



CrI.O.P.No.11836 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: **29.07.2022**

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.11836 of 2022
and CrI.M.P.No.6698 of 2022

1. Subburaj

2. Maheswari

.. Petitioners/A2 & A3

Vs.

1. State rep by
Inspector of Police,
W-27, All Women Police Station,
Vadapalani, Chennai - 600 026.
(Crime No.17 of 2021)

2. Sumitha

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.796 of 2022 pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioners : Mr.M.Mohamed Riyaz

For Respondent 1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For Respondent 2 : No appearance



ORDER

WEB COPY

This petition has been filed by A2 and A3 seeking to quash the proceedings in C.C.No.796 of 2022 pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai for offences punishable under Sections 498(A) and 406 of IPC r/w Section 34 of IPC and Section 3(1) of the Dowry Prohibition Act.

2. The case of the prosecution is that the petitioners (A2 & A3) are the parents of A1. A1 and the second respondent / defacto complainant were in love affair for two years and thereafter they got married on 11.09.2019. At the time of marriage, the defacto complainant was provided with 80 sovereigns of gold and other house hold articles as sreedhana. Thereafter, the defacto complainant claims that A1 forcibly took her jewels and handed it over to A3's sister in the guise of keeping it safely. Thereafter, A1 and A2 compelled the defacto complainant to pledge jewels weighing 40 sovereigns in the bank and they have also demanded cash and jewels from the defacto complainant. Further, the defacto complainant came to know that A1 is having an affair with another girl and thereafter A1 started abusing the defacto complainant. With the above allegations, prosecution has been



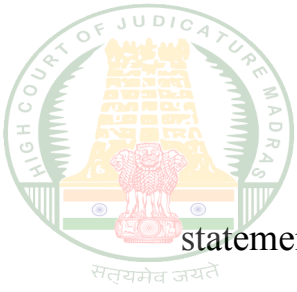
Crl.O.P.No.11836 of 2022

launched against A1 and the petitioners herein for the offences punishable under Sections 498(A) and 406 of IPC r/w Section 34 of IPC and Section 3(1) of the Dowry Prohibition Act.

3. The learned counsel appearing for the petitioners would submit that admittedly, it is a love marriage between A1 and the defacto complainant and after their marriage they are residing separately. The only allegation as against the petitioners is that at their instigation A1 has caused cruelty and took away the jewels of the defacto complainant. It is also contended by the learned counsel for the petitioners that such allegations were pressed into service only due to the strained marital relationship between A1 and the defacto complainant. Except the above statement, there is no other allegation found as against these petitioners.

4. Despite service of notice to the second respondent/defacto complainant and the name of the second respondent/defacto complainant has been printed in the cause list, none appeared for the defacto complainant.

5. The learned Additional Public Prosecutor appearing for the first respondent police would submit that the defacto complainant in her



CrI.O.P.No.11836 of 2022

statement has alleged that cruelty has been caused to her by A1 due to the instigation of the petitioners herein and therefore opposed quashing of the proceedings as against the petitioners.

6. I have heard the learned counsel on either side and also perused the records carefully.

7. Normally when the materials unearthed by the prosecution prima facie discloses commission of the offence, which requires trial, the Court while exercising power under Section 482 of Cr.P.C, will not venture into the probative value of the statements and will not assume the role of a trial Court by conducting a mini trial. But, at the same time, if the Court finds that prosecution has been maliciously instituted with an ulterior motive and the accused being in-laws have been unnecessarily harassed and implicated in a matrimonial disputes, there is no bar on the powers of this Court to go into the materials and find out whether there are materials, which requires a trial.

8. On a perusal of the entire materials, particularly, Section 161 of Cr.P.C. statement of the defacto complainant, which indicates that marriage between her and A1 was a love marriage and after the marriage both were



Crl.O.P.No.11836 of 2022

residing separately at Virugambakkam. A perusal of the entire allegation in

WEB C its entirety, it can be seen that the main grievance of the defacto complainant

is with regard to the jewels, said to have been given by her parents to A1.

According to her A1 converted the jewels and sold it. The only allegation

made against the petitioners herein is that such things have happened at the

instigation of the petitioners. With regard to the instigation or the manner in

which such instigation fructified into action has not been stated by the

defacto complainant. Therefore, an omnibus allegation has been made as

against the family members of A1.

9. In a matrimonial dispute, such statement alone is not sufficient to constitute any of the offence. Admittedly, the jewels have not been entrusted to the petitioners but it was given only to A1 at the time of marriage. Merely because A1 happens to be the son of the petitioners, the entire family members cannot be clothed with criminal liability, particularly when the husband and wife are residing separately. Therefore, in a matrimonial dispute, based on the omnibus allegations, the entire family members cannot be implicated. On a perusal of the materials and the statement of the defacto complainant, this Court is of the firm view that the petitioners have been unnecessarily implicated in a matrimonial dispute between A1 and the defacto complainant, merely because the petitioners were the parents of A1.



Crl.O.P.No.11836 of 2022

WEB COPY 10. Such view of the matter, even the entire allegation taken on its face value would not constitute any offence as against the petitioners. Therefore, the criminal proceedings in C.C.No.796 of 2022, pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai as against the petitioners herein namely A2 and A3 alone stand quashed. Accordingly, the criminal original petition is allowed. Consequently, the connected miscellaneous petition is closed.

29.07.2022

kk

To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
W-27, All Women Police Station,
Vadapalani, Chennai - 600 026.
3. The Public Prosecutor,
Madras High Court.



WEB COPY



CrI.O.P.No.11836 of 2022

N.SATHISH KUMAR, J.

kk

CrI.O.P.No.11836 of 2022
and CrI.M.P.No.6698 of 2022

29.07.2022