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Crl.R.C.No.2243 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.02.2024

PRONOUNCED ON : 7.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2243 of 2023 and

Crl.M.P.No.20059 of 2023

H.Bhagyalakshmi

... Petitioner

Vs.

1.The state Rep. by
Inspector of Police,
AWPS, Sankari,
Salem District.

2.B.Rojaramani

3.Saraswathi

4.R.Boopathy

... Respondents

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of Judicial Magistrate No.II, in C.M.P.No.1035 of 2023 in CC.No.285/2018, dated 23.06.2023.

For Petitioner	:	Mr.S.Sridevi
For R1	:	Mr.C.E.Pratap, Government Advocate (Crl. Side)
For R2 to R4	:	Mr.T.Sivamani

ORDER

The petitioner/defacto complainant has filed this Criminal Revision Case to set aside the impugned order in C.M.P.No.1035 of 2023 dated 23.06.2023 in C.C.No.285 of 2018 and to include one Vijayalakshmi and Ravichandran as



accused in C.C.No.285 of 2018 under Section 319 Cr.P.C.

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2.The case of the prosecution is that on 27.10.2014, the respondent Police received FIR in Crime No.4 of 2014 for offence under Sections 498(A) and 506(i) of IPC from the Inspector of Police, W-27 All Women Police Station, Vadapalani on the point of jurisdiction through proper channel. Thereafter, the said FIR renumbered as Crime No.7 of 2014 for offence under Sections 498(A) and 506(i) of IPC.

3.The case is that arranged marriage between the petitioner/defacto complainant and the 2nd respondent held on 12.06.2012 at Ellampillai, Salem. The customary presentation of articles and jewels were given including marriage expenses to the petitioner's father-in-law/4th respondent. The marriage nuptial was fixed on 13.06.2013, but not performed since her husband/2nd respondent doubted petitioner was handicapped and her legs are slim as informed by his sister Viajaylakshmi. The 2nd respondent enquired the petitioner again and again about the same. Further, he suspected whether she had any other disability and thereby, caused mental harassment. On the next day on 14.06.2013, the petitioner and her husband/2nd respondent had gone to



Chennai for reception at Virugambakkam, they visited her sister-in-law house at Korattur. The petitioner's husband/2nd respondent showed defiance in the reception. Further, the 2nd respondent, his sister and brother-in-law spoke ill of the disability of the petitioner and abused her. They insisted the petitioner to get transfer of her job and to join the 2nd respondent at Salem. On 15.06.2013, the petitioner along with the 2nd respondent came to Salem since a Former Minister who is close to the 4th respondent was to visit them. On 17.06.2013, the 2nd respondent asked the petitioner not to be near his eye sight and to keep herself away. Further, she was put to untold miseries, torture, and abuse for twelve days when she was staying with the respondents 2 to 4 in Salem till 23.06.2013. The petitioner's family members took several steps to reconcile the difference and ensure the petitioner and the 2nd respondent to live as husband and wife in matrimonial home, but the respondents 2 to 4 not cooperated. During her short stay in the matrimonial home, the respondents 2 to 4, the 2nd respondent's sister Vijayalakshmi and her husband Ravichandran demanded 35 sovereigns of gold jewels, a car and her ancestral property. Further, she was administered injection on three or four occasions to ensure she does not become pregnant. Finally, on her complaint, FIR registered, the 2nd respondent was arrested and was in prison from 20.05.2014 to 27.05.2014.



On completion of investigation, charge sheet filed and taken on file as C.C.No.285 of 2018 against the respondents 2 to 4 for offence under Sections 498(A) and 506(i) of IPC listing LW1 to LW10 and several documents. Now, the trial is in progress and PW1 to PW3 examined. At this stage, a petition under Section 319 Cr.P.C., filed, dismissed by the trial Court, against which, the present Criminal Revision Case by the petitioner.

4.The learned counsel for the petitioner/defacto complainant submitted that in the complaint, specific instances and overt act against Vijayalakshmi and Ravichandran who are sister and brother-in-law of the 2nd respondent made. From the day of marriage i.e., on 12.06.2023, the petitioner is constantly harassed and humiliated. In their family, it is a customary practice, wearing of toe ring by the bridegroom's sister-in-law Vijayalakshmi. The said Vijayalakshmi assumed that the petitioner's leg was slim, not normal and informed her brother 2nd respondent that the petitioner was physically disabled, the 2nd respondent questioned the petitioner. On the day of nuptial on 13.06.2013, the petitioner was made to stand to confirm whether her legs were normal. The 2nd respondent questioned the petitioner whether she had any other ailments. On 14.06.2013, there was a reception at Chennai, for which,



the petitioner came along with the 2nd respondent and had brief halt at Korattur where the said Vijayalakshmi and Ravichandran again abused the petitioner.

5.She further submitted that during reception, Vijayalakshmi was in a sober mood that her brother has been cheated and a handicapped woman was given in marriage. The petitioner left to Salem on 15.06.2013 and stayed there till 23.06.2013. In the meanwhile, the said Vijayalakshmi and Ravichandran forced the petitioner to handover her marriage jewels of 35 sovereigns, to get transfer from Chennai to Salem, purchase a car for the 2nd respondent and avail housing loan for the benefit of the 2nd respondent, but the petitioner opposed the same. Due to which, the petitioner was harassed, humiliated and she was kept in a locked room. Thereafter, she informed her brother and her family members who came to Salem on 23.06.2013, village panchayat held and the petitioner returned back to Chennai. During the twelve days period, the petitioner had undergone sufferings at the hands of the respondents 2 to 4 and Vijayalakshmi and Ravichandran. She was also threatened and administered injection ensuring that she does not become pregnant. When the petitioner's family had gone to Korattur to the residence of Vijayalakshmi and Ravichandran to sort out the issue and reconcile the marriage life of the



petitioner with the 2nd respondent, they were chased away, humiliated and abused. In offensive, a complaint lodged calling the emergency Police.

Despite taking all efforts by the petitioner's family, the respondents 2 to 4 not willing to sort out the issues, claiming that they are politically well connected and nothing can be done against them.

6.She further submitted that the petitioner lodged complaints with Kakapalayam Police Station, Salem; Korattur Police, Vadapalani Police and thereafter, Valasaravakkam Police and to the Commissioner of Police, Vepery, Chennai and finally, to All Women Police, Vadapalani. Since no action taken, she made representation to Chief Minister Cell, thereafter the All Women Police, Vadapalani enquired the complaint of the petitioner and finally, FIR came to be registered in Crime No.4 of 2014 on 08.12.2014 and later, on the point of jurisdiction, the FIR transferred to the respondent Police and renumbered as Crime No.7 of 2014. Finally, on completion of investigation, charge sheet against the respondents 2 to 4 alone on 05.01.2015 filed. Despite the petitioner made specific complaint against Vijayalakshmi and Ravichandran, their names included in FIR but deleted from the charge sheet for the reason that on the day of the incident, both of them were not in town



and further for the reason that the petitioner was residing with the respondents 2 to 4 at Salem and Vijayalakshmi and Ravichandran were residing at Chennai. Further, no notice was given to the petitioner in dropping Vijayalakshmi and Ravichandran from the list of accused. The petitioner came to know about the same when she was examined as witness on 23.11.2022, immediately she filed a petition under Section 319 Cr.P.C. Further, the petitioner objected for audience to the respondents 2 to 4 since already they are facing trial as A1 to A3 and they cannot act as proxy for Vijayalakshmi and Ravichandran. Hence, prays for setting aside the impugned order passed by the Court below.

7.In support of the submissions, the learned counsel relied on the following citations:

- ***“Union Public Service Commission Versus S.Papaiah & Ors., reported in AIR 1997 SC 3876” and “P.Venkatesh Versus State by, The Inspector of Police, Yercaud Police Station, Salem District in Crl.O.P.No.2699 of 2019, dated 18.02.2019”*** for the point that issuance of notice by the Magistrate to the defacto complainant at the time of consideration of final report is essential which has not been followed in the case.
- In the case of ***“Y.Saraba Reddy Versus Puthur Rami Reddy reported in***



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AIR 2007 SC (SUPP) 981” the Hon'ble Apex Court held that the trial Court can take step to add any person as accused on the basis of the evidence adduced before it and on the evidence given in the Court.

- In the case of “**Rajendra Singh Versus State of U.P., reported in AIR 2007 SC 2786**” the Hon'ble Apex Court held the burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence.
- Finally, in the case of “**Yashodhan Singh & Ors., Versus the State of Uttar Pradesh reported in (2023) 9 SCC 108**” the Hon'ble Apex Court reiterated the power under Section 319 Cr.P.C., to proceed against the other persons appearing to be guilty of offence.

8.In support of the submissions, the learned counsel for the petitioner filed typed set containing following documents:

- Bank Statement showing that she took loan immediately prior to her marriage with the 2nd respondent.
- A complaint lodged by the 4th respondent on 22.07.2013 as an offensive to cover up his misdeeds.
- The discharge petition filed by the respondents 2 to 4 in Crl.M.P.No.1212 of 2019 and its dismissal order, dated 03.11.2022.
- The Interim Applications in I.A.No.1 of 2019 & in I.A.No.3 of 2020 in O.P.No.4147 of 2014 filed by the 2nd respondent before the learned VI Additional Principal Judge, Chennai seeking interim maintenance and



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subpoena to be taken to the petitioner's superior officer and its dismissal order, dated 07.10.2022.

- The petitioner produced the medical certificate to confirm non-consummation of marriage.

9.*Per contra*, the learned Government Advocate (Crl. Side) appearing for the 1st respondent Police filed counter submitting that the petitioner/defacto complainant lodged a complaint before the All Women Police, Vadapalani which later transferred to the 1st respondent Police on the order of the Deputy Inspector General of Police following the order of the Director General of Police on the point of jurisdiction. In this case, the marriage between the petitioner and the 2nd respondent took place on 12.06.2013 at Ellampillai, Salem. The complaint is that at the time of marriage, the petitioner was given 35 sovereigns of jewels and 5¼ sovereigns of jewels were presented to the 2nd respondent and Rs.3,10,000/- was given for the marriage expense. Not satisfied with the same, created doubt on the petitioner's health alleging she is not normal and she was disabled. The marriage was not consummated, the petitioner was abused and harassed. Further, there was demand for more dowry, purchase of car, transfer of ancestral property and also forced the petitioner to get transfer from Chennai to Salem. On 14.06.2013, there was



reception at Virugambakkam, Chennai, at that time also, the petitioner was harassed and humiliated. Thereafter, they had gone back to Salem on 15.06.2013 and stayed till 23.06.2013. The petitioner and the 2nd respondent lived together for a period of twelve days. During that time, she was put to sufferings and humiliation for demand of dowry. On the complaint of the petitioner, investigation commenced, witnesses examined, their statements recorded, documents collected and finally, the final report filed before the jurisdictional Court arraying the respondents 2 to 4 as accused who are the petitioner's husband and in-laws. As regards, Vijayalakshmi and Ravichandran are concerned, though they were shown as accused in the FIR, during investigation it was found that Vijayalakshmi is said to have informed her brother about the petitioner's disability and thereafter, it was the 2nd respondent who made the petitioner to stand for a long time and questioned about her disability. The petitioner's parents examined as LW2 and LW3, her Aunt as LW4, her relative as LW5 and neighbours as LW6 to LW8. Further complaint is that Vijayalakshmi and Ravichandran along with the respondents 2 to 4 demanded jewels, car and ancestral property. They forced the petitioner to sign blank stamp papers, green sheets and she was administered some injection for three to four days. No witness had direct knowledge, all were



informed by the petitioner and their statements were without correlations.

Hence, the 1st respondent Police filed the charge sheet deleting the names of Vijayalakshmi and Ravichandran. The petitioner through the Assistant Public Prosecutor before the Court below filed a petition under Section 319 Cr.P.C., in Crl.M.P.No.1035 of 2023. The Court below on the submissions and on the evidence and materials produced found the petition not sustainable and dismissed the same.

10.He further submitted that in this case, now the trial is in progress, PW1 to PW5 examined. Except PW1 to PW3 who are the petitioner and her parents, the other witnesses Aunt and neighbour of the petitioner, not supported the case of the prosecution. At the time of alleged occurrence, Vijayalakshmi and Ravichandran not present, no specific overtact made against them and the complaint is of general in nature making sweeping allegations. He further submitted the case is posted for cross examination of PW1 to PW3. The Court below passed a well reasoned order following the directions and dictum of the Hon'ble Apex Court in the cases of “***Hardeep Singh Versus State of Punjab reported in (2014) 3 SCC 92*** and ***Juhru and others Versus Karim and others in Criminal Appeal No.549 of 2023***” and



dismissed the same, which needs no interference. The trial Court may be directed to complete the trial without further delay.

11.The learned counsel appearing for the respondents 2 to 4 submitted that the petitioner is in the habit of making false complaints against 2nd respondent and his entire family members. It is the admitted case of the petitioner that she lived only for twelve days from 12.06.2013 to 23.06.2013 together, that to at Salem except for a day when she came for reception on 14.06.2013. The marriage held on 12.06.2013 at Ellampillai, Salem and nuptial was fixed on 13.06.2013 which could not be consummated since the 2nd respondent was not keeping good health. On 14.06.2013, the respondents 2 to 4 came to Chennai to attend the reception at Virugambakkam. On that day, for a short while, the petitioner came to Korattur and thereafter, they had gone to the reception. Nothing happened in the house of Vijayalakshmi and Ravichandran and at the reception all imaginary stories made by the petitioner to implicate the entire family of the 2nd respondent. It is the admitted case that from 15.06.2013 to 23.06.2013, the petitioner was staying at Salem, at that time, Vijayalakshmi and Ravichandran were staying in Chennai. The demand of jewels, car and ancestral property and forcing the petitioner to get transfer



of her job from Chennai to Salem all happened at Salem. The other incident projected against Vijayalakshmi and Ravichandran is that on 14.09.2013, the petitioner's family came to Korattur for mediation, at the time, they were abused and chased away. On the other hand, it is confirmed that it was the petitioner and her family members who created chaotic situation and caused disturbance in the area and thereafter, on the call of neighbours to emergency Police, the Police came there, defused the situation, for which, on 20.09.2013, a C.S.R No.430 of 2013 assigned and later, closed.

12.It is further submitted that the first complaint was lodged at Kakapalayam Police Station on 22.07.2013 and followed by a complaint on 20.09.2013 at Korattur Police Station and on 22.12.2013 at Vadapalani Police Station and on 06.01.2014 and 13.01.2014 before the Anti Dowry Cell, Vepery, Chennai and on 30.01.2014 with the Valasaravakkam Police Station and C.S.R.No.19 of 2014 assigned and thereafter to the All Women Police Station, Thousand Lights Police Station, Chennai on various dates on four occasions from 10.03.2014 to 22.04.2014 and on 26.03.2024 and 10.04.2014 with the Chief Minister Cell. Thereafter, enquiry conducted by the All Women Police, Vadapalani on 11.05.2014, 17.05.2014 and 20.05.2014. In additional



to it, Ambattur Police also conducted enquiry. Finally, the FIR registered in this case. On one hand, the petitioner was projecting as though she wanted to live with the 2nd respondent and continue matrimonial life and on the other hand, lodged several complaints one after another against the 2nd respondent and his family members. The 1st respondent Police finding that the petitioner's complaint an exaggerated one, motivated and to spite vengeance implicating one and all in the 2nd respondent's family, filed charge sheet against the respondents 2 to 4, finding no evidence and materials dropped the names of Vijayalakshmi and Ravichandran. Though the respondents 2 to 4 filed discharge petition, the same was dismissed and now, they are participating in the trial.

13.He further submitted that the petitioner filed O.P.No.4147 of 2014 seeking restitution of conjugal rights which is contra to her act of filing several complaints. The 2nd respondent filed O.P.No.2181 of 2016 making counter claim for grant of judicial separation. The Family Court by common order, dated 16.11.2023 dismissed the petitioner's claim and granted judicial separation to the 2nd respondent. Apart from the petitioner and her parents, who were examined as PW1 to PW3, the Aunt of the petitioner and a local



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resident of Ellampillai village examined as PW4 and PW5. Both not supported the case of the prosecution. Further, the petitioner citing the above criminal revision case not participated in the trial despite several reminders for appearance before the trial Court, thereby, causing agony and sufferings to the respondents 2 to 4. He further submitted that Vijayalakshmi and Ravichandran got married and settled in Chennai for the past 28 years. The complaint has been lodged with delay of eleven months. Added to it, in the earlier complaints, there is no mention about Vijayalakshmi and Ravichandran and now it is invented for the purpose of harassing them. Hence, prays for dismissal of the criminal revision case.

14.This Court considered the rival submissions and perused the materials available on record.

15.Though the petitioner made objection for the respondents 2 to 4 appearing in the case, in this revision case the petitioner has arrayed her estranged husband, her mother-in-law and father-in-law as respondents 2 to 4.



16.It is not in dispute that the marriage between the petitioner and the 2nd respondent took place on 12.06.2013 at Ellampillai, Salem and thereafter, on 14.06.2013, a reception held at Chennai. On 15.06.2013, both the petitioner and the 2nd respondent had gone to Salem. From 15.06.2013 to 23.06.2013, the petitioner was in matrimonial home along with the respondents 2 to 4. The proposed accused Vijayalakshmi and Ravichandran who are sister and brother-in-law of the 2nd respondent were residing and employed in Chennai for the past 28 years and they have got a separate family.

17.The specific complaint against Vijayalakshmi and Ravichandran is that during the marriage on 12.06.2013, as per custom, wearing of toe ring by bridegroom's sister Vijayalakshmi to the petitioner done. At that time, Vijayalakshmi is said to have noticed the petitioner's leg slim, not normal and informed the same to the 2nd respondent who questioned the petitioner, the further conduct of the 2nd respondent to the petitioner, Vijayalakshmi cannot be a reason. The other complaint is that on 14.06.2013 when the petitioner and the 2nd respondent had gone to Korattur to the resident of Vijayalakshmi and Ravichandran for a brief stay, harassment continued, further Vijayalakshmi informed the petitioner about the cancellation of nuptial which is nothing but



conveying information, nothing more. The other allegation is that on the same day, Vijayalakshmi and Ravichandran demanded dowry, car and ancestral property from the petitioner and also forcibly administered injection on three or four occasions to ensure that the petitioner does not become pregnant. These allegations are made for the first time during trial. In the prior statements, there is no mention of the same. Except a bald and sweeping allegation in the complaint against Vijayalakshmi and Ravichandran, there is nothing more.

18.The petitioner earlier lodged several complaints, but only in this complaint, overtact of Ravichandran and Vijayalakshmi made not found earlier. The petitioner took prevarication stand. In one stretch, she says that the 2nd respondent's family including Vijayalakshmi and Ravichandran intended to administer injection to ensure that she does not become pregnant. On the other hand, the petitioner's own admission is that she is still virgin and marriage not consummated. The petitioner produced the medical certificate, dated 06.05.2014 from Vijaya Hospital which has been marked as Ex.P13 in the matrimonial proceedings wherein it is recorded that '*the petitioner 29 years old patient married since ten months & applying for divorce. On*



examination, hymen opening was found to be normal with no evidence of tearing or bruising. One finger PV was not possible as row was tight and patient had vaginismus due to pain'. Thus, the root of the case gets snapped.

19.The impugned order is a detailed one which refers to the complaint, relevant statements and evidence available in this case. It is seen that dropping the names of Vijayalakshmi and Ravichandran by following the judgment of the Apex Court in the case of “**Hardeep Singh Versus State of Punjab** reported in **(2014) 3 SCC 92**” is proper. In **Hardeep singh** case, it is held that only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power under Section 319 Cr.P.C., should be exercised sparingly only in cases where the circumstances so warrant. In this case, as rightly held by the Court below, no such circumstances conditions available.

20.In the case of “**Yashodhan Singh & Ors., Versus the State of Uttar Pradesh** reported in **(2023) 9 SCC 108**”, the Hon'ble Apex Court discussed the cases of **Hardeep Singh** (cited above), “**Jogendra Yadav and Ors., Versus State of Bihar and anr.**, reported in **(2015) 9 SCC 244**” and “**Ram Janam**



Yadav & Ors., Versus State of Uttar Pradesh & Anr., reported in **2022 SCC OnLine SC 2016**” and “***Sukhpal Singh Khair Vs. State of Punjab*** reported in **(2023) 1 SCC 289**” and “***Brijendra Singh & Ors., Versus State of Rajasthan*** reported in **(2017) 7 SCC 706**” and held that only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power under Section 319 Cr.P.C., should be exercised sparingly. The relevant portion (paragraph No.27) in ***Yashodhan Singh & Ors.***, (cited above) is extracted as follows:

“27. In Brijendra Singh, after referring to Hardeep Singh, this Court considered the question as to the degree of satisfaction that is required for invoking the powers Under Section 319 Code of Criminal Procedure and the related question, namely, as to, in what situations, this power should be exercised in respect of a person named in the FIR but not charge-sheeted. This Court held that once the trial court finds that there is some "evidence" against such a person on the basis of which it can be gathered that he appears to be guilty of the offence, there can be exercise of power Under Section 319 Code of Criminal Procedure. It was observed that the evidence in this context means the material that is brought before the court during trial. Insofar as the material or evidence collected by the Investigating Officer (IO) at the stage of



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inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power Under Section 319 Code of Criminal Procedure. This Court distinguished between the degree of satisfaction arrived at while exercising power Under Section 319 Code of Criminal Procedure which is greater than the degree which is warranted at the time of framing of charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court, that such power should be exercised. Such power should not be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of a person's complicity were the observations of this Court. Holding that in the said case there was no satisfaction, the order passed Under Section 319 Code of Criminal Procedure summoning the Appellant therein was set aside by this Court.”

21.Thus, this Court finds the Court below has rightly dismissed the petition under Section 319 Cr.P.C., with reasons citing the contradictions and improvements in the evidence of the petitioner (PW1) and and her parents (PW2 & PW3).



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22.In the result, this Court is not inclined to interfere with the impugned order, dated 23.06.2023 in C.M.P.No.1035 of 2023 in C.C.No.285 of 2018 passed by the learned Judicial Magistrate No.II, Sankari. Accordingly, this Criminal Revision Case stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

7.02.2024

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Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

To

1.The Judicial Magistrate No.II,
Sankari.

2.The Inspector of Police,
AWPS, Sankari,
Salem District.

3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
Crl.R.C.No.2243 of 2023

7.02.2024