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Crl.O.P.(MD)No.15769 of 2019



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.0.2023

PRONOUNCED ON: 16.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.15769 of 2019
and
Crl.M.P.(MD)Nos.9349 and 9350 of 2019

V.Saravanan : Petitioner/Sole Accused

Vs.

1.State represented by
The Inspector of Police,
All Women Police Station,
Thiruparankundram,
Madurai City.
(Crime No.23 of 2018) : Respondent/Complainant

2.Geetha : Respondent/Defacto Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to the charge sheet filed in C.C.No.691 of 2019, on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai and to quash the same so far as the petitioner is concerned.

For Petitioner : Mr.G.Karuppasamy Pandian
for Mr.B.Arun



For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1
: Mr.J.Lawrence
for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the case in C.C.No.691 of 2019, pending on the file of the Judicial Magistrate, Additional Mahila Court, Madurai and quash the same.

2. The petitioner is the sole accused in C.C.No.691 of 2019, on the file of the Additional Mahila Court, Madurai. On the basis of the complaint lodged by the second respondent/defacto complainant, F.I.R., came to be registered in Cr.No.23 of 2018 on 26.12.2018 against the petitioner for the offences under Sections 498(A) and 406 I.P.C., and under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. The first respondent, after completing the investigation, has laid the final report dated 22.03.2019 against the petitioner herein for the alleged offences under Sections 498(A) and 406 I.P.C., and under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act and the same was taken on file in C.C.No.691 of 2019, on the file of the Additional Mahila Court, Madurai.



3. Admittedly, the marriage between the petitioner and the defacto complainant was solemnized on 05.02.2015 at Telugu Asariyar Marriage hall, West Car Street, Thiruparankundram as per the Hindu customs and rites. It is not in dispute that the petitioner as well as the defacto complainant were the divorcees and both of them had entered into the second marriage.

4. The case of the prosecution is that the defacto complainant's parents has given 20 sovereigns of jewels to the defacto complainant and 5 sovereigns of jewels and a cash of Rs.5,00,000/- and household articles worth of Rs.3,00,000/- to the petitioner, that both of them had started their marital life at Harveypatti, Thiruparankundram and there were no issues for seven months since the marriage, that subsequently the petitioner had started to demand the jewels given to the complainant to clear his marriage debts, that he had taken 10 sovereigns of jewels and pledged the same and that as per the direction of the petitioner, the defacto complainant's father pledged 10 sovereigns of jewels for Rs.1,26,000/- and gave Rs.50,000/- to the petitioner's sister's husband – Boominathan on 20.12.2015 for paying lease amount and Rs.75,000/- to the said Boominathan to clear the petitioner's marriage debts, that the petitioner had also started to ill-treat the petitioner by alleging that the foods were not tasty, that though the defacto complainant had been requesting the petitioner to include her name in the ration card, he refused to accept the same by threatening that he was working in the



High Court and nobody could touch him, that the petitioner at that time had attacked and caused injuries to the defacto complainant and subsequently, had taken her to the hospital, that subsequently, the defacto complainant's parents had intervened and taken her to Madurai for treatment, that when the defacto complainant's father received the demand notice from the financier with regard to pledging of jewels, had informed about the same to the petitioner, but he refused to redeem the jewels, that subsequently he had started to demand Rs. 5,00,000/-, which was allegedly given by the defacto complainant's first husband at the time of their divorce and that when the same was refused, he had attacked the defacto complainant, kicked on her stomach and caused cruelty both mentally and physically.

5. It is the further case of the prosecution that when the defacto complainant had contacted the petitioner through several times through phone, he refused to attend the calls, that subsequently he has filed a divorce petition in H.M.O.P.No.47 of 2017 before the Sub Court, Aruppukkottai and the same is pending and that since there was no action on the complaint lodged by the defacto complainant with All Women Police Station, she was constrained to file a petition in Crl.O.P.No.5470 of 2018 before this Court and on the basis of the order of this Court, the case came to be registered.



6. The case of the petitioner is that after marriage, he rented a house at Harveypatti near the house of the defacto complainant considering her convenience, that subsequently the complainant had started to show her real colour and started to harass the petitioner day by day, that when the said harassment was informed to her parents, they had also supported the attitude and harsh behaviour of their daughter, that the issue started becoming unpleasant and unbearable and hence, the petitioner's villagers intervened and the elders mediated between both the families, that since the complainant and her parents complained that the rental house is very small, he vacated the existing house and rented a new house at Chandrapalayam, that even after shifting to the new house, the respondent had again started to behave abnormally, that the complainant and her parents on many occasions had brought unknown men like Goondas and Hooligans in order to threaten him to become a slave, who would nod his head for their whims and fancies, that the defacto complainant does not cook food on many occasions and made the petitioner to starve and that the petitioner with no other option has filed a divorce petition in H.M.O.P.No.47 of 2017 before the Sub Court Aruppukkottai and that the defacto complainant has appeared and hotly contested the above case.

7. In the matrimonial proceedings, as usual, the husband and wife are making allegations and counter allegations against each other.



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8. The learned Counsel for the petitioner would submit that the first respondent has forwarded a complaint to the Social Welfare Officer, Madurai for enquiry, that the Social Welfare Officer enquired the petitioner and the second respondent on 31.01.2019 and 15.02.2019 and found the fact that there was no dowry harassment and that the first respondent police without considering the report of the Social Welfare Officer and without conducting proper investigation, has laid the charge sheet. He would further submit that the second respondent has already lodged two false complaints and the same were enquired and closed and that the second respondent, by suppressing the same, has lodged the third false complaint and managed to register the case and that the F.I.R. and the charge sheet did not make out any case as against the petitioner so as to attract the offences under Sections 498(A) and 406 I.P.c., and Section 4 of Women Harassment Act.

9. It is further evident from the records that considering the representations made by the learned Counsel for the petitioner as well as the second respondent, the matter was referred to mediation, but subsequently mediation report has been received as the mediation ended in failure.



10. The learned Counsel for the petitioner has relied on the judgment of this Court in ***Umarani and Others Vs. Sub-Inspector of Police, All Women Police Station, Thanjavur District and another*** reported in ***(2020)1 MLJ (Crl.) 423***, wherein it has been held that mere bickerings between parties which happen in day-today life between husband and wife could not be brought under explanation 'a' to Section 498(A)I.P.C., and that the explanation makes it clear that the conduct should be of such nature to drive woman to commit suicide and that the same would only mean that cruelty must be of aggravated nature.

11. No doubt, as rightly pointed out by the learned Counsel for the petitioner, the Social Welfare Officer, after enquiring the petitioner and the second respondent, has given a report dated 14.03.2023 stating that there was some misunderstanding between both of them and there was no dowry harassment. As rightly contended by the learned Government Advocate (Crl.Side) and the learned Counsel for the second respondent, the above report is not binding on the Investigating Officer and if the evidence gathered by them discloses that there was dowry harassment, he can very well reject the report of the Social Welfare Officer and file the charge sheet and there is absolutely no bar or prohibition for the same. Even assuming that there was no dowry harassment, the second respondent has alleged that she was attacked twice and she was forced to take treatment in the hospital. Whether there was any dowry



harassment or the harassment or cruelty attracting the first explanation to Section 498(A) I.P.C., is a matter for trial and the same cannot be gone into, in this petition.

12. The learned Counsel for the second respondent would submit that the first respondent, after conducting proper investigation and after satisfying himself that the occurrences alleged by the defacto complainant are true, has filed the charge sheet, that though the Social Welfare Officer has given a report that there was no dowry harassment, the Investigating Officer, after investigation and after satisfying that there is prima facie case to proceed against the petitioner for dowry harassment and for other offences, he has filed the charge sheet and that the Investigating Officer has examined 7 witnesses and recorded their statements under Section 161(3) Cr.P.C.

13. As rightly contended by the learned Counsel for the second respondent, the witnesses have given statements about the demand of further dowry and the harassment meted out by the petitioner to the defacto complainant and his misappropriation of the loan amount obtained by pledging the jewels.

14. As already pointed out, the second respondent has raised so many allegations and counter allegations against the petitioner. No doubt, the



petitioner has not only disputed those allegations, but raised some allegations against the second respondent. However, those allegations and charges cannot be gone into at this stage and the same are to be decided only at the trial.

15. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Kaptan Singh Vs. State of U.P.**, reported in **2021 (3) Crimes (SC) 247**.

“9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers Under Section 482 Code of Criminal Procedure has quashed the criminal proceedings for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code. It is required to be noted that when the High Court in exercise of powers Under Section 482 Code of Criminal Procedure quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the Accused persons, has filed the charge-sheet before the Learned Magistrate for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition Under Section 482 Code of Criminal Procedure was at the stage of FIR in that case the allegations in the



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FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation / inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.



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9.2. *In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers Under Section 482 Code of Criminal Procedure to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction Under Section 482 Code of Criminal Procedure though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers Under Section 482 Code of Criminal Procedure. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.*

9.3. *Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers Under Section 482 Code of Criminal Procedure.”*

16. It is pertinent to mention that the Hon'ble Supreme Court in in ***Dhruvaram Murlidhar Sonar vs The State Of Maharashtra*** reported in ***2019(18) SCC 191***, after considering the decision of the Hon'ble Supreme Court in ***State of Haryana and Others vs. Bhajan Lal and others*** reported in ***1992 Supp (1) SCC 335***, has specifically held that exercise of powers under Section



482 Cr.P.C., to quash the proceedings is an exception and not a rule and that inherent jurisdiction under Section 482 Cr.P.C., though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is also settled law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C., for quashing the criminal proceedings.

17. Considering the above, as rightly contended by the learned Counsel for the second respondent and the learned Government Advocate (Crl.Side), this Court in exercise of its jurisdiction under Section 482 of Cr.P.C cannot go into the truth or otherwise of the allegations made in the complaint or delve into the disputed question of facts.

18. A perusal of the complaint, charge sheet and the statements of the witnesses recorded under Section 161(3) Cr.P.C., and other records available makes out a prima facie case against the petitioner at this stage and there appears to be sufficient ground for proceeding against him. Hence, this Court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.



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20. In the result, the Criminal Original Petition is dismissed.

Consequently, the connected Miscellaneous Petitions are also dismissed.

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NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1. The Judicial Magistrate,
Additional Mahila Court, Madurai.
2. The Inspector of Police,
All Women Police Station,
Thiruparankundram,
Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

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