



Crl.O.P.No.22869 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18.12.2023
Delivered on	24.01.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.O.P.No.22869 of 2022

N.Arumugam

... Petitioner

Vs.

1. The Sub-Inspector of Police,
All Women Police Station,
Villianoor, Puducherry.

2. M.Poorani

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records and to quash the FIR in Crime No.14 of 2021 dated 22.12.2021 pending on the file of the All Women Police Station, Villianoor, Puducherry.

For Petitioner : Mr.S.Namasivayan

For Respondent-1 : Mr.K.S.Mohandass
Public Prosecutor (Puducherry)
Assisted by Mr.A.Alexander

For Respondent-2 : Mr.A.Sheik Peer



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ORDER

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This Criminal Original Petition has been filed by the petitioner/husband seeking quashment of the First Information Report (FIR) registered against him in Crime No.14 of 2021 dated 22.12.2021 on the file of the informant/first respondent police.

2. The brief facts of the case is as follows:

a)The marriage between the petitioner and the de-facto complainant is an arranged one and was solemnized on 29.10.2018. Thereafter, within a short spell of 24 days i.e., on 23.11.2018, the petitioner left to USA and the de-facto complainant had resided with her in-laws at Tirunelveli till 10.01.2019 and then, she left to her parental home at Puducherry, alleging that her husband and in-laws quarrelled with her and ill treated her. Since there was no good harmony between the petitioner and the defacto complainant, the petitioner initiated divorce proceedings before the Family Court, Puducherry by way of filing HMOP No.135 of 2021 in the month of January 2021 seeking divorce on the ground of 'cruelty'. To counteract the petitioner, the respondent/wife had preferred a maintenance petition seeking not less than Rs.1,50,000/- to meet her basic needs, comforts, health expenses and monthly rent.



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b)In the meanwhile, the de-facto complainant has preferred a petition under Section 156 (3) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter referred to as 'CrPC'] before the learned Chief Judicial Magistrate, Puducherry, in which the learned Chief Judicial Magistrate, Puducherry, had directed the respondent police to take action on her complaint dated 07.10.2020. As per the direction of the learned Judicial Magistrate, a case has been registered against the petitioner, who was arrayed as A1 and his parents in Crime No.14 of 2021 on the file of the All Women Police Station, Puducherry for the alleged offences punishable under Sections 294(b), 498A r/w. Section 34 of 'The Indian Penal Code (45 of 1860)' [hereinafter referred to as 'IPC']. This Court, by order dated 11.08.2022 in CrI.O.P.No.5843 of 2022 had quashed the FIR registered as against the parents of the petitioner. The present Petition has been preferred by the petitioner.

3.Heard Mr.S.Namasivayam, learned counsel for the petitioner and Mr.K.S.Mohandass, learned Public Prosecutor (Puducherry) as well as Mr.A.Sheik Peer, learned counsel appearing on behalf of the first and second respondent respectively.



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4.Mr.S.Namasivayam, learned counsel for the petitioner submits that the defacto complainant only with an ulterior motive to harass the petitioner and his parents had lodged the said complaint with false allegations. The allegations levelled in the FIR are contradictory in nature and there is no evidence to substantiate the same. It is the admitted case of the de-facto complainant that she is living with her parents since 11.01.2019 on her own volition and therefore, there is no semblance of truth in the allegations of cruelty meted out on her by the petitioner and his parents. He submitted that the petitioner has filed the divorce petition in HMOP.No.135 of 2021 before the Family Court, Puducherry on 01.03.2021 whereas the FIR was registered only on 22.12.2021 while he was in abroad, which is only a counter-blast. Moreover, it is now came to light that the defacto complainant has also preferred a petition in FCOP.No.342 of 2023 before the Family Court, Chengalpattu on the ground of 'desertion'. Since both the petitioner as well as the defacto complainant have preferred petitions for dissolving their marriage, the learned counsel prays for quashing the FIR.

5.On the other hand, Mr.A.Sheik Peer, learned counsel appearing for the second respondent/defacto complainant



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vehemently contended that after 24 days of their marriage, the petitioner had left for USA leaving the defacto complainant abruptly under the guise of obtaining visa and has not returned to India since November 2018. That being so, the petitioner was influenced by his parents for demanding dowry from the de-facto complainant. All the jewels, silver utensils and sreedhana articles presented to the defacto complainant for marriage were still in possession of the parents of the petitioner. He further submits that though the complaint preferred by the defacto complainant was on 07.10.2020, FIR has been registered only in the month of December 2021, that too, only after the direction of learned Chief Judicial Magistrate, Puducherry. So, the question of delay of FIR cannot be raised that too in the matter of matrimonial dispute. The allegations made in the divorce petition by the petitioner are all vague and no proof for the same. The learned counsel submitted that the petitioner is in abroad and if the FIR is quashed, the defacto complainant would be put in irreparable loss and hardship and hence pleaded for dismissal of the petition.

6.Considered the rival submissions made by the respective counsels and perused the materials available on record.



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7.The marriage between the petitioner herein and the second respondent/de-facto complainant took place on 29.10.2018 and within a few days i.e., on 23.11.2018, he left to USA on official commitment and the de-facto complainant resided with her in-laws at Tirunelveli till 10.01.2019 and left to her parental home at Puducherry, stating that her husband and in-laws were ill treating her. Due to their strained relationship, the petitioner had filed H.M.O.P.No.135 of 2021 before the Family Court, Puducherry, seeking divorce on 01.03.2021 on the ground of 'cruelty'. It is stated that after filing of the divorce petition, as a counter-blast, the respondent/wife had lodged the said complaint which has been registered only on 22.12.2021. On registration of the FIR, the parents of the petitioner herein filed a petition to quash the same in Crl.O.P.No.5843 of 2022 before this Court. The matter was referred to mediation on 27.06.2022 and 04.07.2022 where the de-facto complainant had demanded a sum of Rs.2 Crores for arriving at an amicable settlement. This Court, by an order dated 11.08.2022 had quashed the FIR stating that, it is a futile exercise as the allegations would not constitute any offence as if they are taken on its face value. Thereafter, the respondent wife had also filed a FCOP



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No.342 of 2023 on 21.07.2023 before the Family Court, Chengalpattu on the ground of 'desertion'. Moreover, it is the contention of the petitioner that the FIR has been filed after three years for the incident which was alleged to have been happened from 26.08.2018 to 11.01.2019 and also that the FIR against the petitioner is only a counteract of the de-facto complainant for the divorce petition which has been vehemently opposed by the second respondent/de-facto complainant stating that the petitioner had deliberately left the defacto complainant after 24 days of their marriage under the guise of getting visa to USA and the second respondent has been ill-treated by her in-laws and they have paved the way for misconception between the petitioner and the second respondent.

8.It is seen from the records that though the defacto complainant had made diligent efforts to the petitioner to pacify him explaining the situation that prevails through various mails dated 06.05.2019 to 01.08.2018, the petitioner has not responded her and all her efforts went in vain. In spite of the complaint given by the de-facto complainant on 07.10.2020, it came to be registered only on the direction of the learned Chief Judicial Magistrate, Puducherry on 22.12.2021 and hence lapse of filing the complaint, cannot be raised



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as a ground for quashment of the FIR. It is also brought to the notice of this Court that the entire marriage expenses were borne by the parents of the de-facto complainant and all her jewels and sreethana articles were only in possession of the petitioner.

9.As per the settled proposition of law, the first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the Learned Magistrate which may be considered by the Learned Magistrate in accordance with the known procedure.

10.The power under section 482 Cr.P.C is very wide, but conferment of wide power requires the Court to be more cautious. It



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casts an onerous and more diligent duty on the Court.

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11.In ***Union of India Vs. B.R. Bajaj*** reported in **1994 (2) SCC 277**, the Hon'ble Supreme Court has observed that at the stage of FIR, the High Court cannot go into the question as to whether the offences alleged in the FIR were made out or not.

12.In yet another case, ***Inder Mohan Goswami Vs. State of Uttaranchal*** reported in **2007 (12) SCC 1**, the Hon'ble Three Judges Bench of the Supreme Court has held in para 27 of the decision that the inherent power under Section 482 Cr.P.C., should not be exercised to stifle a legitimate prosecution and the High Court should normally refrain from taking a prima facie decision in a case where the facts are incomplete and hazy.

13.The Hon'ble Apex Court in ***Neeharika Infrastructure Private Ltd., Vs. State of Maharashtra*** reported in **2021 SCC Online 315** had elaborately dealt with and considered the scope and ambiguity and powers to be exercised under Section 482 CrPC., which reads as under:

"1)Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV



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of the Code to investigate into a cognizable offence.

2)Courts would not thwart any investigation into the cognizable offences.

3)It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

4)The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

5)While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint.

6)Criminal proceedings ought not to be scuttled at the initial stage.

7)Quashing of a complaint/FIR should be an exception rather than an ordinary rule.

8)Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere.

9)The functions of the judiciary and the police are complementary, not overlapping.

10)Save in exceptional cases where non-



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interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.

11)Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice.

12)The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the Learned Magistrate which may be considered by the Learned Magistrate in accordance with the known procedure.

13)The power under section 482 Cr.P.C is very wide, but conferment of wide power requires the court to be more cautious. It casts



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an onerous and more diligent duty on the court.14)However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (Supra) and BhajanLal (Supra), has the jurisdiction to quash the FIR/complaint.

15)When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR.

16)The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under section 482 Cr.P.C and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim



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order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/charge sheet is filed under section 173 Cr.P.C., while dismissing/disposing of the quashing petition under section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

17)Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to herein above, the High Court has to give brief reasons why such an interim order is warranted and/or is



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required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

18)Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

14.At this juncture, it is pertinent to note that in the present case on hand, the second respondent/ de-facto complainant had taken effective steps to reconstitute her marital status with the petitioner but all her efforts are declined by the petitioner and thereafter, the second respondent/ petitioner had given a complaint before the first respondent hence the FIR registered.

15.Considering the facts and circumstances of the case and also in the light of the decisions of the Hon'ble Apex Court as stated supra, this Court is of the opinion that the FIR registered as against the petitioner herein in Cr.No.14 of 2021 is not liable to be quashed at this stage, as the investigation is pending.



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16.For the foregoing reasons, this Criminal Original Petition stands dismissed. There shall be a direction to the first respondent herein to complete the investigation adhering to the rules and to file their report, as early as possible, preferably within a period of two weeks from the date of receipt of a copy of this order.

24.01.2024

Index : Yes / No
Order : Speaking/Non Speaking
NCC : Yes / No

To

1. The Sub-Inspector of Police,
All Women Police Station,
Villianour, Puducherry.
- 2.The Public Prosecutor (Puducherry),
Madras High Court, Chennai.



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VIVEK KUMAR SINGH, J.

DP

Order made in
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