathi Lal -vs- State of UP and Arnesh Kumar -vs- State of Bihar***. The counter complaints lodged by the first petitioner on 20/12/2021 and 30/12/2021 were ignored by the first respondent. The first petitioner was arrested illegally by force and with assistance of hooligans. The complaint about the illegal arrest conveniently suppressed in the final report.



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7. The allegation that the first petitioner had live in relationship with some other person prior to marriage even assuming to be true it does not satisfies the essential ingredients to attract Section 420 IPC. It was the defacto complainant, who had caused breach of trust by taking away Rs.2,35,000/- from the first petitioner without his knowledge. The first respondent police yet to complete the investigation about the incidents which was reported by the first respondent in his complaint dated 20/12/2021 and 30/12/2021.

8. Relying on the very recent judgment dated 23/11/2023 of the Supreme Court rendered in ***Vishnu Kumar Shukla and others -vs- State of UP and another (2 Judges Bench)***, the Learned Senior Counsel for the petitioners submitted that when there is no suspicion, much less strong or grave suspicion alleged, it would be unjustified to make the petitioners to face a full-fledged criminal trial. The petitioners should be protected against vexatious and unwarranted criminal prosecution. The case of ***Priyanka Mishra -vs- St of UP reported in [2023 INSC 729]*** also relied.



9. Response by the defacto complainant:

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The learned Senior Counsel appearing for the defacto complainant/2nd respondent submitted that the conversations retrieved from the laptop and mobile phone of the first petitioner/Allwin singularly enough to proceed against the petitioners for the offences under Section 498-A of IPC. The medical certificate and the statement of doctor who treated the defacto complainant for the injuries caused by the first petitioner is evidence for physical cruelty and the material relied by the prosecution regarding the extra marital affair of the first petitioner is evident from the SMS exchanges between the first petitioner and one "X". The defacto complainant did not rush to the police with any oblique motive, but honestly waited expecting the elders to solve the issue. Only after all her fervent request to the second petitioner failed, she was forced to give the complaint and it is neither malicious nor a counter for the divorce petition initiated by the first petitioner. The attempt of the petitioner to conduct mini trial of the disputed facts in their petition under section 482 Cr.P.C cannot be entertained.



10. Relying upon the Judgement of the Supreme Court in ***Abishek -vs-***

State of MP r(by 3 Judges Bench) reported in [2023 SCC OnLine 1083] decided on 31st August, 2023, the learned senior counsel for the 2nd respondent submitted that, High Court can exercise its power under Section 482 of Cr.P.C to quash the FIR even when a charge sheet is filed by the police during the pendency of FIR quash petition, however it is wholly impermissible for the High Court to enter into the factual arena to adjudge the correctness of the allegations in the complaint.

11. The judgement (by 2 Judges Bench) in ***Rajeev Kourav -vs- Baisahab and others reported in [(2020) 3 SCC 317]*** also referred to emphasis that in the quashment proceedings statements recorded under Section 161 Cr.P.C cannot be taken into consideration by High Court since it is not admissible in evidence.

12. Response by the first respondent/State:

The Learned Government Advocate (Crl.Side) representing the first respondent police submitted that the parties involved are advocates and well informed about the law and procedures. There was no violation of any



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procedure or Courts guidelines in the investigation of the case. The police acted only after thorough enquiry and on collection of evidence which prima-facie indicates that the defacto complainant was treated cruelly both mentally and physically by the first petitioner/first accused. The second and third accused had demanded share in the sale price of the house property at Velacherri owned by the father of the defacto complainant through cell phone and Zoom Call. Being a matrimonial dispute, the police had not taken action against the petitioners immediately. After detailed investigation, being satisfied that the evidence collected during the investigation discloses offences of breach of trust, cheating and cruelty besides criminal voyeurism final report filed.

13. Heard the learned Senior Counsel appearing for the petitioners and the counsels for the respondents. The submissions made by the learned Government Advocate along with the petition, counter, re-joinder and reply were taken up for consideration.

14. The spouses who are at loggerheads are young members of the Bar. Likewise, the father's of the spouses are Senior members of the Bar practising in High Court. The pleadings on either side, adding new facts and



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improving them with embellishment to counter the other party version clearly indicates that what are all alleged on either side are not necessarily correct. The reading of e-mails and SMS exchanges also not natural or casual but appears to be carefully worded expecting that those communications may or can be used in future in case of litigation. The persons exchanging the message are all being legally trained, this is quit natural.

15. The bare facts which either side admit or not denied is that they both are Christians but belong to different faith. Before marriage, the defacto complainant had given an undertaking by way of an affidavit that after marriage she will become a member of CSI, St.Thomas English Church in which her husband Allwin a communicant member. In the said affidavit she has also stated that the marriage is an arranged marriage and there is no demand for dowry towards solemnization of the marriage from the bridegroom side.

16. Next, the female friend of Allwin by name “X“, who is the primary reason for discord in the relationship. The defacto complainant and her father believe that the second and the third petitioners knowingly suppressed about their son's affair with the said “X “. In this regard, two advocates by name Ms.



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Dhurga Bhatt and Mr. Dinesh had given statements that Allwin and “ X “ were in intimate relationship before marriage. In her complaint, Akshayaa had mentioned several incidents, where Allwin compared “ X “ with the defacto complainant to insult her.

17. The resultant effects are, (i) their marital life had come to end within 6 months of the marriage. (ii) The petition to dissolve the marriage initiated soon after the expiry of one year from the date of marriage is pending in Family Court, Chennai. (iii) Allwin and his parents are facing criminal prosecution and (iv) the complaints given by Allwin regarding illegal arrest and for other allegation is under investigation. (v) Due to the fight between these two families, the collateral damage is caused to the personal repute of “ X “.

18. This Court earlier in the course of hearing these petitions thought fit to refer the matter to mediation. A retired Judge of this court was requested to mediate between the parties and arrive at an amicable settlement. This attempt unfortunately failed and parties have decided to work out their remedy through court.



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19. The prime contention in the FIR quash petition filed on behalf of the A-2 and A-3 is that the marriage, separation and lodging of complaint all occurred during the Covid 19 restriction period. Few days after marriage, A-2 and A-3 returned to Madurai. The allegations made against A-1 even if true it was not with their knowledge or they to be held responsible for it. In the petition to quash the final report, they contend that, the charge of cruelty against them either physically or mentally, not made out in the final report except to say that they used to threatened the defacto complainant over cell phone and Zoom calls. For this allegation there is no material evidence to support. The retrieval of informations stored in the mobile phone, laptop or other electronic gadgets does not discloses any incriminating material to prosecute them for the offences under Section 354 C of IPC. The statements of witnesses recorded during the course of investigation, except the defacto complainant and her family members, others have not said anything seriously incriminating about A-2 and A-3 to attract offences under sections 406 or 420 or 498 A of IPC. Even the statement of Mr. Benjamin, the father of the defacto complainant is only regarding the selection of marriage hall, caterer and choice of ring before marriage and the expensive expectations of the petitioners and nothing adverse to prosecute them for offences under section 420 or 406 IPC or 498 A IPC.



WEB COP 20. It is well settled by the Hon'ble Supreme Court in its judgments that the exercise of power under Section 482 Cr.P.C to quash the proceedings is an exception and not a rule. Appreciation of evidence is not permissible in a quash petition. To find out whether any cognizable offence made out or not, the High Court cannot act as an investigating agency nor can exercise its power like appellate court while dealing a quash petition under section 482 of Cr.P.C. If the Court think fit, no *prima facie* material available in the FIR or the Final Report then subject to the parameters laid in ***R.P.Kapur -vs- State of Punjab*** reported in (*AIR 1960 SC 866*) ; ***State of Punjab -vs- Bajanlal*** reported in (*1992 Supp. 1 SCC 335*) and ***Neeharika Infrastructure (P) Ltd -vs- State of Maharashtra*** reported in [*AIR 2021 SCC 1918*] can entertain quash petitions. The power of quashing should be exercised sparingly, with circumspection.

21. In ***Abishek -vs- State of MP*** reported in [*2023 SCC OnLine 1083*] three Judges of the Hon'ble Supreme Court after considering the earlier judgements in respect of quash petitions filed by in laws in matrimonial disputes, has observed that, false implications by way of general omnibus allegations made in the course of matrimonial disputes, if left unchecked would



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result in misuse of the process of law.

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22. At times if not always, in a matrimonial dispute, the agony of the girl and her parents, the irretrievable damage and scar suffered force the victims to make allegations against all who are close to the perpetrator of the crime. Those allegations may not be true or may be an exaggerated one or on presumption and suspicion. In such cases it is inevitable duty of the Courts to look into all other attending circumstances emerging from the record of the case over and above the averments if need be, with due care and circumspection try and read between the lines. ***(Mahmood Ali -vs- State of UP (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) , cited in Abishek case at para 16 relied)***

23. This Court taking cue from the above said observation made by the learned judges of the Hon'ble Supreme Court in the judgment referred holds that the FIR and the Final report does not disclose ingredients required to prosecute accused 2 and 3 (who are the 2nd and 3rd petitioners in Crl.O.P.No.9174 of 2023 and petitioners 1 and 2 in Crl.O.P.No.21974 of 2021). Hence, the case against them alone stands quashed. As far as the first petitioner in Crl.O.P.No.9174 of



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2023, this Court finds copious material for proceeding against the first accused Allwin, therefore his prayer to quash the case in C.C.No.150 of 2023 is dismissed.

24. Accordingly, ***Crl.O.P.No:9174 of 2023 is partly allowed in respect of 2nd and 3rd petitioners and the same is dismissed as far as first petitioner is concerned.*** The trial Court can proceed with C.C.No.150 of 2023 on the file of IV Metropolitan Magistrate, Saidapet, Chennai.

25. In view of the above order passed in Crl.O.P.No.9174 of 2023 , the prayer sought in Crl.O.P.No.21974 of 2021 merge with the relief granted in Crl.O.P.No.9174 of 2023. Hence, no separate order is required in Crl.O.P.No.21974of 2021. Hence, this Criminal Original Petition is disposed of as closed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

08.12.2023

Index :Yes
Speaking order/non speaking order
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To:-



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- 1.The IV Metropolitan Magistrate, Saidapet, Chennai.
- 2.The Inspector of Police, W22, All Women Police Station, Mylapore, Chennai-600 004.
- 3.The Public Prosecutor, High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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delivery Common Order made in
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