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Crl.O.P.(MD)No.18416 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2022

PRONOUNCED ON : 12.04.2023

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P(MD)No.18416 of 2022

1.Wesley Daniel
2.Victory
3.Ravichandran : Petitioners/Accused-1 to 3

-VS-

1.State Rep. by
Inspector of Police,
AWPS Vallam Police Station : 1st Respondent

2.Tanjore Tonia Sabatini : 2 Respondent/De-facto Complainant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for records in Crime No.18 of 2021 and present charge sheet C.C.No.5 of 2022 on the file of the 1st respondent police station and quash the same.

For Petitioner : Mr.Charles Alexander

For Respondent 1 : Mr.B.Nambiselvam
Additional Public Prosecutor

For Respondent 2 : Mr.B.Senthil Kumar

ORDER



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This Criminal Original Petition had been filed to quash the Charge Sheet in C.C.No.5 of 2022, dated 20.01.2022 on the file of the learned Additional Judicial Magistrate, Mahila Court, Thanjavur.

2.The learned Counsel for the Petitioners would submit that the first Petitioner is employed in IT Company. During COVID-19 Lock down, he was working from home. At the same time, on 25.06.2021 while the first Petitioner was taking some documents from the locker in his house, he was surprised and shocked to see a NYKAA bill dated 19.03.2021. It was addressed to the De-facto Complainant address. There were two items mentioned in the bill viz., (1) Durex Lube + Massage Gel 2 in 1 Lubricating Gel for Women-sensual (200 ml), (2) Durex Play Vibrating Ring for Extra Pleasure for Women. Immediately, the first Petitioner as worried Husband asked the second Respondent/De-facto Complainant about the bills and her attitude. All of a sudden, the De-facto Complainant very badly portrayed the first Petitioner and exclaimed “Nee Oru Potta” (meaning impotent) and there arose wordy exchange resulting in the second Respondent/De-facto Complainant taking the child to the bed room and did not return back to the



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hall. After the intervention of the second and third Petitioners, the issue was sorted out. The second Respondent/De-facto Complainant became calm and composed. Subsequently, the second Respondent/De-facto Complainant had informed her parents as though there was quarrel in the family. Based on the information given by the second Respondent/De-facto Complainant, the parents of the Second Respondent along with 10 other relatives trespassed into house of the Petitioners and brutally attacked them resulting in bleeding injuries on the Petitioners, for which they had preferred complaint to the Police. The Police had failed to act. Therefore, they had approached the learned Judicial Magistrate, Ambattur to register the case. Based on the direction of the learned Judicial Magistrate, Ambattur, the case has been registered. After registration of the case against the second Respondent/De-facto Complainant's parents and relatives, the second Respondent/De-facto Complainant had given complaint thereby harassing the Petitioners as though they had committed the offence thereby attracting the offence under Section 498(A) of IPC and the provisions of Section 4 of TNPHW Act. The second Respondent's relatives are serving as Police Officials in the Tamil Nadu Police Department. Based on their influence, the second Respondent shifted place



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towards various Police Stations in Tamil Nadu. In this case, based on the complaint of the second Respondent a case in Crime No.18 of 2021 was registered before the All Women Police Station, Vallam, Thanjavur District. After investigation final report laid before the Court of the learned Judicial Magistrate, Additional Mahila Court, Thanjavur, which is taken on file in C.C.No.5 of 2022. Also, the learned Counsel for the Petitioners submits that the second Respondent had preferred domestic violence case in which new facts had been stated, which has not been mentioned in the earlier complaint. It is nothing but abuse of process of Court. Hence, he seeks to quash the proceedings.

3.The learned Additional Public Prosecutor Mr.B.Nambiselvan appearing for the first Respondent submitted that the Investigation Officer had found out the truth of the case and based on the same, the Charge Sheet has been filed which cannot be quashed. In support of his contention, he placed reliance on the reported decision of the Hon'ble Supreme Court in the case of *State of Haryana -vs- Bhajan Lal* reported in *1992 Suppl.(1) SCC 335* wherein it had been reiterated that cases of grave in nature shall not be quashed. Therefore, the learned Public Prosecutor appearing for the



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first Respondent vehemently objected and sought dismissal of this Civil Revision Petition.

4.Mr.B.Senthil Kumar, learned Counsel appearing for the second Respondent submitted his arguments. As per his arguments, on the date of occurrence, the second Respondent was admitted for delivery. The second Respondent used mobile phone given by the first Petitioner/Husband. The first Petitioner/Husband had installed spy-ware without the knowledge of the second Respondent/Wife. Without permission of the second Respondent/Wife, the first Petitioner/Husband operated the mobile and accessed her mobile including her account and product name not mentioned, delivery of the alleged product was by first Petitioner/Husband himself and not known to the delivery boy regarding the contents of the parcel. The bill itself enclosed. The first Petitioner/Husband only ordered and amount paid for it from his Wife's/second Respondent's account, as she was admitted in hospital on 03.02.2021. The parcel received on 19.03.2021. After receiving the parcel, it was handed over to the first Petitioner/Husband. The first Petitioner/Husband only opened the box/parcel.



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5.As per the arguments of the learned Additional Public Prosecutor, a charge sheet was filed and proceeded for preliminary questioning. Eight witnesses cited and they were questioned. The second Petitioner who is the mother of the first Petitioner had lodged three complaints on 26.06.2021, 16.07.2021 and 04.10.2021 against the father, mother and brother of the second Respondent. The first Petitioner had lodged a complaint on 31.07.2021 against the father, mother, brother and relatives of the second Respondent. The first Petitioner herein is the husband of the second Respondent/Complainant.

6.The learned Counsel for the second Respondent invited the attention of this Court to paragraph No.3 in the complaint of the second Petitioner dated 04.10.2021 which is extracted as under:

“I further submit that due to the Covid-19 Pandemic situation my son was working from home and Tonia Sabatini was looking after the child and everything was fine and myself and my husband never interfered within the life of my son and I also never asked Tonia Sabatini to do any work because she was taking care of the child and without any dispute the life was moving smoothly and my husband is 60 years old and he is still now working for the sake of the family and my family is a law abiding family and never interfered in others life and I never got any bad name in the locality.”



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7.Also, the learned Counsel for the second Respondent submitted that the first Petitioner/Husband had filed divorce petition in I.D.O.P.No.656 of 2021. In the divorce Petition, the NYKAA Product had not been mentioned. As per the second Respondent's typed set, the copy of the divorce Petition filed by the first Petitioner/Husband is available in which the first Petitioner/Husband had not at all mentioned about the NYKAA Products. Therefore, it is the contention of the learned Counsel for the second Respondent/Wife that the mentioning of NYKAA Products by the first Petitioner/Husband is only with an ulterior motive to defame the second Respondent/Wife. Therefore, the Divorce Petition is unacceptable and unfair. In the bill dated 19.03.2021, the name of the second Respondent/Wife is not mentioned. Therefore, it had been concluded that the first Petitioner/Husband alone had ordered the NYKAA Products with an ulterior motive to defame the second Respondent/Wife.

8.On consideration of the rival submissions, the fact that there had been misunderstanding between the first Petitioner/Husband and his wife/second Respondent herein in respect of the purchase of a NYKAA Products (Vibrator) based on which the parents and relatives of the second



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Respondent/Wife are alleged to have brutally attacked the first Petitioner/Husband. The first Petitioner/Husband having given a complaint before the police regarding the attack by the relatives of the second Respondent/De-facto Complainant/Wife, the Police had not taken any action. Whereas the second Respondent/Wife who was staying in Chennai had given a complaint to the All Women Police Station, Vallam, based on which the investigation had been completed and the final report was laid before the Court of the learned Additional Judicial Magistrate, Mahila Court, Thanjavur. When the parties were living at Ambattur in Chennai, filing of complaint as though the occurrence took place within the local limits of the learned Additional Judicial Magistrate, Mahila Court, Thanjavur is nothing but misuse of power and authority. Also, it is the contention of the learned Counsel for the Petitioners that in the reported ruling of the Hon'ble Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh [(2014) 2 SCC 1]*** the Hon'ble Supreme Court had given guidelines to be followed before Registration of cases relating to matrimonial disputes. As per the said ruling regarding matrimonial disputes before filing of the FIR when the husband and wife were alleged to have been residing in the same house, the investigation shall not proceed in



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laying of the final report. The Investigation Officer had to summon both the parties and verify if there is an amicable settlement for the better chance of reunion and family life. Only if the mediation and other alternate dispute resolution methods ends up in failure, the Investigation Officer shall proceed with the matter and file final report. In this case, the Investigation Officer had not followed the said guidelines.

9.In the light of the submission of the learned Counsel for the Petitioners, the Investigation Officer had not followed the guidelines issued by the Hon'ble Supreme Court in the case of *Lalita Kumari v. Government of Uttar Pradesh [(2014) 2 SCC 1]* and also not considered that the first Petitioner had filed divorce Petition. In the light of the above, the filing of the final report in C.C.No.5 of 2022 is found unreasonable and unacceptable, except for the purpose of harassing the in-laws and the first Petitioner/Husband.

In the result, **this Criminal Original Petition is allowed.**

The Charge Sheet in C.C.No.5 of 2022, dated 20.01.2022 on the file



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of the learned Additional Judicial Magistrate, Mahila Court, Thanjavur is
quashed.

Index : Yes/No
Internet : Yes/No
SRM

12.04.2023

To

The Additional Judicial Magistrate,
Mahila Court,
Thanjavur.



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SATHI KUMAR SUKUMARA KURUP, J.

SRM

Order made in
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