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Crl.O.P.No.23785 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM:

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

CRL.O.P.No.23785 of 2021 and
Crl.M.P.Nos.13095 & 13096 of 2021

Prabudoss

... Petitioner/A1

Vs.

1.The State represented by
The Sub Inspector of Police,
All Women Police Station,
Virudhachalam,
Cuddalore District
crime No.27 of 2018

2.Nalinivasantharuby

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the connected records in CC.No.201 of 2020 on the file of the learned Judicial Magistrate-I, Virudhachalam and to quash the same as illegal against the petitioner.

For Petitioner

: Mr.M.Velmurugan

For Respondents

For R1

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

For R2

: No appearance

ORDER



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This criminal original petition has been filed to quash the proceedings in CC.No.201 of 2020 on the file of the learned Judicial Magistrate-I, Virudhachalam taken cognizance for the offences under Sections 498(A) & 506(2) of IPC.

2. The case of the prosecution is that the petitioner married the second respondent on 19.01.2018. During their marriage, the second respondent was presented with 20 sovereigns of jewels with household articles worth about Rs.3,00,000/-. Immediately after their marriage, there was complete change of attitude of the petitioner. Later, the second respondent came to understand that even before their marriage, he had illegal intimacy with another woman i.e. the second accused. Therefore, it was questioned by the second respondent, for which the petitioner attacked her and also threatened her with dire consequences. On 13.03.2018 at night hours, the first accused went to the matrimonial home. It was questioned by the second respondent as to why he came late. Immediately, the petitioner tied her hands and hanged her in fan. Fortunately, she escaped from the hands of the first accused. Even thereafter, the petitioner attempted to murder the second respondent by putting a heavy stone on her head. Thereafter, she was also



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driven out from the matrimonial home. Hence, the second respondent lodged complaint and on receipt of the complaint, the first respondent registered FIR for the offences under Sections 498(A) and 506(ii) of IPC. After completion of investigation, final report was filed and the same was taken cognizance by the trial court in CC.No.201 of 2020 on the file of the learned Judicial Magistrate-I, Virudhachalam.

3. The learned counsel for the petitioner would submit that there are no specific averments in order to attract the offence under Sections 498(A) and 506(ii) of IPC. There was no eye witness to the occurrence except the close relatives of the second respondent. He also produced the decree of divorce granted between the petitioner and the second respondent by the judgment and decree dated 24.03.2022 in HMOP.No.7 of 2020 on the file of the Principal District and Sessions Judge, Perambalur.

4. On perusal of records, revealed that there are specific allegations as against the petitioner to attract the offences under Sections 498(A) and 506(ii) of IPC. That apart, other independent witnesses were also examined by the first respondent and they deposed about the specific overt act as against the petitioner. Therefore, the petitioner committed very serious offence as against



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the second respondent. Though the petitioner obtained decree of divorce, it would not absolve the criminal proceedings initiated by the second respondent for the torture given by the petitioner.

5. 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.***, 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



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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.

6. 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 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



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High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

7. 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 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



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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....."

8. In view of the above discussion, this Court is not inclined to quash the impugned proceedings. However, the petitioner is at liberty to raise all the grounds before the trial Court. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

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

13.10.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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G.K.ILANTHIRAIYAN, J.

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To
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- 1.The learned Judicial Magistrate-I,
Virudhachalam
- 2.The Sub Inspector of Police,
All Women Police Station,
Virudhachalam,
Cuddalore District
- 3.The Government Advocate,
High Court of Madras.

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