

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10/02/2023
Date of Pronouncement	09/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP(MD)No.8836 of 2019

and

Cr1.MP(MD)No.5589 of 2019

- 1.Ithaythullah @ Edayathulla
- 2.Rasiya
- 3.Aarif Raja
- 4.Abudulla
- 5.Rahamath Nisha
- 6.Moorthi @ Krishnamoorthy : Petitioners/A1 to A6

Vs.

- 1.State represented by
The Inspector of Police,
All Women Police Station,
Melur,
Madurai District,
(In Crime No.77 of 2017) : R1/Complainant
- 2.Saktitha Begum : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of charge sheet in CC No.9 of 2019 on the file of the Judicial Magistrate Court, Melur and quash the same as illegal and pass such further or other orders.

For Petitioners : Mr.S.M.A.Jinnah

For 1st Respondent : Mr.R.Suresh Kumar
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.T.Palanisamy

O R D E R

This Criminal Original Petition has been filed seeking quashment of the case in CC No.9 of 2019 on the file of the Judicial Magistrate Court, Melur.

2.The facts in brief:-

The marriage between the de-facto complainant and A1 namely Idhayadulla was performed, on 01/01/2011 as per their customary rites. At the time of marriage, she was provided with sufficient Sridhana, jewels, house-hold articles, etc. After that, two children born to them. When she was living together, the accused persons assaulted, criminally intimidated and harassed her. A1 by taking the advise along with A6 also made trouble. He also received 37 sovereigns of jewels belongs to her and sold the same and spent it. When the above said jewel was demanded back, she was assaulted and criminally intimidated.

3.On the basis of the complaint, the case was registered in Crime No.77 of 2017 and after completing the formalities of investigation, final report was filed before the trial court charge sheeting the accused persons for the offences punishable under sections 341, 294(b), 323 and 506(i) IPC and it was taken cognizance by the trial court in CC No.9 of 2019.

4.Seeking quashment of the criminal proceedings, this petition has been filed by the sixth accused.

5.Heard both sides.

6.Since, it is a matrimonial issue between the husband and wife, the matter was referred to the Mediation and Conciliation Centre, attached to this Bench, for exploring the possibility of settlement. But in spite of the effort, that has been taken by this court and also by the Mediation Centre, no settlement could be reached between the parties and the reason is not known.

7.The learned counsel appearing for the petitioners would submit that originally, the complaint

was given by the de-facto complainant and that was compromised between the parties and later, the husband and wife joined together and lived happily. Thereafter, trouble arose between the husband and the wife, when the de-facto complainant started developing some intimacy with a minor boy. Now they are living separately and there is no harassment and criminal intimidation, misappropriation, etc.

8. Per contra, the second respondent would submit that 37 sovereigns, which belongs to the de-facto complainant was taken by A1 and his parents and others and that was not returned, so trouble has arisen only over the above said issue.

9. Perusal of the records shows that the first accused lodged a complaint, which was also registered in Crime No.427 of 2019, wherein it has been stated by him that some sort of marital scuffle arose between himself and the wife. So he took the wife to her parental home and left there. On 17/09/2017, the father-in-law telephoned him to take the wife. He went to the father-in-law house and in the middle, he was kidnapped by two

identified persons, abused, criminally intimidated and forced him to sign in blank papers. In the above said gang, his father-in-law namely Sikkanthar and one Jahangir were also present. So this is, dated 18/07/2017. On 29/11/2017, the wife lodged the present complaint making allegation against these persons as noted above.

10. What happened to the FIR, that was registered in Crime No.427 of 2017 is not known. There is no documentary evidence or proof also. Another development took place in the form of FIR registered in Crime No.14 of 2022 against the 2nd respondent and others punishable under sections 7, 8 of POSCO Act, 2012 and under sections 9 and 10 of the Prevention of Child Marriage Act, 2008. The complainant was one Chitra. The complaint has been alleged stating that the second respondent is having illicit intimacy with her daughter. The second respondent and the another person was arrested and remanded to judicial custody, on 22/04/2022. This is the position. These documents *prima facie* shows that the complaint that was given by the second respondent against this petitioner is absolutely *mala fide* and inherently improbable and motivated. The complaint given by a

person, who alleged to have some illegal intimacy with minor child must be looked into suspicion, probably as mentioned by the petitioner, trouble is arising between them over the conduct of the second respondent. More-particularly, when the present complaint given after registration of the case in Crime No.427 of 2017. it is clearly seen that as mentioned above, it is a clear case of misuse of process of law. To cover up the real issue that existed between the de-facto complainant and her husband, the above said complaint has been lodged giving a complete different picture attracting the provisions of section 498-A, 406 and 506(i) IPC. This clearly fits into the category of cases as set out in the **Bajan Lal's** case.

11.It is also seen that suppressing the main issue between herself and the first accused namely her husband, for which the in laws and even the friend of A1 has been implicated. The implication of in-laws and others, in the matrimonial issue, has been highly commended by the Hon'ble Supreme Court in **Preeti Gupta's** case. The Hon'ble Supreme Court has also cautioned not only the Investigating Officer, but also the courts, while dealing with the matrimonial issue to be more cautious and

Careful. When we apply the yardstick to the present case, the implication of the Accused 2 to 6 is also nothing, but a colourable exercise of the legal right, which does not exist in favour of the 2nd respondent keeping in mind the conduct also.

12. On that solid ground, the entire proceedings in CC No.9 of 2019 before the Judicial Magistrate, Melur is liable to be quashed.

13. In the result, this criminal original petition is **allowed** and the entire proceedings in CC No.9 of 2019 on the file of the Judicial Magistrate, Melur is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

09/03/2023

Index: Yes/No
Internet: Yes/No
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To,

- 1.The Inspector of Police,
All Women Police Station,
Melur,
Madurai District.
- 2.The Judicial Magistrate Court,
Melur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G.ILANGOVAN, J

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