



Crl.O.P(MD).No.821 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 15.03.2023

Delivered On : 23.03.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

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and

Crl.M.P.(MD)No.374 of 2021

1.O.S.Maideen

2.Noorjahan

3.M.Ameerhamsa

4.Nasreen

5.Bushral

6.Fathima Raihan

...Petitioners

Vs

1. State Represented by,
The Inspector of Police,
All Women Police Station,
Tenkasi.
(Crime No.5 of 2020)

2.Syed Ali Fathima

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to quash the FIR in Crime No.5 of 2020 dated 18.03.2020 on the file of the 1st respondent Police as against the petitioners.

For Petitioners

For 1st Respondent

For 2nd Respondent

: Mr.T.S.Mohamed Mohideen

: Mr.M.Sakthi Kumar

Government Advocate (Crl. Side)

: No Appearance



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ORDER

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This petition is filed to quash the FIR in Crime No.5 of 2020 dated 18.03.2020, on the file of the 1st respondent Police

2.The case of the petitioners is that A1 married the defacto complainant on 23.12.2018 and the marriage was registered before the Sub Registrar, Tenkasi on 08.01.2019. The first accused has filed a suit in O.S.No.27 of 2020, on the file of the District Court, Tenkasi for dissolution of marriage. The first petitioner is the father of the first accused, the second petitioner is the mother of the first accused, the third petitioner is the brother of the first accused, the fourth and fifth petitioners are the sisters of the first accused and the sixth petitioner is the wife of the third accused. The case against the petitioners is that the petitioners and A1 demanded Rs.2,00,000/- (Rupees Two Lakhs only) as further dowry for expanding his business and all the accused threatened the defacto complainant that A1 will divorce the defacto complainant. They always insult defacto complainant and they would give food to the defacto complainant. A compromise effort was taken by the Jamath on 08.12.2019. On 13.02.2019 at about 05.30 p.m, all the accused abused the defacto complainant and scolded her and criminally intimidated her and hence, a case in Crime No.5 of 2020 under Sections 147, 498(A),



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294(b), 506(ii), of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 4 of Dowry Prohibition Act was registered against all the accused.

3.On the side of the petitioners, it is stated that the petitioners are no way connected with the offence. The fifth petitioner, sister of the first accused is aged about 28 years and she gave birth to a female baby on 19.03.2020 and she was admitted in the hospital and she was discharged only on 23.03.2020. There is no possibilities for the fifth petitioner to have indulged in any offence on 18.03.2020.

4.On the side of the petitioners, it is further stated that the sixth petitioner is aged about 23 years and that there is no specific overt act against the sixth petitioner. Due to the pendency of the case, the petitioners 2 and 3, the father and mother of A1 could not go to Mecca.

5.On the side of the petitioners, it is further stated that the third petitioner is only the brother of A1. There is no specific averment against the petitioners 3 to 6. There is no rioting and the offence under Section 147 of IPC is not made out. The respondent Police did not apply their mind before registering the FIR. There is no specific averment in respect of offence under



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Section 294(b) of IPC. In the complaint, there was no ingredients mentioned to invoke criminal intimidation to file a FIR under Section 506(ii) of IPC. The dowry demand is only an averment against A1. The intention of the defacto complainant is to live separately with her husband. Only with the motive, a false case was foisted against the petitioners. A1 has filed a suit in O.S.No.27 of 2020 for dissolution of marriage and prayed the FIR to be quashed.

6.On the side of the prosecution, it is stated that A1 and the defacto complainant lived together only for 40 days. A1 and the petitioners abused the defacto complainant and they demanded Rs.2,00,000/- (Rupees Two Lakhs only) as dowry. The prosecution has examined seven witnesses and chargesheet was filed on 20.08.2022 and was taken on file as C.C.No.323 of 2022 on the file of the learned Judicial Magistrate, Tenkasi and the case was posted on 11.04.2023 for the examination of witnesses.

7.On the side of the petitioners, it is stated that there is a stay order pending and that the chargesheet cannot be filed against the petitioners. In support of this contention, a judgment of the Hon'ble Supreme Court in the case of *Anand Kumar Mohatta and Another v. State (NCT of Delhi), Department of Home and Another* reported in *2019 11 SCC 706* is cited, which reads as follows:



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“There is no merit in the submission of respondent 2 that once the chargesheet is filed, petition for quashing of FIR is untenable. As has been observed by the Supreme Court in Joseph Salvaraj A., (2011) 7 SCC 59, even if chargesheet had been filed, court could still examine whether the offences alleged were prima facie made out from the complainant's FIR, chargesheet, documents, etc. or not. Even otherwise, the appellants had invoked inherent jurisdiction of the High Court in this case and the Supreme Court is hearing an appeal from an order under Section 482 Cr.P.C. There is nothing in the word of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of Court or miscarriage of justice only to the stage of the FIR. The high Court can exercise jurisdiction under Section 482 Cr.P.C., even when the discharge application is pending with the trial Court. It would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a chargesheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a chargesheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any Court.”



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8.The learned counsel for the petitioners would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Joseph Salvaraj v. State of Gujarat and Others*** reported in **2011 7 SCC 59**, which reads as follows:

“Thus, from the general conspectus of the various sections under which the appellant is being charged and is to be prosecuted would show that the same are not made out even prima facie from the complainant's FIR. Even if the charge sheet had been filed, the learned Single Judge could have still examined whether the offences alleged to have been committed by the appellant were prima facie made out from the complainant's FIR, chargesheet, documents, etc, or not.”

9.It is seen that the fifth petitioner gave birth to a female baby on 19.03.2020 and the alleged occurrence is on 18.03.2020. Except some passing words, there was no overt act against the petitioners in the complaint lodged by the defacto complainant. Though there is a stay order against the filing of the chargesheet against the fifth petitioner, the prosecution has filed a chargesheet including the fifth petitioner as A6.

10.In view of the above, the fifth petitioner is discharged from the charges in C.C.No.323 of 2022 and since the chargesheet was already filed



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against the other petitioners, the Criminal Original Petition is dismissed as infructuous as against the petitioners 1 to 4 and 6. Consequently, connected miscellaneous petition is closed.

23.03.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

To

- 1.The Inspector of Police,
All Women Police Station,
Tenkasi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI,J.

Mrn

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