



Crl.O.P.No.6006 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.6006 of 2025
and Crl.M.P.Nos.3856 and 3857 of 2025

1. B.M.Sathish Babu
2. B.S.Muthu Krishnan
3. B.S.Vijayalakshmi
4. B.Sujatha
5. M.N.Basker

... Petitioners

Vs

1. State Rep. By,
The Inspector of Police,
All Women Police Station,
Avadi,
Thiruvallur District.
(Crime No.07 of 2022)

2. Mohana Priya

... Respondents

PRAYER: Criminal Original Petition is filed under 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records, pending trial in C.C.No.292 of 2024 on the file of the learned Judicial Magistrate No.I, Poonamallee and quash the charge sheet preferred therein.

For Petitioners : Mr.A.Arunkumar

For R1 : M/s J.Archana
Government Advocate (Crl.side)

ORDER



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This Criminal Original Petition has been filed challenging the proceeding in C.C.No.292 of 2024 on the file of the learned Judicial Magistrate No.I, Poonamallee and to quash the same.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) for the first respondent and perused the materials placed on record.

3. The case of the prosecution is that the first petitioner and the second respondent got married on 27.11.2016. At the time of marriage, the second respondent family members had given 70 sovereigns of gold and a sum of Rs.2,00,000/- for purchase of house hold articles. After their marriage, both went to USA and the second respondent gave birth to a female child, on 20.12.2017. After the expiry of Visa, the second respondent came to India. During the stay in India, in the house of the first petitioner, other petitioners had harassed the second respondent to do all the household chores. The 5th petitioner has snatched the passport of the second respondent and has also sexually abused her. When it was questioned, the fifth respondent scolded her with filthy language and also locked her up inside a room along with her child.

4. Thereafter, they had driven out the second respondent from the



matrimonial home. When the first petitioner visited India, the second respondent had gone to meet him in the matrimonial home. However, she was not allowed to see him and once again, was driven out of the matrimonial home. Thereafter, the second respondent also came to understand that the first petitioner had already married a lady in the year 2012. Therefore, the second respondent lodged a complaint, alleging the suppression of the first petitioner's earlier marriage, cruelty and dowry harassment as against the petitioners.

5. On receipt of the same, the first respondent registered FIR in Crime No.7 of 2022 for the offences punishable under Sections 498(A), 420 and 494 of IPC. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.292 of 2024 on the file of the learned Judicial Magistrate No.I, Poonamallee and it is pending for trial.

6. The learned counsel for the petitioners would submit that the first respondent without even conducting proper enquiry, has mechanically registered the FIR. After registering the FIR, without conducting further investigation they have proceeded to file a final report. He further submitted that pursuant to the registration of FIR, the fifth respondent filed a petition for anticipatory bail in CrI.O.P.No.13000 of 2022. It was referred before the

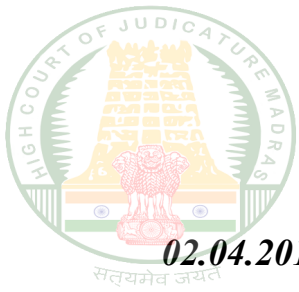


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WEB COPY District Social Welfare Officer, Thiruvallur for enquiry. During the course of enquiry, the second respondent had insisted to return the passport and visa of her child and also agreed to go along with the first petitioner to USA after six months. Meanwhile, the second respondent also filed a petition in HMOP.No.16 of 2021 for restitution of conjugal rights and also a maintenance petition in M.C.No.4 of 2012, on the file of the Sub-Court, Vellore. However, the second respondent was not permitted to live in the matrimonial home. Thereafter, the second respondent had agreed to withdraw those petitions and had gone to the matrimonial home. Therefore, no offence is made out as against the petitioners as alleged by the prosecution. Without considering the above, the first respondent had mechanically filed a final report and the same has been taken cognizance by the Trial Court.

7. A perusal of records reveals that there are specific allegations as against the petitioners to attract the offences under Sections 498(A), 420 and 494 of IPC. Though there was Mediation, it was not acted upon and the second respondent was not allowed to enter into the matrimonial home.

8. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***CrI.A.No.579 of 2019*** dated



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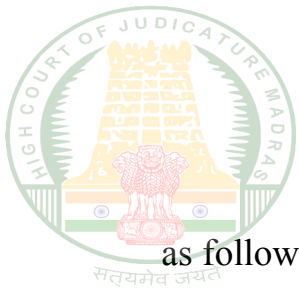
02.04.2019 in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as

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" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Invstigation Vs. Arvind Khanna**, wherein, it has been held



as follows:

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“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

10. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **CrI.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference



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to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner are mixed question of facts and it cannot be considered in quash petition under Section 482 Cr.P.C.



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11. In view of the above, this Court is not inclined to quash the proceeding in C.C.No.292 of 2024 on the file of the learned Judicial Magistrate No.I, Poonamallee. However, the personal appearance of the second and third petitioners are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the second and third petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 351 of BNSS and at the time of passing judgment. The Trial Court is directed to complete the Trial in C.C.No.292 of 2024, within a period of six months from the date of receipt of a copy of this order.



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WEB COPY 12. Accordingly, this Criminal Original Petition is dismissed.

Consequently, connected Miscellaneous petitions are closed.

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

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G.K.ILANTHIRAIYAN. J,

mn

To

1. The Judicial Magistrate No.I,
Poonamallee.
2. The Inspector of Police,
All Women Police Station,
Avadi,
Thiruvallur District.
3. The Public Prosecutor,
High Court, Madras.

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