



WEB COPY



Crl.O.P.No.16661 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 25.03.2024**

**CORAM**

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

Crl.O.P.No.16661 of 2022

and

Crl.M.P.No.9744 of 2022

1.Ganesh  
2.N.Anusha  
3.G.Nagarathinam  
4.M.N.Jayanthi

... Petitioners

**Vs.**

1.State Rep. by  
The Inspector of Police,  
Thiruvannamalai All Women Police Station,  
Pavazhakundur, Thiruvannamalai  
Crime No.14 of 2022

2.L.S.Divya

... Respondents

**Prayer:** Criminal Original Petition filed under Section 482 of Cr.P.C.,  
praying to call for the records in Crime No.14 of 2022, on the file of the 1<sup>st</sup>  
respondent police and quash the same.

|                 |                                                       |
|-----------------|-------------------------------------------------------|
| For Petitioners | : Mr.E.Mitesh Pavitran<br>Mr.V.Mukesh Kumar           |
| For R1          | : Mr.S.Vinoth Kumar<br>Government Advocate (Crl.Side) |
| For R2          | : Mr.R.Radha Pandian                                  |



CrI.O.P.No.16661 of 2022

WEB COPY

## ORDER

This petition has been filed to quash the Crime No.14 of 2022, on the file of the 1<sup>st</sup> respondent police for the offence punishable under Section 498(A) and Section 377 of IPC and Section 4 of the Dowry Prohibition Act, 1961.

2. The petitioners appeared along with their respective counsels. The 2<sup>nd</sup> respondent / defacto complainant appeared along with her counsel and her parents also accompanied her.

3. Based on the complaint given by the 2<sup>nd</sup> respondent, an FIR was registered in Crime No.14 of 2022 on the file of the 1<sup>st</sup> respondent against the petitioners for offences under Section 498(A), Section 377 of IPC, and Section 4 of the Dowry Prohibition Act. Challenging the FIR, the petitioners approached this Court to quash the proceedings against them.

4. The 1<sup>st</sup> petitioner is the husband of the defacto complainant, the 2<sup>nd</sup> petitioner is the sister of the defacto complainant, and the 3<sup>rd</sup> and 4<sup>th</sup>



CrI.O.P.No.16661 of 2022

petitioners are the father-in-law and mother-in-law of the defacto complainant. Earlier, the 2<sup>nd</sup> respondent initiated DVC proceedings in DVC. No.30 of 2021, before the learned Judicial Magistrate, Thiruvannamalai, and for the same allegation, the 2<sup>nd</sup> respondent has filed the present complaint against the petitioners. Hence, they pray to quash the proceedings.

5. This Court enquired with both the parties about any possibility of reconciliation. The defacto complainant stating that though she was harassed by the 1<sup>st</sup> petitioner and her in-laws, she is not inclined to live with him and her marriage was not consummated due to the attitude of the 1<sup>st</sup> petitioner. According to her, 1<sup>st</sup> petitioner is interested in the same sex of relationship. Therefore, she filed an application for divorce on the ground of null and void.

6. The allegation raised by the defacto complainant was strongly objected by the learned counsel for the petitioners. Moreover, the 1<sup>st</sup> petitioner who also appeared before this Court, denied the allegations levelled by the defacto complainant against him and stated that trouble started in the family immediately after their marriage, as the mother of A1



CrI.O.P.No.16661 of 2022

met with an accident. Furthermore, he submitted that the Sreethana Articles, Jewels, and other belongings are in the custody of the defacto complainant. Now, her only claim is that she wants a divorce on the ground of null and void. The defacto complainant has already filed an application for divorce on the ground of null and void before the V Additional Family Court, Chennai in HMOP.No.2620 of 2023. The 1<sup>st</sup> petitioner / husband of the defacto complainant also filed an divorce petition in HMOP.No.256 of 2024 before the same magistrate, on the ground of cruelty.

7. The fact reveals that there is no possibility of re-union between the 1<sup>st</sup> petitioner and the defacto complainant. When this Court enquired, the defacto complainant expressed that due to the attitude of the 1<sup>st</sup> petitioner and his family members, she suffered more. Therefore, the defacto complainant is not inclined to live with him and she wants a divorce on the ground of null and void. Though the 1<sup>st</sup> petitioner denied her allegations and stating that there is no proof on the side of the 2<sup>nd</sup> respondent to establish those allegations against him, in fact, she mistook his relationship with other boyfriends and falsely alleged intimacy. However, the allegations levelled against him caused mental agony to him, so he is also not inclined to live



CrI.O.P.No.16661 of 2022

with her.

WEB COPY

8. Considering both side submissions, the divorce petition filed by the defacto complainant is the earliest one. This Court is also considered the divorce petition filed by the 1<sup>st</sup> petitioner. Moreover, the 1<sup>st</sup> petitioner / A1 /husband of the defacto complainant also no objection to allow her divorce without any prejudice, as there is no possibility of cohabitation between the parties.

9. Considering the above facts of the case, as well as the ratio laid down by the Hon'ble Supreme Court in the case of Shilpa Sailesh vs. Varun Sreenivasan reported in [ (2023 SCC online SC 544)] is extracted hereunder:-

50. In view of the aforesaid discussion, we decide this reference by answering the questions framed in the following manner:

**(i) The scope and ambit of power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India.**

This question as to the power and jurisdiction of this Court under [Article 142\(1\)](#) of the Constitution of India is answered in terms of paragraphs 8 to 13, inter alia, holding that this Court can depart from the procedure as well as the substantive laws, as long as the decision is exercised based



CrI.O.P.No.16661 of 2022

on considerations of fundamental general and specific public policy. While deciding whether to exercise discretion, this Court must consider the substantive provisions as enacted and not ignore the same, albeit this Court acts as a problem solver by balancing out equities between the conflicting claims. This power is to be exercised in a 'cause or matter'.

.....

**(iii) Whether this Court can grant divorce in exercise of power under [Article 142\(1\)](#) of the Constitution of India when there is complete and irretrievable breakdown of marriage in spite of the other spouses opposing the prayer?**

This question is also answered in the affirmative, inter alia, holding that this Court, in exercise of power under [Article 142\(1\)](#) of the Constitution of India, has the discretion to dissolve the marriage on the ground of its irretrievable breakdown. This discretionary power is to be exercised to do 'complete justice' to the parties, wherein this Court is satisfied that the facts established show that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. The Court, as a court of equity, is required to also balance the circumstances and the background in which the party opposing the dissolution is placed."

10. Considering the above judgement and impossibility of a reunion between them, this Court is inclined to grant divorce. Additionally, there is no possibility of co-habitation between the husband and wife, as confirmed by the affidavit filed by both parties, which is also recorded before this Court. The defacto complainant is also inclined to withdraw the proceedings in HMOP.No.2620 of 2023 before the learned V Additional



CrI.O.P.No.16661 of 2022

Family Judge, Chennai, as well as the present complaint against the petitioners in Crime No.14 of 2022. The 1<sup>st</sup> petitioner is also inclined to withdraw the proceeding in HMOP.No.256 of 2024, on the file of the V, Additional Family Court, Chennai, against the defacto complainant. Furthermore, both the parties have filed affidavits, in which the 1<sup>st</sup> petitioner states that there are no further claims in the future, and the defacto complainant states that she would not claim any maintenance or future claim from the 1<sup>st</sup> respondent and also assured that she would not allege any complaint in the future against the petitioners. Further, in the affidavit, it is stated that since the 2<sup>nd</sup> respondent is inclined to withdraw all her complaints, the 1<sup>st</sup> petitioner is no objection to grant divorce as prayed.

11. Considering both side submissions, this Court inclined to grant divorce in favour of the petitioner by dissolving the marriage, in favour of the 2<sup>nd</sup> respondent, the marriage solemnized on 31.01.2021 is declared null and void. Additionally, considering the submission made by the 2<sup>nd</sup> respondent, she is not inclined for any further proceedings against the petitioners. Therefore, the FIR registered in Crime No.14 of 2022 on the file of the 1<sup>st</sup> respondent against the petitioners is ordered to be quashed.



Crl.O.P.No.16661 of 2022

Furthermore, the proceedings initiated by the 2<sup>nd</sup> respondent in HMOP.No.2620 of 2023 as well as the HMOP.No.256 of 2024 proceedings initiated by the 1<sup>st</sup> petitioner against the defacto complainant are ordered to be quashed, in view of the compromise entered into between the parties. Accordingly, the marriage between the defacto complainant and the 1<sup>st</sup> petitioner is dissolved and the proceedings in Crime No.14 of 2022 are also ordered to be quashed.

12. Accordingly, this Criminal Original Petition is allowed. The affidavits filed by the defacto complainant and the 1<sup>st</sup> petitioner shall form part and parcel of this order. Consequently, the connected miscellaneous petition is closed.

25.03.2024

Index: Yes/ No  
Neutral Citation: Yes/No  
rri

To

1. The Inspector of Police,



CrI.O.P.No.16661 of 2022

Thiruvannamalai All Women Police Station,  
Pavazhakundur, Thiruvannamalai.

WEB COPY

2. The V Additional Family Judge, Chennai.

3. The Public Prosecutor,  
High Court of Madras.

**T.V.THAMILSELVI, J.**



WEB COPY



Crl.O.P.No.16661 of 2022

ri

Crl.O.P.No.16661 of 2022  
and  
Crl.M.P.No.9744 of 2022

25.03.2024