



Crl.O.P.(MD) No.17249 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.02.2024

CORAM

THE HON'BLE MRS.JUSTICE R.HEMALATHA

Crl.O.P.(MD) No.17249 of 2021

and

Crl.M.P.(MD) No.9364 of 2021

1.Christober

2.Rosemary

3.Vijayakumari @ Vijaya

4.Pushparaj

... Petitioners

Vs.

1.The State rep. by
The Inspector of Police,
All Women Police Station,
Colachel, Kanyakumari District.
In Crime No.39 of 2015

2.Sheeba Selin Mary

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records pertaining to the charge sheet in C.C.No.186 of 2019 pending before the learned Judicial Magistrate, Fast Track Court (Magistrate Level), Eraniel, Kanyakumari District for the alleged offences u/s. 498(A), 406 & 506(ii) of IPC and Sections 4 and 6 of DP Act and quash the same as against the petitioners/Accused Nos.1, 2, 8 & 9.



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For Petitioners : Mr.M.Maran
For R1 : Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)
R2 : Party-in-person

ORDER

Seeking to quash the final report filed by the police before the Judicial Magistrate, Fast Track Court (Magisterial Level), Eraniel in C.C.No.186 of 2019, the present Criminal Original Petition is filed.

2. The case of the prosecution in a nutshell is as follows:

(i) The first petitioner (A1) married the second respondent (*de facto* complainant) on 10.07.2013 at St.Sebastian Church, Madathattuvilai, Kanyakumari District. According to the second respondent (*de facto* complainant), her parents presented 45 sovereign of gold jewels and household articles worth about Rs. 1,50,000/- as dowry to the family of the first petitioner (A1). Her further contention is that on the date of their marriage, the second petitioner (A2) who is the mother of the first petitioner (A1) took all the jewels in order to verify the same. When she requested the second petitioner (A2) to return her jewels, the latter threatened her with



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dire consequences by opening the Gas Stove and setting fire to it. The second respondent (*de facto* complainant) was put under imminent danger on account of the act of the second petitioner (A2) and she somehow managed to escape. All the accused used to beat the second respondent (*de facto* complainant) with a broomstick and also abuse her in filthy language.

(ii) The third and fourth petitioners herein (A8 and A9) are closely related to the second respondent (*de facto* complainant) and they had called the first petitioner (A1) over his mobile phone and instigated him to beat her as she (*de facto* complainant) does not have anyone to support.

(iii) The second respondent (*de facto* complainant) had therefore lodged a complaint with the Sub-Inspector of Police, All Women Police Station, Kolachel and the same was registered as F.I.R. in Crime No.39 of 2015 against the accused for the offences punishable under Sections 498(A), 406 & 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. The Inspector of Police after conducting investigation had laid a final report before the Judicial Magistrate, Fast Track Court (Magisterial Level), Eraniel, Kanyakumari District, in C.C.No.186 of 2019 as indicated below:



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Accused	Sections of law
1 & 2	Sections 498(A), 406, 506(i) of IPC and Sections 4 and 6 of Dowry Prohibition Act
3 & 4	Sections 498(A), 506(i) of IPC and Section 4 of Dowry Prohibition Act
5	Sections 498(A) and 506(i) of IPC
6 to 9	Section 498(A) of IPC

3. Mr.M.Maran, learned counsel for the petitioners would submit that there are no allegations against the third and fourth petitioners (A8 and A9) and that they are actually related to the second respondent (*de facto* complainant). His further contention is that since they had arranged the marriage between the first petitioner (A1) and the second respondent (*de facto* complainant), they have been falsely implicated in the present case. His further contention is that subsequent to the alleged occurrence, the second respondent (*de facto* complainant) had gone over to her matrimonial house and was living with the first petitioner (A1) and she had also given birth to two children, one in the year 2018 and another in the year 2021 and in the said circumstances, the allegations made against the present petitioners cannot be sustained.



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4. He also drew attention of this Court to the orders dated 29.04.2021 passed by a learned Single Judge of this Court in Crl.O.P. (MD) No.21847 of 2016, wherein, this Court had quashed the final report against A3 to A7.

5. The second respondent (*de facto* complainant) appeared before this Court in person and contended that whenever the case in Crime No.39 of 2015 was taken up, the first petitioner (A1) used to pacify and take her back to the matrimonial house and that she had given birth to two children subsequently. However, she was forced to leave the matrimonial house as she was unable to bear the torture meted out to her at the hands of the accused. Her specific contention is that the third and fourth petitioners (A8 and A9), who are closely related to her, had instigated the first and second petitioners (A1 & A2) to torture her and beat her and in fact, her husband, first petitioner (A1) had also shown audio recording made by him when the third and fourth petitioners (A8 and A9) talked to him from their mobile numbers and therefore, there is no ground to quash the final report in C.C.No.186 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Eraniel.



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WEB COPY 6. The further contention of the second respondent (*de facto* complainant) is that she is unable to maintain herself and her three children and in fact, the first petitioner (A1) had taken her first son with him from the school where he was studying, without getting a Transfer Certificate and got him admitted in a school where he is residing.

7. Mr.M.Sakthi Kumar, learned Government Advocate (Crl. Side) appearing for the first respondent police, on instructions, would contend that the police after conducting proper investigation laid the final report and therefore, there are valid reasons to quash the file report against the present petitioners.

8. It is seen from the orders dated 29.04.2021 passed by the learned Single Judge of this Court in Crl.O.P.(MD) No.21847 of 2016, the final report in C.C.No.96 of 2016 as against A3 to A7 was quashed on the ground that the complaint is lodged against them even without mentioning required details such as date, time and place of occurrence. In fact, the final report was filed against A3 and A4 for the offences punishable under Sections 498(A), 506(i) of IPC and Section 4 of Dowry Prohibition Act;



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against A5 for the offences punishable under Sections 498(A) and 506(i) of IPC and against A6 & A7 for an offence punishable under Section 498(A) of IPC.

9. As far as the third and fourth petitioners (A8 and A9) are concerned, the final report is filed against them for an offence punishable under Section 498(A) of IPC. The specific allegation against the third and fourth petitioners (A8 and A9) is that they are closely related to the second respondent (*de facto* complainant) and at their instigation, the first and second petitioners (A1 and A2) demanded dowry and picked up quarrel with the second respondent (*de facto* complainant) frequently and had also beaten up her. The contention of the learned counsel for the petitioners is that the third and fourth petitioners (A8 and A9) had not committed any offence and there are no materials placed on record by the prosecution to show that they had actually instigated the first and second petitioners (A1 and A2). According to the second respondent (*de facto* complainant), the third and fourth petitioners (A8 and A9) called the first petitioner (A1) through mobile phone and instigated him to demand dowry from her. This is not found either in the F.I.R. or in the final report except for one line allegation that at the instigation of third and fourth



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petitioners (A8 and A9), the first petitioner (A1) tortured the second respondent (*de facto* complainant). The alleged audio recordings in the mobile phone of the first petitioner (A1) has also not been retrieved by the police.

10. Moreover, there are no ingredients available on record to show that the third and fourth petitioners (A8 and A9) threatened the second respondent (*de facto* complainant) with dire consequences to attract the provisions of Section 506(i) of IPC. Therefore, the entire criminal proceedings against the third and fourth petitioners (A8 and A9) in C.C.No.186 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Eraniel, Kanyakumari District is liable to be quashed.

11. The Hon'ble Supreme Court in State of Haryana Vs. Ch.Bhajan Lal and others reported in 1992 (1) SCC 335 : AIR 1992 SC 604, has held as follows:

“In the backdrop of interpretation of various relevant provisions of the Code of Criminal Procedure (for short, Cr.P.C.) under Chapter XIV and of the principles of law



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enunciated by this court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under section 482 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this court made it clear that it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised: "

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



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(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.



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(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In the instant case, even if the entire allegations made in the First Information Report (F.I.R.) and in the statements recorded by the police under Section 161(3) of Cr.P.C. are taken at their face value and accepted in their entirety as true, do not *prima facie* constitute any offence against the third and fourth petitioners (A8 and A9). However, as far as the first and second petitioners (A1 and A2) are concerned, there are specific allegations against them. Therefore, I do not see any reason to quash the final report against them.

13. In the result, this Criminal Original Petition is partly allowed. Criminal proceedings in C.C.No.186 of 2019 on the file of the Judicial Magistrate, Fast Track Court (Magisterial Level), Eraniel, Kanyakumari District is quashed against the third and fourth petitioners (A8 and A9) alone. This Criminal Original Petition is dismissed as far as the first and



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second petitioners (A1 and A2) are concerned. Consequently, connected

Miscellaneous Petition is closed.

27.02.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

To:

- 1.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Eraniel, Kanyakumari District.
- 2.The Inspector of Police,
All Women Police Station,
Colachel, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.HEMALATHA, J.

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