



CrI.O.P.No.8355 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2025

CORAM:

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

CrI.O.P.No.8355 of 2025

and

CrI.M.P.Nos.5478 and 5479 of 2025

1. Mohammed Zuhel Raja
2. Mohammed Abdulla
3. Abdul Zarina

... Petitioners

Vs.

1. The State, Represented by
The Inspector of Police,
W-12, Harbour-AWPS, Chennai
(Cr.No.3/2023)

2. R.Zara Jasmine

... Respondents

PRAYER: This Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records in C.C.No.1100 of 2024 pending on the file of the VII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.N.Elayaraja

For Respondents : Mr.A.Gopinath,
Government Advocate (CrI.Side)
for R1



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ORDER

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2. The case of the prosecution is that the first petitioner had love affair with the defacto complainant. The first petitioner, on false promise of marrying her, had sexual intercourse with her, she became pregnant and on his compulsion, she aborted the fetus and also she has converted her religion. Later, the first petitioner refused to marry her as promised by him.

3. The learned Counsel appearing for the petitioners submits that already the first FIR is pending in Cr.No.4 of 2022 registered for the offences punishable under Sections 417, 376 and 506(i) of IPC. After the period of 13 months, when the third petitioner had lodged a complaint as against the second respondent, another complaint has been lodged by the second respondent before the first respondent police and the same has been registered in Cr.No.3 of 2023 for the offences punishable under Sections 417, 323 of IPC and Section 4 of Tamil Nadu Prohibition of



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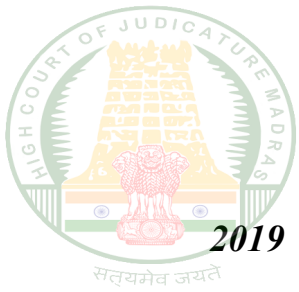
Harassment of Women Act 2002 against the petitioners. After completion of investigation, final report was filed before the VII Metropolitan Magistrate, George Town, Chennai and the same has been taken cognizance in C.C.No.1100 of 2024. Hence he prayed to quash the same.

4. The learned Government Advocate (CrI. Side) appearing for the respondent police reiterated the prosecution case and on instructions submitted that that already the first FIR is pending in Cr.No.4 of 2022, another complaint has been lodged by the second respondent before the first respondent police and the same has been registered in Cr.No.3 of 2023.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. It is seen that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.3 of 2023 for the offences under Sections 417, 323 of IPC and Section 4 of Women Harassment Act. After completion of investigation, the first respondent filed final report and the same has been taken cognizance in C.C.No.1100 of 2024 by the trial Court and it is pending. To quash the said criminal proceeding, the petitioners filed the present petition.

7. The Hon'ble Supreme Court of India in the judgment reported in



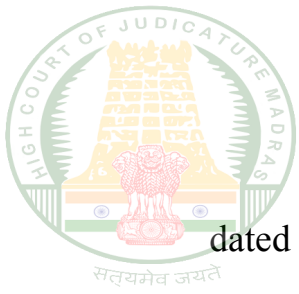
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2019 (4) SCC 351 in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr., (Crl.A.No.579 of 2019 dated 02.04.2019)** while dealing

with the petition to quash the entire criminal proceedings held that the High Courts have 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 as against the accused. It could be done only by the trial Court while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order that the charge sheet has been laid on the basis of the inconsistency statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

8. Further, the Hon'ble Supreme Court of India in the judgment reported in **2019 (10) SCC 686** in the case of **Central Bureau of Investigation Vs. Arvind Khanna, (Crl.A.No.1572 of 2019** dated 17.10.2019) held that the High Courts cannot record the findings on the disputed facts. The defence of the accused is to be tested after appreciation of evidence by the trial Court during the trial. Therefore, this Court has no power to consider the disputed facts under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

9. The Hon'ble Supreme Court of India in another judgment



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dated **02.12.2019** passed in ***Crl.A.No.1817 of 2019*** in the case of

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M.Jayanthi Vs. K.R.Meenakshi & anr, held that while considering the petition for quashment of complaint or charge sheet, 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. Further, the Court can also see whether the preconditions requisite for taking cognizance have been complied with or not and whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged. Whether the accused will be able to prove the allegations in a manner known to law would arise only at a later stage i.e., during trial.

10. Further this Court cannot observe at this stage that the initiation of criminal proceeding itself is malicious. Whether the criminal proceeding is malicious or not, is not required to be considered at this state. The same is required to be considered at the conclusion of the trial. Therefore, the ground raised by the petitioners to quash the final report cannot be entertained to quash the entire proceedings.

11. In view of the above discussion, this Court is not inclined to



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quash the proceedings in C.C.No.1100 of 2023 on the file of the VII Metropolitan Magistrate, George Town, Chennai. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners 2 and 3, the personal appearance of the petitioners 2 and 3 are dispensed with and they shall be represented by a counsel after filing appropriate application. However, the 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 within a period of six months from the date of receipt of copy of this Order.

12. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are also closed.

21.03.2025

Vv

To

1. The VII Metropolitan Magistrate,
George Town, Chennai.
2. The Inspector of Police,
W-12, Harbour-AWPS, Chennai
3. The Public Prosecutor,
High Court of Madras, Chennai.



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G.K.ILANTHIRAIYAN, J.

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