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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2025

Pronounced on : 08.01.2025

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P(MD)No.16823 of 2022

and

C.R.P(MD)No.1167 of 2023

and

Crl.O.P(MD)No.SR. 48587 of 2023

and

Crl.M.P(MD)Nos.11261 and 11263 of 2022

and

C.M.P(MD)No.5631 and 5632 of 2023

For Crl.O.P(MD)No.16823 of 2022

1. N.Janaki

2. Kanagalakshmi

... Petitioners

Vs

1. The Inspector of Police,
All Women Police Station,
Srirangam,
Trichy City, Trichy.
Crime No.5 of 2020.

2. Nivedita

... Respondents

PRAYER: Criminal Original petitions have been filed under Sections 439



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(1) (b) of the Code of Criminal Procedure, to call for the records pertaining to the impugned Final Report in CC.No.200 of 2022 on the file of the Learned Additional Mahila Court, Trichy in Cr.No.5 of 2020 dt.3.3.2020 on the file of the Respondent No.1 and quash the same as illegal.

For Petitioners : Mr.T.Lajapathi Roy
Senior Counsel
For M/s.Lajapathi Roy Associates,

For R1 :Mr.B.Thanga Aravindh
Government Advocate (Crl.Side)

For R2 : Mr.C.Dhanaseelan

For C.R.P(MD)No.1167 of 2023

1. N. Janaki

2. Kanagalakshmi

3. Ramamoorthi

... Petitioners

Vs

Nivedita

... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to struck of pertaining Impugned proceedings filed by the Respondent in D.V.C. No. 37 of 2022 on the file of Learned Judicial Magistrate No.1, Tirunelveli and set aside the same.



For Petitioners : Mr.T.Lajapathi Roy
Senior Counsel
For M/s.Lajapathi Roy Associates,

For Respondent : Mr.S.Mahendrapathy

For CrI.O.P(MD)No.SR 48587 of 2023

Nivedita

... Petitioner

Vs

The Inspector of Police,
All Women Police Station,
Srirangam,
Trichy City, Trichy.
Crime No.5 of 2020.

... Respondent

PRAYER: Criminal Original petitions have been filed under Sections 439 (1) (b) of the Code of Criminal Procedure, to direct the respondent police to retrieve the Whatsapp messages in between the accused persons in phone numbers(1) 9597917915-A1 (2(9994223890-A2 and (3) "+14793201381" (U.S. number) and 9994449272 (India)-A3, which are relevant to the offences in Cr.No.5 of 2020, now pending in c.C.No.200 of 2022 as the petitioner had pointed out by her representations dated 07.07.2020 and 22.07.020, 13.12.2022, 18.02.2023 and 10.08.2023 and produce the same as report on further investigation in the said C.C.No.200 of 2022 on the file of the learned Judicial Magistrate, Additional Mahila Court Trichy in compliance with this Court order dated 15.02.2022 passed



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in Crl.O.P(MD)No.8752 of 2020 within a time limit fixed by this Court.

For Petitioner : Mr.C.Dhanaseelan

For Respondent :Mr.B.Thanga Aravindh
Government Advocate (Crl.Side)

COMMON ORDER

The issue involved in these cases are common and hence they are taken up together, heard and disposed of through this common order.

2.The criminal original petition in Crl.O.P(MD)No.16823 of 2022 has been filed by A2 and A3 seeking to quash the proceedings in C.C.No. 200 of 2022 on the file of the Additional Mahila Court, Trichy. The same petitioners along with another person have challenged the proceedings in D.V.C.No.37 of 2022 on the file of the learned Judicial Magistrate No.I, Tirunelveli, initiated under the Domestic Violence Act.

3.The case of the prosecution is that on 01.12.2013, marriage was solemnized between A1 and the defacto complainant. It is alleged that 80 sovereigns of gold and house hold articles were given to the defacto



complainant. On 18.03.2016, the defacto complainant delivered a boy baby.

The defacto complainant has alleged cruelty meted out by A1 and insofar as A2 and A3, it is alleged that they were holding back the jewels and also retained the insurance amount after the demise of A1 and they were also instigating A1. The first petitioner (A2) is the mother of A1 and the second petitioner (A3) is the sister of A1. A1 died during the pendency of this case due to kidney failure and the criminal case is now pending only as against A2 and A3. Insofar as the proceedings initiated under the Domestic Violence Act, it has been filed against the mother-in-law, sister-in-law and the husband of the sister-in-law seeking for payment of maintenance, to provide for rent and to meet out the educational expenses of the child and to return back the jewellery and other important documents and also for compensation.

4.The final report has been filed against the accused persons for the offence under Sections 498(A), 406 and 506(1) of IPC. The quash petition was filed even when the FIR was registered in Crime No.5 of 2020 and an interim order was also passed by this Court. However, the investigation was completed and final report was filed and it was taken on file in C.C.No.200 of 2022 by the Additional Mahila Court, Trichy. Since



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the final report was filed when the interim order was in force, a contempt petition in Cont P(MD)No.636 of 2022 was filed before this Court and this Court was pleased to close the contempt petition by order dated 08.08.2022. While passing this order, this Court took into consideration the fact that A2 had paid a sum of Rs.29,00,000/- to the defacto complainant and also returned back the gold jewelleryes.

5. There is no bar in dealing with the quash petition even if the final report has been filed and this Court can always see if the offence has been made out and whether the proceedings requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

6. Heard the learned Counsel appearing on either side.

7. The specific allegations in the final report was mainly against A1. It is alleged that A1 was working in a shipping company and right from the year 2015, there was some misunderstanding between A1 and the defacto complainant. The defacto complainant was also financially helping A1 for his higher studies and for repaying loan amount. That apart, A1 suffered from kidney failure and A2 donated one of her kidney and for this



operation also the defacto complainant helped financially. Even after the operation, it is alleged that A1 and the defacto complainant were not in good terms. Unfortunately, A1 died due to kidney failure on 22.06.2021. The allegations against A2 and A3 is that they refused to repay back the amount that was given by the defacto complainant towards various expenses and have also refused to return back the jewellery to the defacto complainant. That apart, allegations have also been made against A2 and A3 to the effect that they only instigated A1 and they did not allow the defacto complainant to live peacefully with A1.

8.It must be borne in mind that during the pendency of the proceedings, substantial amount was settled in favour of the defacto complainant and out of 72 sovereigns which was claimed by the defacto complainant, 50 sovereigns were returned back to the defacto complainant. Hence the focus of the case and the main ground that was urged on the side of the defacto complainant is now with regard to the alleged cruelty committed by them and the alleged instigation of A1 to commit cruelty against the defacto complainant.

9.It is an admitted case that A3 was living in United States. The



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defacto complainant therefore has taken a stand that various whatsapp messages and videos were circulated which will show that A2 and A3 were repeatedly instigating A1. For that purpose, CrI.O.P(MD)No.SR 48587 of 2023 has been filed by the defacto complainant to retrieve the whatsapp messages by the police in order to establish the involvement of A2 and A3.

10.The death of A1 and the subsequent developments whereby money and the jewels were handed over to the defacto complainant, has substantially watered down the case. It is quite far fetched to allege that A3 was sitting in United States and instigating A1. It is also borne out by the records that A1 was suffering from kidney failure from 2016 onwards and even as per the final report, it was A2, who donated one of her kidney in the year 2018. Hence the family was struggling due to the health condition of A1. Unfortunately, he died on 22.06.2021. Hence to conduct a case at this stage will be akin to flogging a dead horse.

11.This Court must bear in mind the judgment of the Apex Court passed in *Achin Gupta Vs. State of Haryana and Another* reported in **2024 SCC Online SC 759** and the relevant portions are extracted hereunder

"31. We are of the view that the category 7 referred to



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above should be taken into consideration and applied in a case like the one on hand a bit liberally. If the Court is convinced by the fact that the involvement by the complainant of her husband and his close relatives is with an oblique motive then even if the FIR and the chargesheet disclose the commission of a cognizable offence the Court with a view to doing substantial justice should read in between the lines the oblique motive of the complainant and take a pragmatic view of the matter. If the submission canvassed by the counsel appearing for the Respondent No. 2 and the State is to be accepted mechanically then in our opinion the very conferment of the inherent power by the Cr.P.C. upon the High Court would be rendered otiose. We are saying so for the simple reason that if the wife on account of matrimonial disputes decides to harass her husband and his family members then the first thing, she would ensure is to see that proper allegations are levelled in the First Information Report. Many times the services of professionals are availed for the same and once the complaint is drafted by a legal mind, it would be very difficult thereafter to weed out any loopholes or other deficiencies in the same. However, that does not mean that the Court should shut its eyes and raise its hands in helplessness, saying that whether true or false, there are allegations in the First Information Report and the chargesheet papers disclose the commission of a cognizable offence. If the allegations alone as levelled, more particularly in the case like the one on hand, are to be looked into or considered then why the investigating agency thought fit to file a closure report against the other co-accused? There is no answer to this at the end of the learned counsel appearing for the State. We say so, because allegations have been levelled not only against the Appellant herein but even against his parents, brother & sister. If that be so, then why the police did not deem fit to file chargesheet against the other co-accused? It appears that even the investigating agency was convinced that the FIR was nothing but an outburst arising from a matrimonial dispute.

32. Many times, the parents including the close relatives of the wife make a mountain out of a mole. Instead of salvaging the situation and making all possible endeavours to save the marriage, their action either due to ignorance or on



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account of sheer hatred towards the husband and his family members, brings about complete destruction of marriage on trivial issues. The first thing that comes in the mind of the wife, her parents and her relatives is the Police, as if the Police is the panacea of all evil. No sooner the matter reaches up to the Police, then even if there are fair chances of reconciliation between the spouses, they would get destroyed. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences are mundane matters and should not be exaggerated and blown out of proportion to destroy what is said to have been made in the heaven. The Court must appreciate that all quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A very technical and hyper sensitive approach would prove to be disastrous for the very institution of the marriage. In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned. The only reason why we are saying so is that instead of handling the whole issue delicately, the initiation of criminal proceedings would bring about nothing but hatred for each other. There may be cases of genuine ill-treatment and harassment by the husband and his family members towards the wife. The degree of such ill-treatment or harassment may vary. However, the Police machinery should be resorted to as a measure of last resort and that too in a very genuine case of cruelty and harassment. The Police machinery cannot be utilised for the purpose of holding the husband at ransom so that he could be squeezed by the wife at the instigation of her parents or relatives or friends. In all cases, where wife complains of harassment or ill-treatment, Section 498A of the IPC cannot be applied mechanically. No FIR is complete without Sections 506(2) and 323 of the IPC. Every matrimonial



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conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty.

...

37. Before we close the matter, we would like to invite the attention of the Legislature to the observations made by this Court almost 14 years ago in Preeti Gupta (supra) as referred to in para 26 of this judgment. We once again reproduce paras 34 and 35 respectively as under:

“34. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. 35. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law. We direct the Registry to send a copy of this judgment to the Law Commission and to the Union Law Secretary, Government of India who may place it before the Hon’ble Minister for Law and Justice to take appropriate steps in the larger interest of the society.”

38. In the aforesaid context, we looked into Sections



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85 and 86 respectively of the Bharatiya Nyaya Sanhita, 2023, which is to come into force with effect from 1st July, 2024 so as to ascertain whether the Legislature has seriously looked into the suggestions of this Court as made in Preeti Gupta (supra). Sections 85 and 86 respectively are reproduced herein below:

“Husband or relative of husband of a woman subjecting her to cruelty.

85. Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Cruelty defined.

86. For the purposes of section 85, “cruelty” means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.” "

12.As held by the Apex Court, the facts of the present case also clearly show that the normal bickerings in a family life has been blown out of proportions and the defacto complainant is trying to make a mountain out of a molehill.



13. Useful reference can also be made to the judgment of the Apex

Court in ***Dara Lakshmi Narayana and others Vs. State of Telangana and another*** reported in **2024 SCC online SC 3682** and the relevant portions are extracted hereunder:

"31. Further, this Court in [Preeti Gupta vs. State of Jharkhand](#) (2010) 7 SCC 667 held that the courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment by the husband's close relatives who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complainant are required to be scrutinized with great care and circumspection.

32. We, therefore, are of the opinion that the impugned FIR No.82 of 2022 filed by respondent No.2 was initiated with ulterior motives to settle personal scores and grudges against appellant No.1 and his family members i.e., appellant Nos.2 to 6 herein. Hence, the present case at hand falls within category (7) of illustrative parameters highlighted in [Bhajan Lal](#). Therefore, the High Court, in the present case, erred in not exercising the powers available to it under [Section 482 CrPC](#) and thereby failed to prevent abuse of the Court's process by continuing the criminal prosecution against the appellants."

14. The Apex Court has repeatedly held that the Courts must be extremely careful and cautious while dealing with the matrimonial cases and



particularly when the complaint is made against the relatives. There is always a tendency to rope in the relatives to settle scores in a matrimonial dispute.

15.Continuation of the criminal proceedings as against A2 and A3 will only result in abuse of process of law since very vague allegations have been made against them which does not constitute any offence and this Court also takes into consideration the subsequent developments which have been recorded supra. Therefore, this Court is inclined to exercise its jurisdiction under Section 482 Cr.P.C.

16.Insofar as the proceedings initiated under the Domestic Violence Act, there is no scope for the defacto complainant to claim maintenance from the mother-in-law, who is already aged about 69 years. Insofar as others are concerned, they are not liable to pay any maintenance to the defacto complainant. The reasoning that has been given in the quash petition will equally apply to the domestic violence case also. In fact, the defacto complainant has also roped in the husband of the sister-in-law in the domestic violence proceedings. The said proceedings is also an abuse of process of law which requires the interference of this Court under Article



227 of the Constitution of India.

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17.In the light of the above discussion, the proceedings in C.C.NO.200 of 2022 on the file of the Additional Mahila Court, Trichy, is hereby quashed and accordingly, the criminal original petition in CrI.O.P(MD)No.16823 of 2022 is allowed. The proceedings in D.V.C.No. 37 of 2022 on the file of the learned Judicial Magistrate No.I, Tirunelveli, is hereby quashed and accordingly, the civil revision petition is allowed.

18.Consequently, connected miscellaneous petitions are closed.

19.In the light of orders passed in CrI.O.P(MD)No.16823 of 2022 and C.R.P(MD)No.1167 of 2023, the criminal original petition in CrI.O.P(MD)No.SR 48587 of 2023 is closed.

08.01.2025

Internet :Yes
Index :Yes/No
NCC :Yes/No
LR



To

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1. The Additional Mahila Court,
Trichy.

2. The Inspector of Police,
All Women Police Station,
Srirangam,
Trichy City, Trichy.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

copy to

The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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N.ANAND VENKATESH, J.

LR

**Crl.O.P(MD)No.16823 of 2022
and
C.R.P(MD)No.1167 of 2023
and
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