



Crl.R.C.(MD)No.632 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

Reserved on : 04.03.2025

Pronounced on : 28.03.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.632 of 2024

and

Crl.M.P.(MD)No.6442 of 2024

Josephine Amirtha

... Petitioner

Vs.

1.Jenifer Diana

2.Sivakumar

3.The State rep. by
The Inspector of Police,
All Women Police Station,
Thoothukudi.
(Crime No.22 of 2022)

... Respondents

Prayer : This Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C., to call for the records pertaining to the order dated 24.05.2024 made in Cr.M.P.No.9261 of 2024 in C.C.No.232 of 2024 passed by the learned Judicial Magistrate No.IV, Thoothukudi and set aside the same.



Crl.R.C.(MD)No.632 of 2024

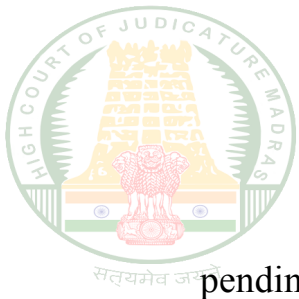
WEB COPY

For Petitioner : Mr.T.Antony Arulraj
For R1 & R2 : Mr.B.Michael Sebastin
For R3 : Mrs.M.Aasha
Government Advocate (Crl. Side)

ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.9261 of 2024 dated 24.05.2024 on the file of the Court of the Judicial Magistrate No.4, Thoothukudi, in discharging the respondents 1 and 2/accused 3 and 4.

2. On the basis of the complaint lodged by the petitioner, FIR came to be registered in Crime No.22 of 2022 on 25.07.2022 against five persons including the respondents 1 and 2 for the alleged offences under Sections 498(A), 406 and 506(1) IPC and Section 4 of Dowry Prohibition Act and after completing the investigation, the third respondent police has laid the final report against five accused including the respondents 1 and 2 for the alleged offences under Sections 498(A), 406 and 506(1) IPC and the case was taken on file in C.C.No.232 of 2024 on the file of the Court of the Judicial Magistrate No.4, Thoothukudi. When the calender case was



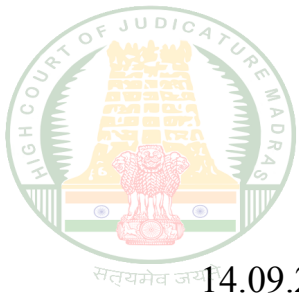
Crl.R.C.(MD)No.632 of 2024

WEB COPY

pending for framing of charges, the accused 3 and 4 invoking Section 239 Cr.P.C. filed a petition seeking discharge.

3. Admittedly, the marriage between the first accused and the petitioner was solemnized on 27.01.2021 and that the second accused is the mother, the first respondent/third accused is the sister and the fifth accused is the brother of the first accused and the second respondent/fourth accused is the husband of the third accused.

4. The case of the prosecution is that at the time of marriage, the petitioner's parents gave 80 sovereign of gold jewels, household articles worth about Rs.3 lakhs and cash of Rs.5 lakhs, that they have spent Rs.7,50,000/- while the first accused was suffering from Corona, that the first accused was promoted as Assistant Manager and was transferred to Gujarat, that the petitioner along with the accused 1 and 2 had started to reside in Gujarat, that the accused 1 and 2 had demanded the petitioner to get ring, Smart TV, washing machine and car from her parents, that as per the instigation of the second accused and the respondents 1 and 2, the first accused sent the petitioner out of the matrimonial home forcibly on

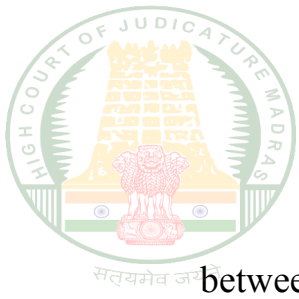


Crl.R.C.(MD)No.632 of 2024

WEB COPY

14.09.2021 and directed her to return with the additional dowry demanded, that when the petitioner was demanding to return the 80 sovereign of gold jewels, they have caused criminal intimidation, that the petitioner with the help of her father's friend at Gujarat managed to return to her native place, that the petitioner after the marriage came to know that the first accused is an impotent and that the respondents 1 and 2, by suppressing the first accused's impotency, have cheated the petitioner and her family.

5. The case of the respondents 1 and 2, in their discharge petition, is that there is no truth in the charges alleged against them and the same is nothing but a story cooked up by the petitioner to suit her purpose and to enrich herself unlawfully, that the respondents 1 and 2 have been arrayed as accused with sole and crooked intention of arm twisting and harassing them to make unlawful gain, that they are not at all necessary parties to the above case and have been unnecessarily dragged into the same, that the respondents 1 and 2 are not in a position to traverse any of the allegations pertaining to the first accused as they were not aware of the any disputes between the first accused and the petitioner, that soon after the marriage



Crl.R.C.(MD)No.632 of 2024

WEB COPY

between the first accused and the petitioner, they started living in their separate residence at Chennai and Gujarat, that as per the version of the prosecution, both of them lived jointly at 9 months and at that time, the respondents 1 and 2 lived at Tirunelveli, that the second respondent is working as Sub Inspector of Survey Department, that the complaint of the petitioner was earlier forwarded to the Social Welfare Officer and the Social Welfare Officer, after enquiry, had given a report that the respondents 1 and 2 were present only at the time of marriage ceremony and they have not received or involved in any act of receiving dowry, that the respondents 1 and 2 have not played any role in the entire matrimonial life of the petitioner and that the charges levelled against the respondents 1 and 2 are groundless and as such, they are entitled to be discharged from the above case.

6. The third respondent has filed a counter statement raising objections and further stated that the respondents 1 and 2 are residing at Melashanmugapuram, Thoothukudi, that the investigation conducted by the third respondent police and the statements recorded from the witnesses would reveal that they were also involved in forcibly sending the



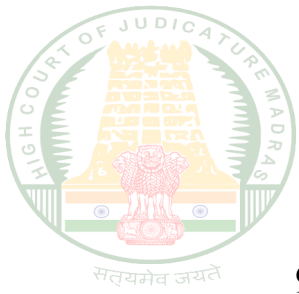
Crl.R.C.(MD)No.632 of 2024

WEB COPY

petitioner out of the matrimonial home demanding further dowry, that the veracity of the allegations/charges can only be gone into at the trial and not in the present proceedings, that there are sufficient materials available to frame charges against the respondents 1 and 2 and that therefore their application for discharge is liable to be dismissed.

7. The learned Magistrate, after enquiry, has passed the impugned order dated 24.05.2024, by holding that there are no sufficient materials to frame charges against the respondents 1 and 2, allowed the petition and thereby discharged the respondents 1 and 2. Challenging the said order, the present revision came to be filed.

8. The learned Magistrate, in the impugned order, has observed that the respondents 1 and 2 were present at the time of marriage and that the petitioner and the first accused had left for Gujarat and while both of them were residing at Gujarat, the respondents 1 and 2 were at Tirunelveli and as such, there is absolutely no scope for the respondents 1 and 2 to take part in the offence alleged.



Crl.R.C.(MD)No.632 of 2024

WEB COPY

9. 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 Bijjaya (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 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



WEB COPY



Crl.R.C.(MD)No.632 of 2024

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”

10. 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:-

“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.



Crl.R.C.(MD)No.632 of 2024

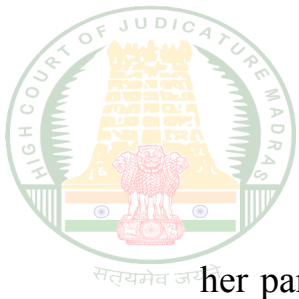
WEB COPY

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

11. 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.

12. 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.

13. In the case on hand, the petitioner, in her complaint as well as in her statement recorded under Section 161(3) Cr.P.C., has stated that after fixing of marriage, the respondents 1 and 2 with the first accused came to



Crl.R.C.(MD)No.632 of 2024

WEB COPY

her parents' house on 18.01.2021 and received the dowry amount of Rs.5 lakhs and that when the petitioner was at Gujarat, at the instigation of the second accused and the respondents 1 and 2, the first accused sent the petitioner out of the matrimonial home forcibly on 14.09.2021 directing her to get the articles already demanded. As rightly contended by the learned counsel appearing for the respondents 1 and 2, except the above two sentences, the petitioner has not alleged anything against the respondents 1 and 2. Though the petitioner has alleged that the respondents 1 and 2 had also instigated for sending the petitioner out of matrimonial home, she has not elaborated anything further. The petitioner's father, mother, brother and her relative have given statements under Section 161(3) statement reiterating the version of the complainant. The other witnesses have also not alleged anything against the respondents 1 and 2. The third respondent, in the final report, has only reiterated the complaint version and stated that at the instigation of the second accused and the respondents 1 and 2, the first accused has sent the petitioner out of the matrimonial home at Gujarat.

14. It is pertinent to mention that the Courts are duty bound to



Crl.R.C.(MD)No.632 of 2024

WEB COPY

determine if there are sufficient grounds to proceed against the accused and if there are not sufficient grounds, then the Courts must discharge the accused. The purpose of Section 239 Cr.P.C. is to ensure that the Court is satisfied that the accusations made against the accused are not frivolous. During the discharge petition hearing, the Courts are required to evaluate whether the allegations taken at their face value discloses existence of all the ingredients of the alleged offence. In the present case, as rightly contended by the learned counsel appearing for the respondents 1 and 2, there are absolutely no material sufficient enough to frame charges and to proceed against the respondents 1 and 2 and the learned Magistrate though on a different footing discharged the respondents 1 and 2 and as such, the same cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merit and the same is liable to be dismissed.

15. In the result, this Criminal Revision Case stands dismissed.

Consequently, connected Miscellaneous Petition is closed. No costs.

28.03.2025

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

11/12



WEB COPY



Crl.R.C.(MD)No.632 of 2024

K.MURALI SHANKAR,J.

csn

To

- 1.The Judicial Magistrate No.4,
Thoothukudi.
- 2.The Inspector of Police,
All Women Police Station,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-Delivery Order made in
Crl.R.C.(MD)No.632 of 2024
and
Crl.M.P.(MD)No.6442 of 2024

Dated : 28.03.2025