



CrI.O.P.(MD)No.10887 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2023

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.O.P.(MD)No.10887 of 2021
and CrI.M.P(MD).No.5540 of 2021

Dr.Kokila

... Petitioner

Vs.

1.The Inspector of Police,
All Women Police Station,
Thallakulam,
Madurai District.
Crime No.65/2020.

2.R.Mythili

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash the F.I.R in Crime No.65 of 2020 dated 11.12.2020 on the file of the first respondent as against the petitioner.

For Petitioner : Mr.C.Ranjith Kumar

For Respondents : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor
for R1
Mr.S.Chinnaian for R2



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ORDER

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The petitioner who was arrayed as accused No.4 in Crime No.65 of 2020 on the file of respondent police has preferred this Criminal Original Petition to quash the proceedings in Crime No.65 of 2020 on the file of the first respondent, wherein she is said to have committed the offence under Section 498 A IPC.

2. The case of the prosecution is that the defacto complainant got marriage with the first accused 11 years before the date of the complaint. Out of wedlock, they have a male child. According to the defacto complainant, the first accused insisted the defacto complainant and her parents to make arrangement of another marriage for him with her own sister who is an Engineer Graduate. So, some dispute arose between them. On 29.02.2020, the father of the defacto complainant preferred a complaint before the Chettinad Police Station, Kanadukathan, alleging that her daughter namely, the sister of the defacto complainant was missing. On enquiry based upon the said complaint, A1 appeared and stated that he married the sister of the defacto complainant. On knowing that, the defacto complainant preferred a complaint before the All



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Women Police Station, Melur, on 04.03.2020. So, her husband namely, A1 at the instigation of his parents, sister and brothers assaulted her and driven out her from the matrimonial home. On the basis of the complaint, the defacto complainant referred to the Social Welfare Officer, Madurai. Thereafter, the Officers of the All Women Police, Melur, directed her to prefer a complaint before the Madurai Police Station on account of the jurisdiction limit. So, she preferred a complaint before the respondent police alleging that during the subsistence of marriage between herself and A1, A1 abducted her sister to perform second marriage with her and assaulted the defacto complainant and driven out her from the matrimonial home. For the said action, the parents namely, A2 and A3, brothers, the petitioner and sister of A1 also aided him. So, the respondent police registered a case under Section 498(A) IPC.

3. The learned counsel for the petitioner submitted that the 1st accused is the husband of the defacto complainant. The 2nd accused is the father-in-law of the defacto complainant. The 2nd accused entered into second marriage. In the said second marriage, this petitioner was born. So, the petitioner is in sister-in-law relationship with the defacto



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complainant. She never lived with A1. She is living from faraway place of the second respondent matrimonial home from 2011 onwards on account of her higher studies in medicine. More particularly, she got marriage in the year 2017 and lived with her husband at Chennai. Subsequently, she got a job at Cheyyar Government Hospital and got transferred to the Government Medical College Hospital, Thiruvannamalai. It is situated more than 400 kilometer away from the residence of the second respondent and hence, with an intention to harass the petitioner, an Omni Bus allegation is made against the petitioner as if the petitioner has instigated A1 to assault her. So, no ingredients to constitute the offence under Section 498(A) are available against the petitioner and hence, the learned counsel for the petitioner seeks indulgence of this Court to quash the proceedings.

4. Per contra, learned Government Advocate (CrI.Side) submitted that the investigation was over. The investigation officer filed the final report was filed with specific allegation that the petitioner abetted A1 to assault the defacto complainant and he seeks dismissal of the quash petition.



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5.The second respondent also reiterated the same and also submitted that the sufficiency of the material cannot be looked at this stage and he also seeks for the dismissal of the quash petition.

6.This Court considered the rival submissions and perused the records and the precedents cited by the learned counsel for the petitioner.

7. It is admitted case that the petitioner is the cousin sister of A1 and she is a Doctor. She got married in the year 2017 and she has been living with her husband at Chennai from 2017 onwards. Subsequently, she got appointed as a Doctor in the Cheyyar Government Hospital. From that place, she got transferred to the Government Medical College Hospital, Thiruvannamalai. Her husband is also a Doctor and he has also transferred to the Chengalpattu Medical College Hospital, Chengalpattu. The distance between the occurrence place and the residence of the petitioner is more than 400 kilometers. The case of the petitioner is that she has no active relationship with the defacto complainant and her in-laws have to be accepted in the above circumstances.



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7.1. In the opinion of this Court, the sweeping allegation of abetment on the part of the petitioner in the above crime made with intention to rope the petitioner in the above crime. The learned Additional Public Prosecutor produced the copy of the final report. Except the above, the *Omni Bus* allegation, nothing is available in the complaint and the final report to implicate the petitioner in the above case. Hence, the petitioner's case squarely comes under the decision of the Hon'ble Supreme Court in the case of ***State of Haryana v. Bhajan Lal***, reported in **1992 Supp (1) SCC 335** and paragraph 102 of the said judgment is as follows:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima



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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 concerned Act (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 concerned Act, 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.”



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8. The Hon'ble Supreme Court in number of the judgments, considering the numerous incidents where the relative of the husband were falsely robed under the allegation of the 498A IPC, quashed the proceedings treating the same as abuse of process of law. The Hon'ble Supreme Court in the case of **Kahkashan Kausar @ Sonam and Others Vs. State of Bihar and Others** reported in **2022 (6) SCC 599** has considered the above principle elaborately and held as follows:

“17.The above mentioned decisions clearly demonstrate that this Court has at numerous instances expressed concern over the misuse of Section 498-AIPC 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.

21. Therefore, upon consideration of the relevant circumstances and in the absence of any specific role attributed to the appellant-accused, it would be unjust if the appellants are forced to go through the tribulations of a trial i.e. general and omnibus allegations cannot manifest in a situation where the relatives of the complainant's husband are forced to undergo trial. It



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has been highlighted by this Court in varied instances, that a criminal trial leading to an eventual acquittal also inflicts severe scars upon the accused, and such an exercise must, therefore, be discouraged.”

The above principle is applicable to the petitioner's case in all aspects and hence, this Court is inclined to quash the proceedings against the petitioner alone as abuse of process of law. Accordingly, the impugned FIR in Crime No.65 of 2020 and the consequential final report are hereby quashed insofar as the petitioner alone.

9. In the result, this Criminal Original Petition is allowed as against the petitioner alone. Consequently, connected miscellaneous petition is also closed.

08.06.2023

Index : Yes / No
Internet : Yes / No
ssb

To
1.The Inspector of Police,
Cantonment Police Station,
Trichy City, Trichy.



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K.K.RAMAKRISHNAN,J

ssb

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

Order made in
Crl.O.P.(MD)No.10887 of 2021

Dated:08.06.2023