



CrI.O.P(MD).No.6229 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 15.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P(MD).No.6229 of 2021

and

CrI.M.P.(MD)No.3570 of 2021

1.Alagarsamy
2.Karuppayi @ Ponnalagu
3.Balakrishnan

...Petitioners

Vs

1.The State by,
The Inspector of Police,
All Women Police Station,
Aundipatti,
Theni District.
2.Vanitha

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the C.C.No.202 of 2020 on the file of the learned Judicial Magistrate, Aundipatti, Theni District and quash the same.

For Petitioners	: Mr.J.Vishnu
For Respondents 1 and 2	: Mr.M.Sakthi Kumar
	Government Advocate (CrI. Side)
For 2 nd Respondent	: Mr.K.Dinesh

ORDER

This petition is filed to quash the charge sheet in C.C.No.202 of 2020 on



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the file of the learned Judicial Magistrate, Andipatti, Theni District.

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2.According to the petitioners, the petitioners and second respondent had given complaint before the first respondent police and registered a FIR in Crime No.5 of 2020 under Sections 498A, 109 of IPC and Section 4 of Dowry Prohibition Act.

3.As per prosecution case, the husband of the second respondent and others demanded dowry and caused cruelty. Further A1 had illicit intimacy with A6. These petitioners are parents and brothers of A6 respectively. These petitioners being the relatives of A6, who said to have illicit intimacy with A1, have no nexus with this case. The offence under Sections 498(A) of IPC would not attract since they are not relative of the husband of the second respondent. Even as per FIR, there is no specific overt act as against the petitioners and the allegations are vague and bald one and the respondent police has not conducted proper investigation and filed final report. Therefore, the pending charge sheet is liable to be quashed.

4.No counter was filed on the side of the respondents.



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5.The learned counsel appearing for the petitioners would contend that these petitioners are no way connect with the aforesaid crime. The second respondent lodged a complaint as against her husband and the daughter of the petitioners 1 and 2 and sister of third petitioner alleging that A1 had illegal intimacy with A6 and threatened the second respondent and cause cruelty and demanded dowry. The allegation as against these petitioners is that A6 along with these petitioners demanded Rs.5,00,000/-. Apart from that, no other allegation was made as against these petitioners. The petitioners being relatives of A6 no way connect with the occurrence. Section 498A of IPC would not attract as against these petitioners since they are not relatives of the husband of the defacto complainant. Without considering the above legal provision and without conducting proper investigation, the first respondent has filed final report as against these petitioners. The pending C.C.No.202 of 2020 is abuse of process of law. Therefore, the pending charge sheet is liable to be quashed.

6.The learned counsel appearing for the second respondent would contend that these petitioners along with A6 demanded money and caused cruelty and thereby, the second respondent lodged a complaint and thereafter investigation was completed and filed final report and the case is pending for trial. Already P.W.1 was examined and at this stage, this petition is not



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maintainable. Thereby, this petition is liable to be dismissed.

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7.The learned Government Advocate appearing for the first respondent would contend that the second respondent has given complaint before the first respondent. Based on the complaint, the first respondent has filed FIR and thereafter, filed final report. Based on the final report, the Judicial Magistrate has taken cognizance and the same was filed as C.C.No.202 of 2020 for the offence under Sections 498A and 109 of IPC and section 4 of Dowry Prohibition Act. There are *prima facie* materials available to proceed against the petitioners. Already the case is pending for trial and thereby, this petition is liable to be dismissed.

8.This Court heard both sides and perused the materials available on records.

9.On perusal of records, it is admitted fact that the petitioners are not relatives of A1 and even according to the prosecution case, A1 has illegal intimacy with A6 and these petitioners are relatives of A6. Thereby, the offence under Sections 498A and 109 of IPC and Section 4 of Dowry Prohibition Act would not attract. Further in the trial Court, P.W.1 was examined and the case is posted for examination of further witnesses.



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10.The learned counsel appearing for the petitioners would contend that so far P.W.1 has not been cross examined. Even at this stage, the Court can quash the proceedings in order to prevent the abuse of process of law. In the case on hand, it is admitted fact that the petitioners are not relatives of husband of the second respondent. The allegation against the petitioners is that these petitioners along with A6 demanded money of Rs.5,00,000/- and these allegations are vague. Merely on the basis of these vague allegations, the petitioners need not face the trial.

11.The learned counsel appearing for the petitioner relied upon the judgment of the Delhi High Court in the case of ***Akhtar Malik and another v. The State*** in ***Crl.M.C.No.4416 of 2015***, wherein the Delhi High Court in para nos.13 and 14 held as follows:-

“13. Further more, Section 498-A is a penal one. It, thus, deserves strict construction. Ordinarily, save and except where a contextual meaning is required to be given to a statute, a penal provision is required to be construed strictly.

This Court in T. Ashok Pai v. Commissioner of Income Tax, Bangalore, [2007 (8) SCALE 354] held as under :- "17. It is now a well-settled principle of law that the more is the stringent law, more strict construction thereof would be necessary. Even when the burden is required to be discharged



by an assessee, it would not be as heavy as the prosecution. [See P.N. Krishna Lal and Ors. v. Govt. of Kerala.)” [See also Noor Aga v. State of Punjab].

14. A Three Judge Bench of this Court, however, in Shivcharan Lal Verma and another v. State of M.P., [2002 (2) Crimes 177 SC = JT (2002) 2 SC 641] while interpreting Sedction 498A of the Indian Penal Code, in a case where the prosecution alleged that during the life of the first wife- Kalindi, appellant therein married for the second time, Mohini, but after marriage both Kalindi and Shiv Charan tortured Mohini as a result thereof, she ultimately committed suicide by burning herself, opined :-

"..One, whether the prosecution under Section 498A can at all be attracted since the marriage with Mohini itself was null and void, the same having been performed during the lifetime of Kalindi. Second, whether the conviction under Section 306 could at all be sustained in the absence of any positive material to hold that Mohini committed suicide because of any positive act on the part of either Shiv Charan or Kalindi. There may be considerable force in the argument of Mr. Khanduja, learned counsel for the appellant so far as conviction under Section 498A is concerned, inasmuch as the alleged marriage with Mohini during the subsistence of valid marriage with Kalindi is null and void. We, therefore, set aside the conviction and sentence under Section 498A of the IPC."



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12. On careful reading of the aforesaid judgment, it is clear that as per Section 498A of IPC, the relatives of husband only would come under purview of Section 498A of IPC. These petitioners being relatives of the second respondent would not come under purview of Section 498A of IPC.

13. Therefore, as discussed above and as per the aforesaid judgment, this Criminal Original Petition is allowed and the charge sheet in in C.C.No.202 of 2020 on the file of the learned Judicial Magistrate, Andipatti, Theni District is quashed. Consequently, connected miscellaneous petition is closed.

15.09.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1. The Judicial Magistrate, Aundipatti, Theni District.
Virudhunagar District.

2. The Inspector of Police,
The Inspector of Police,
All Women Police Station,
Aundipatti,
Theni District.

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



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P.DHANABAL, J.

Mrn

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