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Crl.O.P.No.22771 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

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THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No.22771 of 2019

and

CRL.M.P.No.11855 of 2019

V.Sathyamurthy

....

Petitioner

Vs

1. The State Rep. By
The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai – 600 014.

2. K.Mahalakshmi

....

Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.2165 of 2015 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the proceedings as against the petitioner.

For Petitioner : Mr.R.Ganesh Kumar

For R1 : Mr.L.Baskaran
Government Advocate (Criminal Side)

For R2 : Mr.K.S.Durai Pandian



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.2165 of 2015 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The second respondent lodged a complaint on the allegation that she got married to the petitioner on 28.06.007, during the marriage, her parents presented 200 sovereign of gold jewels, silver articles, cash and other household articles. Even then the accused persons demanded huge dowry. After marriage, the petitioner tortured the second respondent to the core. He had also beaten her. After marriage, they went to USA where the first accused harassed her and due to cruelty she was driven out to India. When it was informed to the other family members of the petitioner, they also threatened her with dire consequences. Hence, the complaint.

4. On receipt of the said complaint, the first respondent



registered an FIR in Crime No.1 of 2014 for the offences under Sections 498(A), 406 of IPC read with Section 4 of Dowry Prohibition Act. There are totally eleven accused, in which the petitioner is arrayed as A1. After completion of investigation, the first respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No2165 of 2015 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

5. The petitioner is arrayed as A1. The learned counsel appearing for the petitioner would submit that in the petition filed by the second respondent for restitution of conjugal rights, it was categorically admitted that no jewels were demanded by the petitioner during marriage. That apart, she lived with the petitioner only for 35 days and thereafter, she herself left the petitioner's house and went to her parents house. So far as the other accused persons are concerned, they already filed a discharge petitions and the same were dismissed. Aggrieved by the same, they preferred an appeal before the Supreme Court of India and the same is pending with an interim order. Therefore, the grounds raised by the petitioner is mixed question of facts.

6. A perusal of the statement recorded from the witnesses including the second respondent reveals that there are specific allegations



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in order to attract the offences under Section 498(A), 406 of IPC read with Section 4 of Dowry Prohibition Act. In fact, there are specific allegations as against the petitioner. Therefore, the grounds raised by the petitioner can be considered only before the trial Court that too after letting in evidence.

7. In this regard, 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 ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, 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



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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.

8. Recently, the Hon'ble Supreme Court of India dealing 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 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



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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."

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



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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 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....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

10. That apart, the provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to be meet out the ends of justice and to prevent the abuse of process of law.



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11. In view of the above, this Criminal Original Petition stands

dismissed. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No

Internet:Yes/No

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

2.The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai – 600 014.

3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN,J.

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