



Crl.R.C.(MD)No.575 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 25.03.2025

Pronounced on : 03.06.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.575 of 2024

and

Crl.M.P.(MD)No.5882 of 2024

N.Vinotha Rani

... Petitioner

Vs.

1.State through
Sub Inspector of Police,
All Woman Police Station,
Kuzhithurai,
Kanyakumari District.
(Crime No.25 of 2012)

2.S.Amala Nisha

*(R2 is suo-motu impleaded as per order of the Court
dated 19.06.2024 in Crl.RC(MD)No.575 of 2024)*

... Respondents

Prayer : This Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C., to call for the records pertaining to the impugned order dated 18.03.2021 made in Crl.M.P.No.7817 of 2017 in Calendar Case No.115 of



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2013 on the file of the Judicial Magistrate No.I, Kuzhithurai and to set aside the same.

For Petitioner : Mr.M.R.Sreenivasan
For R1 : Mrs.M.Aasha
Government Advocate (Crl. Side)
For R2 : Mr.C.Muthu Saravanan

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.7817 of 2017 in C.C.No.115 of 2013 dated 18.03.2021 on the file of the Court of the Judicial Magistrate No.I, Kuzhithurai, dismissing the petition for discharge filed under Section 239 of the Code of Criminal Procedure.

2. On the basis of the complaint lodged by the second respondent/ defacto complainant, FIR came to be registered in Crime No.25 of 2012 dated 13.08.2012 against four persons including the petitioner for the alleged offences under Sections 406, 498(A) and 497 IPC and Sections 3 and 4 of Dowry Prohibition Act. The first respondent, after completing the investigation, has laid the final report against four persons including the



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petitioner for the alleged offences under Sections 498(A), 406 and 109 IPC and Sections 3 and 4 of Dowry Prohibition Act and the case was taken on file in C.C.No.115 of 2013 and is pending on the file of the Judicial Magistrate No.I, Kuzhithurai. When the calendar case was pending for framing of charges, the petitioner/fourth accused invoking Section 239 Cr.P.C. has filed the above petition seeking discharge from the above case.

3. Admittedly, the marriage between the second respondent and the first accused Alwin was solemnized on 28.08.2008 as per the Hindu customs and rites. It is not in dispute that the second accused is the mother and the third accused is the sister of the first accused and that the petitioner is the wife of the second accused's brother.

4. The case of the prosecution is that the accused 1 to 3, after receiving the dowry as demanded by them at the time of marriage, had also demanded additional dowry, that the second respondent's father had provided the money as demanded and also constructed a house, that the first accused had illicit affairs with the petitioner and the second respondent had seen them in a compromising position, that the second



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respondent had consumed more sleeping tablets in order to commit suicide and that the accused had committed the offences under Sections 498(A), 406 and 109 IPC and Sections 3 and 4 of Dowry Prohibition Act.

5. Before entering into further, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455***.

“7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case



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against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial”

6. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Vikramjit Kakati Vs. The State of Assam*** reported in **2022 AIR SC 3597**, wherein, the Hon'ble Apex Court has referred the principles laid down by the Hon'ble Supreme Court in ***M.E.Shivalingamurthy Vs. Central Bureau of Investigation, Bengaluru*** reported in **(2020) 2 SCC 768** and the relevant principles are extracted hereunder:-



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“10....

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.”

7. It is settled law that at the stage of framing charges, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

8. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial. Bearing the above legal



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position on mind, let us consider the case on hand.

9. It is pertinent to mention that, as already pointed out, FIR came to be registered for the alleged offences under Sections 406, 498(A) and 497 IPC and Sections 3 and 4 of Dowry Prohibition Act but charge sheet came to be filed only for the offences under Sections 498(A), 406 and 109 IPC and Sections 3 and 4 of Dowry Prohibition Act and thereby excluding Section 497 IPC. But the learned Magistrate, without considering the charge sheet properly, has taken the case on file in C.C.No.115 of 2013 for the offences under Sections 498(A), 406 and 497 IPC and Sections 3 and 4 of Dowry Prohibition Act.

10. The learned counsel appearing for the petitioner would mainly contend that the only allegation levelled against the present petitioner is that she had illicit affairs with the first accused, that the petitioner and the first accused were living in adultery and that except the above, the second respondent has not levelled any other allegations of dowry demand or harassment or criminal breach of trust as against the petitioner.



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11. As already pointed, the Investigating Officer, though the case was registered for the offence under Section 497 IPC, has rightly excluded the same in the final report.

12. It is pertinent to note that the Hon'ble Supreme Court in ***Joseph Shine Vs. Union of India*** reported in **2019 (3) SCC 39** has declared Section 497 of IPC as unconstitutional and thereby decriminalized the offence of adultery, but the learned Magistrate, without considering the above aspect, has also taken cognizance for the offence under Section 497 IPC in a mechanical fashion and when the same was brought to the notice of the Magistrate, who conducted enquiry in the discharge petition, has also failed to apply his mind and proceeded to dismiss the discharge petition in a very casual and mechanical manner. Hence, the question of invoking Section 497 IPC against the petitioner does not arise at all.

13. The Investigating Officer, in the final report, has given his opinion that the first accused had committed the offences under Sections 498(A) and 406 IPC and Sections 3 and 4 of Dowry Prohibition Act, that the accused 2 and 3 had committed the offences under Section 498(A) IPC

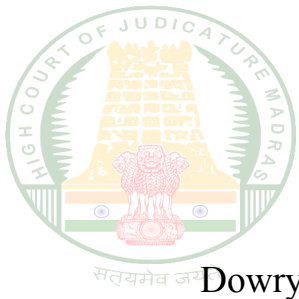


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and Sections 3 and 4 of Dowry Prohibition Act and that the petitioner had committed the offence under Section 109 IPC.

14. Section 109 IPC defines that an act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment. Abetment can take the form of instigation, conspiracy or aiding. It is pertinent to mention that *mens rea* i.e., intention to commit an act is an important element so as to attract the abetment. The prosecution has to show that the accused must have intentionally done something which amounted to instigation for another to do an illegal act. For constituting an act of abetment by conspiracy, there must be two or more people involved in the conspiracy and an illegal act must take place in pursuance of that conspiracy. The third clause is abetment by intentional aiding to do an illegal act or omission of a legal act and the abettor facilitates or helps in committing the crime. In the case on hand, neither the second respondent nor any of the witnesses have implicated the petitioner that she abetted the other accused in the commission of offences under Section 498(A) IPC and Sections 3 and 4 of



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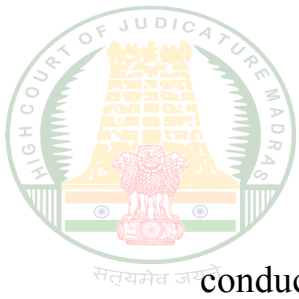
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Dowry Prohibition Act. As rightly contended by the learned counsel appearing for the petitioner, there is absolutely no material to show that the petitioner had abetted in the commission of offences referred above.

15. The Hon'ble Supreme Court in ***Dechamma I.M. @ Dechamma Koushik Vs. The State of Karnataka and another*** passed in ***SLP (Crl.) No.3421 of 2022 (2024 INSC 972)*** has held that a girlfriend or even a woman with whom a man has had romantic or sexual relations outside of marriage could not be construed to be a relative under Section 498(A) IPC.

16. Considering the allegations at their face value in the FIR and in the material placed in the final report, there is absolutely no averment or material to show that the petitioner was in any way concerned with causing harassment to the second respondent on account of non-fulfilment of demand of dowry or that the petitioner had abetted the other accused in the commission of offences stated above.

17. As already pointed out, the learned Magistrate, without



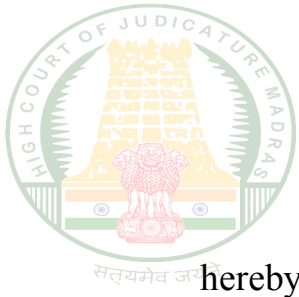
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conducting proper enquiry in the discharge petition, by simply observing that the calendar case is pending from 2013, that no steps were taken by the prosecution also, that the discharge petition is pending for long time and that the Court had taken the cognizance against the accused including the petitioner as *prima facie* case is made out from the available materials, by holding that there is no need to proceed further in the discharge petition, dismissed the same. It is very shocking and surprising to see the way in which the impugned order came to be passed. No doubt, the calendar case is pending from 2013 and the petitioner has filed the discharge petition in the year 2017, but the same was kept pending for more than four years and lastly, it was dismissed in 2021.

18. Considering the above and in the absence of any materials to frame charges against the petitioner, the impugned order dismissing the discharge petition cannot be sustained and as such, the same is liable to be set aside.

19. In the result, this Criminal Revision Case stands allowed and the impugned order dated 18.03.2021 passed in Crl.M.P.No.7817 of 2017 is



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hereby set aside. The petitioner shall stand discharged in C.C.No.115 of 2013 on the file of the Judicial Magistrate No.I, Kuzhithurai.

Consequently, connected Miscellaneous Petition is closed. No costs.

03.06.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

- 1.The Judicial Magistrate No.I,
Kuzhithurai.
- 2.The Sub Inspector of Police,
All Woman Police Station,
Kuzhithurai,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
Crl.R.C.(MD)No.575 of 2024
and
Crl.M.P.(MD)No.5882 of 2024

Dated : 03.06.2025