

Crl.R.C.(MD).No.365 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 24.03.2025

PRONOUNCED ON : 30.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.365 of 2025

and

Crl.M.P.(MD)No.3786 of 2025

1.Nanthakumar

2.Rajappan

3.Jeyalakshmi

... Petitioners/Respondents 2 to 4/A.1 to A.3/
A.1 to A.3

Vs.

1.The State of Tamil Nadu,
represented by
The Inspector of Police,
All Women Police Station,
Tirunelveli,
Tirunelveli District.
(Crime No.2 of 2022)

: 1st Respondent/1st Respondent/Complainant/
Complainant

2.Vinithakumari

: 2nd Respondent/Petitioner/Defacto complainant/
Defacto complainant



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PRAYER: Criminal Revision Petition has been filed under Section 438 and 442 of BNSS, 2023 to call for the records relating to the orders dated 19.02.2025 made in M.P.No.4 of 2025 in C.C.No.1183 of 2024, on the file of the Judicial Magistrate Court No.III, Tirunelveli and set aside the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy
for Mr.K.Althaf Sheriff

For Respondents : Mrs.M.Aasha
Government Advocate (Crl.Side)
for R.1
: Mr.S.Ramasamy
for R.2

ORDER

This Criminal Revision is directed against the order passed in M.P.No.4 of 2025 in C.C.No.1183 of 2024, dated 19.02.2025, on the file of the Court of Judicial Magistrate No.III, Tirunelveli, directing further investigation.

2. Admittedly, the second respondent/defacto complainant is the wife of the first petitioner/first accused and that the petitioners 2 and 3 / accused 2 and 3 are the parents of the first petitioner/first accused. On the basis of the complaint lodged by the second respondent, F.I.R., came to be registered in Cr.No.2 of 2022 against five persons including the petitioners for the alleged offences under

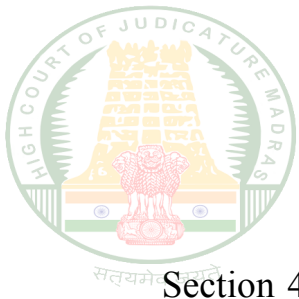


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Sections 498-A, 406 I.P.C., and under Section 4 of Dowry Prohibition Act. The first respondent police after completing investigation, has filed the final report against the petitioners herein for the alleged offences 498-A I.P.C., and Section 4 of Dowry Prohibition Act and the case was taken on file in C.C.No.1183 of 2024 and the same is pending on the file of the Court of Judicial Magistrate No.III, Tirunelveli.

3. It is pertinent to mention that before filing of the charge sheet, the accused 4 and 5 shown in the F.I.R., filed a petition under Section 482 Cr.P.C., seeking quashment of F.I.R., registered in Cr.No.2 of 2022, on the file of the first respondent police and a learned Judge of this Court, vide order dated 21.02.2024 allowed the petition and thereby quashed the F.I.R., insofar as the accused 4 and 5 are concerned. In pursuance of the orders of this Court, the first respondent police deleted the accused 4 and 5 and filed the charge sheet as against the accused 1 to 3/petitioners herein. The second respondent/defacto complainant has filed a petition raising objections for deleting the offence under Section 406 I.P.C., in the charge sheet and the said petition was taken on in M.P.No.4 of 2025. The learned Magistrate, after enquiry, has passed the impugned order dated 19.02.2025 directing further investigation with respect to the offence under



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Section 406 I.P.C., and file a report before the concerned Court. Aggrieved by the impugned order, the accused 1 to 3 have preferred the present revision.

4. The learned Counsel for the petitioners would submit that the learned Judicial Magistrate, while entertaining the objection filed by the second respondent/defacto complainant has neither chosen to issue notice to the investigating agency nor provided any opportunity to the accused to substantiate the correctness in removing Section 406 I.P.C., in the charge sheet, that the second respondent, taking advantage of the inadvertent arithmetical error occurred in the alteration report filed by the first respondent police has projected the case as if the police filed the alteration reported dated 28.04.2023 removing Section 406 I.P.C., during the period of stay of investigation ie., from 08.06.2022 to 21.02.2024 granted by this Court in Crl.O.P.(MD)No.7444 of 2022, that the second respondent herself admitted in her further 161(3) statement dated 08.04.2024 that she got back her entire jewels from the petitioners, that this Court while granting anticipatory bail in Crl.O.P.(MD)No.10966 of 2021 has categorically observed that the petitioners returned the jewels to the defacto complainant which were presented during the marriage and that in the said anticipatory bail petition, the second respondent has intervened and also



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accepted the same, that the learned Additional Subordinate Judge, Tirunelveli in H.M.O.P.No.5 of 2022 has given a categorical finding that the second respondent was not gifted with 200 sovereigns of jewels at the time of marriage, that the learned Magistrate only by referring to the F.I.R., and 161(3) statements, which was already investigated by the first respondent police, has ordered further investigation, that the first respondent police had already examined all the relevant witnesses and material evidence and thereby removed Section 406 I.P.C., in the charge sheet, that the learned Magistrate is having jurisdiction to frame charges under any Penal Section, during the course of trial, if he feels the circumstances warrants such act to secure the ends of justice, that the impugned order passed by the learned Magistrate would cause serious prejudice to the petitioners and as such, the said order is nothing but miscarriage of justice and that therefore, the petitioners were constrained to file the present revision challenging the impugned order.

5. No doubt, as rightly contended by the learned Counsel for the revision petitioner, it is evident from the impugned order that the learned Magistrate by considering the objection petition filed by the defacto complainant, has passed the impugned order and that there is nothing to infer that the learned Magistrate



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has issued notice to the petitioners/accused nor to the prosecution. The petitioners, after coming to know about the impugned order, has filed the present petition challenging the said order and this Court has given opportunity to the second respondent/defacto complainant, the learned Government Advocate appearing for the first respondent and the petitioners/accused to canvass their case and to submit their arguments.

6. Moreover, the prosecution has not raised any objections before this Court. But for the petitioner, as rightly contended by the learned Counsel for the second respondent, the accused need not be heard, while considering the requisition of the defacto complainant or the prosecution for further investigation. No doubt, the second respondent/defacto complainant has taken a stand that the prosecution has filed the alteration report on 28.04.2023 when stay granted by this Court in Crl.O.P.(MD)No.7444 of 2022, dated 21.02.2024 was in force. But as rightly contended by the learned Counsel for the petitioners, in the alteration report itself, the prosecution has referred about the order passed by this Court in Crl.O.P.(MD)No.7444 of 2022 dated 21.02.2024 quashing the case as against the accused 4 and 5 and as such, as rightly contended by the learned Counsel for the petitioners, the complainant has taken the advantage of



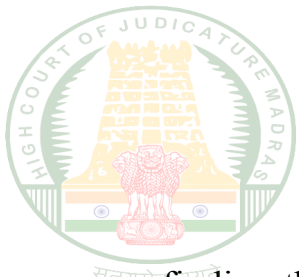
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typographical mistake occurred in the alteration report showing the date of report as 28.04.2023.

7. On examining the merits, the petitioners' main contention is that this Court's order granting anticipatory bail in Crl.O.P.(MD)No. 10966 of 2021 noted that the petitioners had returned jewels presented during the marriage to the de facto complainant. However, as rightly pointed out by the learned counsel for the second respondent, the second respondent was neither a party to the anticipatory bail applications nor filed an intervening petition. Moreover, the second respondent has no connection to the alleged report by the prosecution about returning the jewels to the de facto complainant. Considering the above, the petitioners' contention that the second respondent intervened in the anticipatory bail applications and accepted the prosecution's report is unsustainable..

8. The next contention of the petitioners is that the first petitioner has filed a petition in H.M.O.P.No.5 of 2022 against the second respondent seeking restitution of conjugal rights and the learned Subordinate Judge, Tirunelveli while granting the relief of restitution of conjugal rights has given a specific



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finding that the defacto complainant has failed to prove that 200 Sovereigns of jewels were presented to her at the time of marriage. But according to the second respondent, the second respondent has already preferred an appeal challenging the order passed in H.M.O.P.No.5 of 2022 and the same is pending on the file of the District Court.

9. As rightly contended by the learned counsel for the second respondent, H.M.O.P.No.5 of 2022 focuses on whether the petitioner has proven that the other spouse withdrew from their society without reasonable excuse. The issues of whether the second respondent received 200 sovereigns of jewels during her marriage and whether some jewels were retained by her husband and in-laws are not relevant to the petition for restitution of conjugal rights. Since these aspects are raised in the criminal complaint and the appeal against the decree for restitution of conjugal rights is pending before the appellate court, they cannot be grounds for deleting the offense under Section 406 IPC.

10. The learned Counsel for the petitioners would submit that the second respondent herself in her further statement given under Section 161(3) Cr.P.C., stated that she got her entire jewels from the petitioners. But the said factum has



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been specifically disputed by the second respondent. The learned Counsel for the second respondent would submit that only partial jewels have been recovered and the remaining are with her husband and in-laws. He would further submit that they have specifically mentioned in the letter which was in joint locker in the State Bank of India and which was counter signed by the second respondent as well as the third accused that only partial jewels have been recovered.

11. It is the specific case of the second respondent that there is HDFC bank locker which stood in the name of the defacto complainant and the accused 2 and 3, that the said locker at HDFC, Sivakasi branch was lastly operated by the third accused on 22.06.2020 and that the judicial officer has not chosen to examine the HDFC bank Manager.

12. On considering the entire facts and circumstances and the grounds alleged by the second respondent, this Court has no hesitation to hold that the second respondent has shown valid grounds for ordering further investigation with regard to the offence under Section 406 I.P.C., and the impugned order directing further investigation cannot be found fault with. Consequently, this



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Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

13. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petition is also dismissed. The Investigating Officer is directed to proceed with further investigation and file an additional/further report within a period of one month from the date of receipt of a copy of this order.

30.04.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To

1. The Judicial Magistrate Court No.III, Tirunelveli.
2. The Inspector of Police,
All Women Police Station,
Tirunelveli,
Tirunelveli 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

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30 .04.2025