



CRL.O.P(MD).No.1090 of 2017

IN THE MADURAI BENCH OF JUDICATURE AT MADRAS

Order Reserved on	:	15.09.2023
Order Pronounced on	:	27.09.2023

CORAM

THE HONOURABLE MR. JUSTICE P.DHANABAL

CRL.O.P(MD).No.1090 of 2017

1.C.V.K.Balakrishnan
2.Jayarani

.....Petitioners

Vs.

1.The State represented by
The Inspector of Police,
All Women Police Station,
Thallakulam,
Madurai.
(Crime No.24 of 2016)

2.Jenifa Rani

.....Respondents

Prayer : Criminal Original Petition filed under section 482 of Criminal Procedure Code praying to call for the records in pursuant to the charge sheet in C.C.No.12 of 2017 on the file of the Additional Mahila Court, Madurai, as far as the petitioners are concerned and quash the same.



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For Petitioners ... Mr.Niranjana

For R-1 ... Mr.M.Sakthi Kumar

Government Advocate (Crl.Side)

For R-2 ... Mr.K.Balasundaram, Senior Counsel

For.Mr.R.Manoharan

ORDER

This petition has been filed by the petitioners to quash the proceedings in C.C.No.12 of 2017 on the file of the Additional Mahila Court, Madurai.

2.According to the petitioners, based on the complaint given by the 2nd respondent, the first respondent has registered a case in Crime No.24 of 2016 on 10.09.2016 for the offences under sections 498(A), 294 (b) & 506(i) IPC. The first petitioner has been arrayed as 2nd accused and the second petitioner has been arrayed as 3rd accused in the FIR. Thereafter, the first respondent has investigated the case and filed the final report as against these petitioners and others for the offences under sections 498(A), 294 (b) & 506(i) IPC.



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(ii) According to the prosecution case, the first accused Shivashankar married the second respondent on 20.03.2005 and out of their wedlock, a male child was born on 14.2.2006. At the time of marriage, the parents of the defacto complainant presented 105 sovereigns of gold ornaments and sreedhan worth Rs.2 lakhs. After few years of marriage, A1 got a job in USA and he has been in USA and the defacto complainant lived with her parents. Thereafter, A1 changed his attitude and harassed the defacto complainant. On 14.5.2016, A1 came to the house of the defacto complainant, demanded her consent for mutual divorce on payment of compensation and threatened and abused her in filthy language. The A2 and A3 have not shared the amount given by A1 to maintain the family.

(iii) Further, at the instigation of A2 and A3, A1 harassed the defacto complainant. All the accused refused to return back the jewels of the defacto complainant, which were presented, at the time of marriage. Further all the accused abused the defacto complainant using obscene words and also caused criminal intimidation, thereby, the complaint was



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lodge by the second respondent before the first respondent and the first respondent investigated the case and filed the final report. In fact the defacto complainant did not live with the petitioners' son i.e., A1. The second respondent has given a false complaint, after a lapse of 11 years from the date of marriage. In fact the petitioner's son offered to pay a sum of Rs.15,00,000/- to the defacto complainant for a peaceful and happy living and towards their daily expenditure since she wanted to stay back in Madurai in her parental home.

(iv) Further from and out of the income of the first accused, the second respondent purchased land and building in her name and now she is getting Rs.6000/- as the monthly rent from the above said property. After returning from USA, when the son of the petitioners' requested his wife to join with him, she refused. On 14.08.2010, the defacto complainant absconded with her child and a complaint was lodge before Anna Nagar Police Station and after investigation, she was traced out and handed over to her parents. Thereafter, the petitioners' son arranged separate house and provided all the amenities and also sent a sum of Rs.40,000/- per month and in some months Rs.1,00,000/- to the defacto complainant. While so, on



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27.08.2016, the defacto complainant forcibly entered into the house of the petitioners and occupied the first floor of the house. Now, the defacto complainant often stays with her parents at Sellur. Hence, the complaint given by the defacto complainant is totally false.

(v) The second respondent already filed a Petitions in W.P.No.17629 of 2016 and CrI.O.P.No.17364 of 2016 to harass the petitioners. The above said Writ petition in W.P.No.17629 of 2016 was dismissed by this Court and also the above said Criminal original Petition was filed to cancel the anticipatory bail. The defacto complainant filed several cases in Civil Courts and filed a case before the Additional Mahila Court seeking Rs.1 Crore as compensation and Rs.80,000/- as monthly maintenance. Further the defacto complainant and her father opened the house in the absence of the petitioners and took away gold ornaments and property documents belonging to the petitioners and to that effect the complaint has been lodged and the same is pending. These petitioners never lived with the defacto complainant and she made empty efforts to garnish her complaint with such offences under sections 294(b) & 506(i) IPC. Therefore, the pending proceedings are abuse of process of law.



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3. The second respondent filed a counter alleging that these petitioners have previously filed a discharge petition in Crl.M.P.No.1145 of 2018 in C.C.No.12 of 2017 before the Additional Mahila Court and the same was dismissed. Subsequently, the petitioners filed a petition to quash the proceedings in Crl.O.P.(MD).No.1090 of 2017 and the same was also dismissed on the ground that already the discharge petition was filed and pending before the trial Court. Thereafter, they have taken the matter to Hon'ble Supreme Court and Hon'ble Supreme Court directed to hear the case afresh and now the case was re-opened. The A2 and A3 who are the parents of A1 have illegally taken over the jewels and money belonging to the second respondent and refused to return back the same. The petitioners have tortured the second respondent by demanding dowry and even after the same was provided by her parents at the time of marriage, these petitioners have induced their son to divorce the second respondent and forced her to provide consent for the same. But the second respondent denied to give consent thereby, they tortured the second respondent.

(ii) As per the investigation conducted by the first respondent for the



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offences under section 498(A), 294(b) & 560(i) IPC it clearly show that the petitioners had manually strangled the second respondent and pushed her down and the same have been clearly stated in the statement of witnesses. The second respondent was harassed and forced to leave the matrimonial home by the petitioners. The Writ Petition in W.P.No.17629 of 2016 was not dismissed and it was closed on the assurance given by the petitioners that they have not caused any harassment. Neither the second respondent nor her parents took away any gold ornaments and property documents belonging to the petitioners as alleged.

(iii) The second respondent and these petitioners have lived together in the same house and at that time, the petitioners have harassed her physically and used obscene words and even threatened her to cause death. In the FIR itself it is specifically stated about the involvement and participation of the petitioners and they have committed the offences under sections 498(A), 294(b) & 560(i) r/w. 109 of IPC. No valid grounds have been made out to quash the charge proceedings since prima facie material is available as against these petitioners as per the final report filed by the first respondent police. Already the discharge petition has been filed by the



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petitioners in Crl.M.P.No.1145 of 2018 in C.C.No.12 of 2017 and the same was dismissed and no appeal was filed and further no valid grounds raised by the petitioners to quash the proceedings. Therefore, this petition is liable to be dismissed.

4. Learned counsel appearing for the petitioners would contend that the date of occurrence shown in the FIR i.e., 20.03.2005 is nothing but date of marriage and no specific allegations made in the FIR. The allegations made in the FIR are vague and bald allegations. As per FIR on 14.05.2016, the husband of the defacto complainant demanded mutual divorce and allegedly attacked and abused her but till 10.09.2016, ie., on the date of FIR, no complaint was given and after a long time, the FIR has been registered on 10.09.2016. There is no specific date mentioned as to where and when the wife of the A1 was attacked.

(ii) The compliant is bereft of material particulars as to the dates on which the second petitioner leaked the cooking gas by keeping the burner open in the night time as falsely averred in the complaint. In spite of the vague allegations without specifying or mentioning the action taken



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against the 4th accused by name Dayana in the FIR whose name was subsequently included in the charge sheet, mere narration of facts without any material particulars cannot be sustained in the eye of law. Subsequent to filing the FIR, the defacto complainant filed a Writ petition in W.P.No. 17629 of 2016 as if the petitioners attempted to vacate her from matrimonial home at Thapalthanthi Nagar. The petitioners were enlarged on bail dated 23.09.2016 and wife was able to obtain possession of the first floor of her matrimonial home only with the aid of the police and the same was recorded in the above said writ proceedings. After obtaining the possession of the matrimonial home with the aid of the police she continue to harass the old aged petitioners by raising slogans and protest with the aid of the so called women's organisations by demanding the petitioners to hand over all the property documents and alienate the properties in her name thereby, the petitioners lodged a complaint in All Woman Police Station, Thalla Kulam in C.S.R.No.442 of 2016 dated 19.10.2016.

(iii) In the charge sheet only a vague and general statements were made for the purpose of filing the charge sheet against the age old petitioners herein without specifically mentioning about the date and place



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of occurrence. All the witnesses shown in the charge sheet were interested close relatives of the complainant hailing from very same locality at Sellur, whereas the alleged occurrences have taken place at Thapalthanthi Nagar. None of the ingredients of section 498(A) of IPC was satisfied in the charge sheet and there is absolutely no cruelty caused to second respondent. The statements of the father and mother of the defacto complainant happened to be verbatim, reproduction with the sole intention to maintain the false criminal proceedings.

(iv) Already the 1st accused filed a petition in HCP.No.910 of 2017 and the same was dismissed by holding that the petition is thoroughly misconceived and clear abuse of process of Court. The present case is a classic example of foisting a false case against the innocent in-laws without material particulars and with the aid of usual wordings. Only for the purpose of maintaining and proceeding with the criminal prosecution by abuse of process of law the criminal case has been foisted which cannot be entertained in the interest of justice and hence, the pending proceedings in C.C.No.12 of 2017 is liable to be quashed as against these petitioners.



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5. Learned Senior counsel appearing for the second respondent would contend that these petitioners caused cruelty and also abused the second respondent using obscene words and threatened her with dire consequences and thereby, complaint has been lodged by the second respondent. Based on the complaint, an FIR has been registered in Crime No.24 of 2016 for the offences under sections 498(A), 294(b) and 506(i) of IPC. After, elaborate investigation, the first respondent filed final report and based on the final report, the Trial Court also had taken cognizance for the offences under sections 498(A), 294(b) and 506(i) of IPC since there are prima facie materials available against the petitioners. Thereafter these petitioners filed the petition before the trial Court to discharge them in CrI.M.P.No.12106 of 2016 and the same was also dismissed, but no appeal or revision filed as against that order. Already this Court dismissed the petition by holding that since the discharge petition is pending before the trial Court, there cannot be any parallel proceedings. Thereafter, the petitioners filed Appeal before the Hon'ble Supreme Court and Hon'ble Supreme Court directed this Court to re-open the case and to decide the case on merits. As per the investigation and final report, there are prima facie material available as against these petitioners and it is a matter for



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trial and at this stage, this Court cannot testify the veracity of the statements recorded by the investigation officer and document collected by them. Already the trial Court also dismissed the discharge application by holding that there are prima facie material available and therefore, this petition is liable to be dismissed.

6. This Court heard the arguments on either side and perused the materials available on record.

7. It is admitted fact that in this case there is no contravention with regard to the relationship of the parties. The second respondent is none other than the wife of first accused and daughter-in-law of the petitioners herein. These petitioners have been arrayed as A2 and A3 in the charge sheet.

8. The main contention of the petitioners is that they have not committed any offence and the second respondent, in order to get more money from the first accused, filed so many complaints and thereby, harassed the petitioners and even as per the FIR and charge sheet, no



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materials are available as against these petitioners to constitute the offences.

9. According to the second respondent, these petitioners along with first accused caused cruelty and thereby, she has given a complaint and based on the complaint, the FIR has been registered and thereafter, the first respondent police have conducted the investigation and as per the investigation, the prima facie materials available. Therefore, at this stage, the petitioners have to face the trial and the grounds taken in this petition are nothing but defence and the same have to be agitated before the trial Court and it is a matter for trial.

10. In this case, already these petitioners have filed a petition to discharge them and the same was dismissed by the trial Court and no appeal or revision was filed as against the order of the trial Court. Already this Court has dismissed the petition on the ground that already the petitioners filed discharge application before the trial Court and there cannot be a parallel proceedings and as against the order of this Court, the petitioners filed an appeal before the Hon'ble Supreme Court and the



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Hon'ble Supreme Court had directed this Court to consider the quash petition afresh in accordance with law and decide the case on merits.

Already the petitioners filed a petition before the trial Court for discharge and the trial Court, after applying its mind, held that there are prima facie material available against the petitioners. As against that order, no appeal or revision has been filed by the petitioners. Even in this application as per the final report filed by the respondent police, there are prima facie material available as against these petitioners and this Court by invoking power under section 482 Cr.P.C can not look into the veracity of the statements recorded during the investigation and cannot conduct mini-trial. The grounds raised by the petitioners in this petition can be agitated before the trial Court. The allegations are serious and there are some material available as per the final report and thereby this matter requires elaborate trial and after trial only, the case has to be disposed of. At this Stage, this Court cannot quash the proceedings since prima facie material is available as against these petitioners.

11. The learned counsel for the petitioners have relied upon the judgments in Abhishek Vs.State of Madhya Pradesh reported in Criminal



Appeal No.1457 of 2015, wherein the Hon'ble Supreme Court held in Para 15 and 16 as under:

15. Earlier, in Neelu Chopra and another Vs. Bharti [(2009) 10 SCC 184], this Court observed that the mere mention of statutory provisions and the language thereof, for lodging a complaint, is not the 'be all and end all' of the matter, as what is required to be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. These observations were made in the context of a matrimonial dispute involving Section 498A IPC.

16. Of more recent origin is the decision of this Court in Mahmood Ali and others vs. State of U.P. and others (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.

12. On careful reading of the said judgment, it is clear that mere mention of statutory provisions and the language thereof for lodging a complaint is not the be all and end all of the matter as what is required to



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be brought to the notice of the Court is the particulars of the offence committed by each and every accused and the role played by each and every accused in the commission of that offence. In the case on hand, as per the investigation there are prima facie materials available as against the petitioner and the veracity of the statement of witnesses cannot be tested by this Court at this stage. Thereby, the said case law will not be applicable to the present facts of the case.

13. The learned counsel appearing for the petitioners has relied on the following judgments :-

(i)Saroja and others v. State and others reported in 2023 (1) MWN (Cr.) 465.

(ii)S.Murugesan and others v. State and others reported in 2021 (1) CTC 826.

(iii)Kahkashan Kausar @ Sonam and others v. State of Bihar and others in 2022 Livelaw (SC) 141.

(iv)Varala Bharath Kumar and another v. State of Telangana and another reported in (2017) 3 Supreme Court Cases (CrI) 740.

(v)Kamalesh Kalra and another v Shilpika Kalra and others in (2020) 4 MLJ (CrI.) 501.

(vi)Vineeth Kumar and others v. State of U.P. And others reported in 2017 (2) MWN 291 (SC).



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(vii) K. Subba Rao and others v. State of Telangana and others
reported in (2018) 14 Supreme Court Cases 452.

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14. On careful reading of the said judgments, it is clear that by filing of criminal complaint, pressure tactic employed by complainant is abuse of process of Court, the Courts should be careful in proceeding against the distant relatives in crimes pertaining to matrimonial disputes and dowry deaths, the relatives of the husband should not be roped in on the basis of the omnibus allegations unless specific instances of their involvement in the crime are made out, if solemn process of Court sought to be abused with oblique motive, the Court has to thwart such attempt at very threshold, the exercising power under Article 226 or inherent power under Section 482 of Cr.P.C., can be exercised by the High Court either to prevent abuse of process of the Court or otherwise to secure the ends of justice and if the allegations made against the relatives of the husband are general and omnibus, they do not warrant prosecution. In the case on hand there are some prima facie materials available as against the petitioner to proceed with the case, thereby, the case laws submitted by the learned counsel appearing for the petitioners are not applicable to the present facts



of the case.

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15. The learned counsel appearing for the second respondent has argued that the demand of dowry amounts to cruelty. Mental cruelty may consist of verbal abuses and insult, by using filthy and abusive language leading to constant disturbance of mental peace of the other party and a single act of physical cruelty may itself amount to cruelty and if a perusal of the FIR leads to disclosure of an offence even broadly Courts are barred from usurping the jurisdiction of the police and while considering the case of quashing of the criminal proceedings, the Court should not “kill a still born child” and appropriate prosecution should not be shifted unless there are compelling circumstances to do so.

16. To support his contention, he relied upon the following judgments:-

(i)Shobarani v. Madhukar Reddi reported in (1998) 1 SCC 105

(ii)Jayachandra v. Aneel Kaur (2015) 2 SCC 22

(iii)Kajal Roy v. Prasanta Kr. Roy reported in (2005) 2 CALLT 567

HC

(iv)S.M.Datta v. State of Gujarat reported in (2001) 7 SCC 659



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(v)State of Haryana and Others v. Bhajan Lal and others reported in 1992 AIR 604

(vi)Neeharika Insfrastructure Pvt. Ltd., v. State of Maharastra reported in 2021 SCC Online SC 315

(vii)Vinod Raghvanshi v. Ajay Arora and others reported in (2013) 10 SCC 581

(viii)State of A.P. v. Gourishetty Mahesh and others reported in (2010) 11 SCC 226

17. On careful reading of the said judgments, it is clear that mental cruelty may consist of verbal abuses and insults, by using filthy and abusive language leading to constant disturbances of mental peace of the other party, a single act of physical cruelty may itself amount to cruelty, if a perusal of the FIR leads to disclosure an offence even broadly Courts are barred from usurping the jurisdiction of the police. Complainant are disclosed in the FIR. The ingredients of the offences are disclosed and there is no material to show that the complaint/FIR is malafide, frivolous or vexatious, in that event, there would be no justification for interference by the High Court. In the case of hand also, there are *prima facie* materials available as against these petitioners, thereby, it if matter of trial.



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18. In view of the above discussions and and the judgments, further as per the guide lines given by the Hon'ble Supreme Court in M/s.Neeharika Infrastructure private limited Vs.State of Maharashtra and others [Criminal Appeal No.330 of 2021], this Court decline to quash the proceedings at this stage and this petition has no merits and this petition is liable to be dismissed.

19. Accordingly this Criminal Original Petition is dismissed.

20. While pronouncing order the learned counsel appearing for the petitioner would request that the petitioners are aged old persons and having health issues and their personal appearance may be dispensed with before the trial Court. In this context, the petitioners are at liberty to approach the trial Court by filing appropriate application and on such application if any by the petitioners the trial Court shall consider the same on merits taking into consideration of age of the parties and their health conditions.

27.09.2023

NCC : Yes/No
Index: Yes/No
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To

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



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P.DHANABAL,J.

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Pre-delivery Order in
CRL.O.P(MD).No.1090 of 2017

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