



Crl.O.P.No.23426 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:07.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.23426 of 2021

1. V. Dhanasekaran
2. D.Bharathi

... Petitioners

Vs.

State by

1. The Inspector of Police,
AWPS, Gingee Taluk,
Villupuram District.
Cr.No.10 of 2018

2. Mrs.Tamilselvi
- Respondents

...

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, 1973 to quash the final report in C.C.No.36 of 2019 on the file of Judicial Magistrate of Gingee, Villupuram District.

For Petitioner : Mr. P. Thirumalai

For Respondents : Mr.V.J. Priyadarsana
Government Advocate (Crl.side)-R1



CrI.O.P.No.23426 of 2021

M/s. R. Poornima for R2

ORDER

This Criminal Original Petition is filed to quash the final report in C.C.No.36 of 2019 on the file of Judicial Magistrate of Gingee, Villupuram District.

2. The facts of the case are as follows;

2.1 The first petitioner and the 2nd respondent are husband and wife respectively and they got married in the year 1988 and they were having two children.

2.2. A complaint was lodged by the 2nd respondent against the petitioners before the first respondent alleging that the 1st petitioner and the 2nd respondent are husband and wife and due to illtreatment and harassment made by her husband and her mother in law, she left her matrimonial home along with her children. Whiles, the 1st petitioner had married the 2nd petitioner without the knowledge and consent of the 2nd respondent when the maintenance case is pending between them in family court. When the



CrI.O.P.No.23426 of 2021

2nd respondent went to 1st petitioner's house along with her father and two children to ask for help, the petitioners abused her and the children in a filthy language and also threatened them with dire consequences.

2.3 Pursuant to the complaint, a case was registered against the petitioners in Cr.No.10 of 2018. After investigation, final report was filed framing charges under section 294(b), 494 and 506(i) IPC and the case was taken as C.C.No.36 of 2019 on the file of learned Judicial Magistrate, Gingee, Villupuram District.

2.3. Aggrieved by filing of final report, the petitioners have come up with this Criminal Original Petition to quash the final report in C.C.No.36 of 2019 on the file of the learned Judicial Magistrate, Gingee, Villupuram District.

3. The learned counsel for the petitioner submitted that the defacto complainant is the wife of the 1st petitioner and on account of a matrimonial dispute, they have been separately living. The 2nd respondent /wife has filed HMOP.No.786 of 2016 before the I Addl. Family Court, Chennai for



CrI.O.P.No.23426 of 2021

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restitution of conjugal rights and also a maintenance case in M.C.No.102 of 2016. It is his further submission that in view of a compromise arrived at between the petitioner and the second respondent before the elders of the villagers, the 1st petitioner has paid Rs.15 lakhs to the 2nd respondent/wife and children (Rs.5 lakhs each) and also the village elders made a divorce deed between the first petitioner and the 2nd respondent on 03.12.2018.. He further submitted that the police failed to record this fact in the 164 statement and also there is no material found in the final report constituting the offences made out under sections 494, 294(b) & 506(ii) IPC. Thus, he seeks to quash the criminal proceedings in C.C.No.36 of 2019 on the file of learned Judicial Magistrate, Gingee, Villupuram District.

4. When the matter is taken up hearing, the learned counsel appearing for the defacto complainant/2nd respondent submitted that the petitioner himself in the grounds of this Criminal Original Petition, at paragraph 4, admitted that he had married second petitioner as his second wife in the year 2000 and out of their wedlock, they are having two



Crl.O.P.No.23426 of 2021

children namely Vishu Lakshmi and Sairam. Under these circumstances, the ingredients required for the offence under section 494 IPC is made out and no ground is available for quashing the entire criminal proceedings. Therefore he prayed for dismissal of this criminal original petition.

5. When the matter is taken up for hearing, the learned Govt. Advocate (crl.side) submitted that in pursuance of the admission of the petitioner about the second marriage, the requirement of 494 IPC is fulfilled and also list of witnesses viz., LW1 to LW6, in their statements spoke about the incident of second marriage of the first petitioner. Therefore, he prayed that at this stage it is not proper to quash the criminal proceedings against the petitioners before the trial court.

6. Heard the learned counsel for the petitioners, learned Govt. Advocate (crl.side) appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent/defacto complainant and perused the materials available on record.



Crl.O.P.No.23426 of 2021

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7. The petitioners are A1 and A2 in C.C.No.36 of 2019 on the file of learned Judicial Magistrate of Gingee, Villupuram District. Based on the complaint given by the 2nd respondent, the 1st respondent police registered a complaint on 14.06.2018 in Cr.No.10/2018 for the offence under sections 294(b), 494 , 506 (i) of IPC. After completion of investigation, final report has been filed before the learned Judicial Magistrate, Gingee, Villupuram and it was taken on file in C.C.No.36 of 2019. After framing of charges, witnesses have been summoned and now the case is posted for trial on 4.8.2023 before the trial court. Further, on perusal of the statement of the witnesses LW1 to LW6 and the allegation raised against the petitioners, besides the admission of the 1st petitioner himself in para 4 of the grounds of his Criminal Original Petition that he has married the 2nd petitioner as his second wife as early as in the year 2000 and is having two children through her, this Court is of the view that the disputed facts has to be adjudicated only before the trial court by letting in evidence. The factual dispute of second marriage cannot be adjudicated here while deciding the matter under section 482 of Cr.P.C., and every factual allegation has to be adjudicated



before the trial court after letting in evidence.

8. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) R.P.Kapur Vs. The State of Punjab reported in
AIR 1960 SC 866

(ii) State of Haryana & Ors. Vs. Ch.Bhajan Lal
& Ors. reported in *AIR 1992 SC 604*

(iii) M/s.Neeharika Infrastructure Pvt. Limited
Vs. State of Maharashtra & Ors. reported in 2021 SCC
Online SC 315

8.1. In the case of *R.P.Kapur Vs. The State of Punjab* reported in
AIR 1960 SC 866, the Hon'ble Supreme Court has held as follows:

“6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either



CrI.O.P.No.23426 of 2021

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to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can



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CrI.O.P.No.23426 of 2021

be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

8.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face



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CrI.O.P.No.23426 of 2021

value and accepted in their 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 FIR 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 Act concerned (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 Act concerned, 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.”



8.3. Similarly, in the case of *M/s.Neeharika Infrastructure Pvt.*

Limited Vs. State of Maharashtra & Ors. reported in 2021 SCC Online

SC 315, the Hon'ble Apex Court has observed as follows:

“80., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India* and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the *Constitution of India*, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the *Code of Criminal Procedure* contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;



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iv) *The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).*

v) *While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;*

vi) *Criminal proceedings ought not to be scuttled at the initial stage;*

vii) *Quashing of a complaint/FIR should be an exception rather than an ordinary rule;*

viii) *Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;*

ix) *The functions of the judiciary and the police are complementary, not overlapping;*

x) *Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to*



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CrI.O.P.No.23426 of 2021

complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing



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CrI.O.P.No.23426 of 2021

petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the



CrI.O.P.No.23426 of 2021

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aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”

9. It is to be noted that the present case does not meet the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*. Further, I do not find any merit in the present case.

10. In view of the foregoing discussions, this Court is of the opinion that it is inappropriate to quash the criminal proceedings against the 1st petitioner/accused in C.C.No.36 of 2019 on the file of Judicial Magistrate, Gingee, Villupuram District before letting in evidence before the trial court. Therefore, I do not find any merits in the present case. Hence, this criminal original petition is dismissed.

Index: Yes/No
Internet: Yes/No
msr

07.07.2023

To

15 of 17



CrI.O.P.No.23426 of 2021

WEB COPY

1. The Judicial Magistrate of Gingee, Villupuram District.
2. The Public Prosecutor, Madras High Court.



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Crl.O.P.No.23426 of 2021

V.SIVAGNANAM, J.,

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Crl.O.P.No.23426 of 2021

07.07.2023