



Crl.O.P(MD).Nos.695 and 1763 of 2021

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 29.03.2023

Delivered On : 24.04.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).Nos.695 and 1763 of 2021

and

Crl.M.P.(MD)Nos.308 and 866 of 2021

1.Iyappan

2.Kannan

3.Usha

4.Vimala

5.Vidhya

6.Ramesh

7.Dhamotharan

...Petitioners in Crl.O.P.(MD)No.695 of 2021

R.S.Vignesh

... Petitioner in Crl.O.P.(MD)No.1763 of 2021

Vs

1.The State Rep. By
the Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai City.
(Crime No.19 of 2019)

2.Suwathy

...Respondents in both Crl.O.Ps.



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COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the entire records relating to the impugned chargesheet in C.C.No.548 of 2020 on the file of the Additional Mahila Court, (Judicial Magistrate Level), Madurai and to quash the same.

For Petitioners : Mr.A.Saravanan
in Crl.O.P.(MD)No.695 of 2021
For Petitioner : Mr.S.Veeraraghavan
Crl.O.P.(MD)No.1763 of 2021
For 1st Respondent : Mr.M.Sakthi Kumar
(in both Crl.O.Ps.) Government Advocate (Crl. Side)
For 2nd Respondent : Mr.S.M.Mohan Gandhi
(in both Crl.O.Ps.)

COMMON ORDER

These petitions are filed to quash the chargesheet in C.C.No.548 of 2020, on the file of the Additional Mahila Court, (Judicial Magistrate Level), Madurai.

2.The case of the prosecution is that the defacto complainant is the wife of the first petitioner. The second petitioner is the father in law, the third petitioner is the mother in law, the fourth petitioner is the sister of the mother in law, the fifth petitioner is the sister in law, the sixth petitioner is the cousin brother of the first petitioner. The seventh petitioner is the elder brother of the second petitioner. The petitioner in Crl.O.P.(MD)No.1763 of 2021 is the cousin brother of the first petitioner. The petitioners treated the defacto



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complainant with cruelty and they demanded more dowry and they driven out the defacto complainant from the matrimonial home. A case in Crime No.19 of 2019 under Sections 498(A) and 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act was registered against the petitioners. Subsequently, after investigation, the final report was filed altering the offences under Sections 498(A), 403 and 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act r/w. 34 of IPC. The case was taken on file as C.C.No.548 of 2020 on the file Additional Mahila Court(Judicial Magistrate Level), Madurai.

3.The case of the petitioners is that at the time of marriage, 10 sovereigns of gold jewel was given to the wife. The defacto complainant has already taken back the household articles. The first petitioner is working in Bangalore in IT field and the second petitioner is doing catering work in Madurai. The petitioners 3 to 5 are house wives. The sixth petitioner is a business man and the seventh petitioner is a retired professor. The petitioner in Crl.O.P.(MD)No. 1763 of 2021 is working in a private company. The first petitioner and the second respondent were having friendship from the college days and they continued their friendship at Bangalore while they were working in the IT field. Both the families consent for their marriage and the marriage was solemnized on 30.06.2017. After marriage, they lived at Bangalore. The



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petitioners/Accused 2 to 8 were residing in Madurai. There was no harassment or ill treatment at the influence of the petitioners/Accused 2 to 8. The first petitioner filed divorce application in H.M.O.P.No.601 of 2019 on the file of the Family Court, Madurai. Another petition in H.M.O.P.No.575 of 2020 for restitution of conjugal rights is pending before same Court. The second respondent filed a case in M.C.No.137 of 2019 on the file of the Family Court, Madurai. The second respondent on the ill advice of her family members and her colleagues lodged a criminal complaint against the husband and his family members. The Social Welfare Officer conducted an enquiry and filed a report on 23.11.2019 stating that there was no dowry harassment. In fact the petitioners/Accused 2 to 8 tried to re unite the husband and wife and the case is liable to be quashed.

4.On the side of the petitioners, it is stated that there is no ingredients for dowry harassment. The entire case was based on dowry harassment. But the District Social Welfare Officer, Madurai has given a statement that there was no dowry harassment. The first respondent Police did not conduct any independent investigation. The petitioners 2, 3 and 8 are aged about 63, 64 and 67 respectively. The petitioners/Accused 2 to 8 were no way connected with the matrimonial dispute between the first petitioner and the second



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respondent.

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5.On the side of the petitioners, it is stated that even before the filing of the divorce petition, the first petitioner filed a complaint before the Police against the wife for stabbing him with knife and later, he filed a divorce petition on the ground of cruelty and that after the mediation talks by the elders, again they reunited and lived together in Bangalore. The second respondent filed a petition in H.M.O.P.No.575 of 2020 on 09.10.2020 for restitution of conjugal rights. She filed a petition in DV case in D.V.C.No.20 of 2021 and all the proceedings are pending. The petitioners 2 to 7 are not residing in Bangalore. The sister in law was residing in Chorompet for the past 10 years and the others were living in different address.

6.On the side of the petitioners, it is stated that the entire complaint was based on dowry demand, which was not there. All the witnesses L.W.2 to L.W.5 are hearsay witnesses. The allegations regarding the attempt for abortion and denial for medical checkup are all false. The second respondent gave birth to a child within one year from the date of marriage, which itself reveals that the allegation levelled against the petitioners are false. All the jewels and articles were left at Bangalore. The petitioner husband fled to



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Madurai and there is no question of misappropriation of any property. Section 4 of Tamil Nadu Prohibition of Harassment of Women Act is not made out. It was the husband, who was harassed by the wife. There was no dowry demand. There was no eye witness and hence, the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 498 A of IPC are not made out.

7. On the side of the petitioners, it is stated that as per the decision of the Hon'ble Supreme Court in ***Lalitha Kumari v. State of UP***, it is stated that the family disputes are civil in nature and the police has to conduct preliminary enquiry and then alone register a case. No such enquiry was conducted by the Police. Only the District Social Welfare Officer conducted the enquiry. The chargesheet has not disclosed that a preliminary enquiry was conducted. The petitioners were released on anticipatory bail. After two years, the second respondent has filed a petition for cancellation of the anticipatory bail and the petition was disposed of by this Court on condition that the first petitioner has to pay a sum of Rs.5,000/- (Rupees Five Thousand only) per month for the maintenance of the child. The first petitioner is following the order regularly.



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8. On the side of the petitioners, it is stated that there is a FIR against the second respondent for setting fire to cars and two wheeler of the neighbors. The second respondent has approached this Court and filed a petition before this Court in Crl.O.P.(MD)No.4486 of 2022 dated 09.03.2022 for a prayer of not to harass her. The second respondent filed another complaint in Crime No.160 of 2021 against the petitioners 1 to 3. After investigation, the complaint was closed as 'mistake of fact'. The owner of the rented house lodged a complaint against the second respondent in C.S.R.No. 383 of 2021 on 12.12.2021 for breaking open the lock and for misappropriation of the funds and for removing the furniture in the house which belongs to the house owner. A case in Crime No.13 of 2022 was registered against the second respondent and her family members.

9. The learned counsel for the petitioners would rely upon a judgment of Hon'ble Supreme Court in the case of ***Rajesh Sharma and Others v. State of Uttar Pradesh*** reported in ***(2018) 10 Supreme Court Cases 472***, wherein it states as follows:

“Need to check tendency to rope in all family members by making omnibus allegations to settle matrimonial disputes – Fact that most of such complaints were filed in heat of moment over trivial issues and were not bona fide, taken judicial notice of – besides, uncalled



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for arrests ruin chances of settlement and even when settlement is arrived at, proceedings continue since offence under Section 498 A is non compoundable resulting in uncalled hardship to parties – hence, safeguards, against uncalled for arrest or insensitive investigation necessary.”

10.The learned counsel for the petitioners would rely on a judgment of the Hon'ble Supreme Court in the case of ***Tabrez Khan @ Guddu and Others v. State of Uttar Pradesh*** reported in ***2019 0 Supreme (SC) 401***, wherein it is stated as follows:

“In other words, in our view, there does not appear to be any justification or and prima facie case to proceed against the appellants either jointly or severally for commission of the offences alleged against them in the complaint. Indeed, the facts stated against the appellants in the complaint do not constitute any case as alleged against any of them.”

11.The learned counsel for the petitioners would rely on a judgment of the Hon'ble Supreme Court in the case of ***Kahkashan Kausar @ Sonam v. State of Bihar and Others*** reported in ***(2022) 6 Supreme Cases 599***, wherein it is stated as follows:

“The abovementioned decisions clearly demonstrate



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that this Court has at numerous instances expressed concern over the misuse of Section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long-term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this Court by way of its judgments has warned the Courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.”

12.On the side of the second respondent, it is stated that the second respondent and the first petitioner loved each other and their marriage was a love cum arranged marriage. Immediately, after marriage, the mother and the sister of the first petitioner demanded dowry and they took away the ATM card of the second respondent and they abused her in filthy language and the points raised by the petitioners can be decided at the time of trial and a prima facie is made out. Even during the pendency of the case, the petitioners went to the house of the second respondent and threatened her to withdraw the case and the first petitioner set fire on her and her bike. The photographs of a burnt bike were produced on the side of the 2nd respondent.



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WEB COPY 13. On the side of the petitioners, it is stated that this photographs were not produced during the enquiry before the Police and the photographs are fake and there are nothing to do with the petitioners.

14. On the side of the second respondent, it is stated that only on the ill advice of other petitioners, the first petitioner harassed the second respondent and the second respondent is willing to live with the first petitioner.

15. On the side of the prosecution, it is stated that with the consent of the parents, the first petitioner and the second respondent married and then the petitioners demanded dowry. The first petitioner filed a petition for divorce. On the advice of the elders, they reunited with his wife and they lived together. Subsequently, there was dowry demand during the advanced stage of the pregnancy of the defacto complainant. The first petitioner wanted to marry the complainant's sister and there were materials available for the trial.

16. It is seen that there are complaints and counter complaints against both the parties. The main allegation against the petitioners is that they



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demanded dowry. The report of the Social Welfare Officer reveals that there was no dowry demand. The chargesheet was not filed under Dowry Prohibition Act. From the aadhar card filed on the side of the petitioners, it is clear that the petitioners/Accused 2 to 8 were not the residents of Bangalore and that except the first petitioner, all other petitioners are residents of Madurai. Only because they are relatives of the first petitioner, they were roped into the case. The age of the petitioners 2, 3, 8 are 63,61 and 73 respectively.

17.Considering that the petitioners/Accused 2 to 8 were residing in different house in Madurai and considering the last resident matrimonial home is at Bangalore and considering that the first petitioner is an IT employee, the responsibility for the commission of the offence that on the instigation of other petitioners, the first petitioner involved in offence is remote.

1.In view of the above, a case against the petitioners/Accused 2 to 8 in C.C.No.548 of 2020 on the file of the Additional Mahila Court, (Judicial Magistrate Level) Madurai, is hereby quashed. Hence, this Criminal Original Petition in Crl.O.P.(MD)No.695 of 2021 is **allowed** as against the petitioners 2 to 7. Since there are various litigations pending between the first petitioner



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and the second respondent which requires detailed enquiry, the case against the first petitioner requires trial. Hence, this Criminal Original Petition in Crl.O.P.(MD)No.695 of 2021 is **dismissed** as against the first petitioner alone. This Criminal Original Petition in Crl.O.P.(MD)No.1763 of 2021 is **allowed**. Consequently, connected miscellaneous petitions are closed.

24.04.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Additional District Judge, Padmanabhapuram.

2.The Inspector of Police,
All Women Police Station,
Thirupparankundram,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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