

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.06.2015

Delivered on : 10.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.11551 of 2015

Ilangovan

... Petitioner

Versus

The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar,
Chennai-83.

... Respondent

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the amended charge sheet filed in SC.No.121 of 2014 on the file of the Hon'ble Mahila Court Judge, Chennai and quash the same.

For Petitioner : Mr.M.Vijaya Kumar

For Respondent : Mr.C.Emalias, Addl. Public Prosecutor

O R D E R

Seeking to quash the amended charge sheet filed in SC.No.121 of 2014 on the file of the Mahila Court, Chennai.

2. Heard Mr.M.Vijaya Kumar, learned counsel for the petitioner and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent.

3. The 1st accused who is the petitioner herein is seeking to quash the amended final report that has been filed by the respondent police, pursuant to a direction from this Court for further investigation under Section 173[a] Cr.P.C. It may be necessary to narrate the brief history of the case. For the sake of convenience, the parties will be referred to by their name.

4. Ilangovan [petitioner/1st accused] got married to Loganayagi [defacto complainant] on 13.06.1985. It is alleged by Loganayagi that her husband and his relatives demanded more and more dowry from her and subjected her to untold cruelty. It is alleged by Loganayagi that on 26.03.1992, Ilangovan approached her in the guise of wanting to have sex with her and he caused tear to her private part with a blade.

5. It may be relevant to state that no complaint was lodged by Loganayagi immediately. After Ilangovan filed a petition for divorce, Loganayagi lodged a complaint with the respondent police on 25.11.1993 making allegations of dowry demand and cruelty against his family members. Based on the complaint given by Loganayagi, the respondent police filed a complaint in Crime No.18 of 1993 for the offences under Section 498A, 406 IPC and Section 4 of the Dowry Prohibition Act, against Ilangovan and seven others.

6. The police completed the investigation and filed a Final Report before the XVII Metropolitan Magistrate, Saidapet for the offences under Section 498A, 406 IPC and Section 4 of the D.P. Act which was taken on file as C.C.No.1121 of 1995. Loganayagi was not satisfied with the investigation conducted by the police and therefore, she approached this Court in Crl.O.P.No.42176 of 2003 for altering the penal provisions to Section 307 and 507 IPC. This Court by order dated 24.04.2004 in Crl.O.P.No.42176 of 2003 directed the Investigating Officer to file an application under Section 173[8] Cr.P.C before the Trial Court for further investigation.

7. Pursuant to the order passed by this Court in Crl.O.P.No.42176 of 2003, the Investigating Officer filed an application under Section 173[8] Cr.P.C for further investigation and he examined Dr.Mangayarkarasi who gave treatment to Loganayagi on 26.03.1992. He also collected the treatment details from Dr.Mangayarkarasi. Thus the Investigating Officer has collected materials to show that Loganayagi sustained injuries on her private parts on 26.03.1992 and she was treated by Dr.Mangayarkarasi. This evidence simpliciter cannot lead to the interference that there was an attempt on the life of Loganayagi. Therefore, the Investigating Officer took steps to record the statement of Loganayagi and she consistently refused to give any statement. He even attempted to have her statement recorded under Section 164 Cr.P.C by the V Metropolitan Magistrate, Egmore. But Loganayagi did not co-operate. This is what the Investigating Officer has stated in the amended Final Report :

"On 14.07.2006, 24.07.2006, 10.01.2007, 03.10.2007, 12.05.2008, 04.08.2009, 28.11.2010 and 06.12.2010, subpoena sent to this complainant for recording statement of this witness u/s 164 Cr.P.C before the learned V Metropolitan Magistrate Court, Egmore. After receiving the subpoena she came to the Court and she refused to give the 164 Cr.P.C statement before the above said court.

After getting Deputy Director of Prosecution's opinion I altered the section and included 506[ii], 307 IPC in addition to already filed charge sheet in C.C.No.509/93 before this Hon'ble Court."

8. Despite the above, the Investigating Officer filed an amended Final Report on 02.05.2011 before the learned Magistrate and the entire case has now been committed to the Court of Sessions

and is now pending trial in SC.No.121 of 2014 before the Mahila Court, Chennai.

9. This Court meticulously perused the investigation records and found that Loganayagi and this petitioner got married on 13.06.1985. It is stated by her that immediately after marriage, differences cropped up between her husband and her. The incident in which Loganayagi suffered injuries on private parts is said to have occurred on 26.03.1992. Only after her husband initiated divorce proceedings, she went and lodged a complaint to the police based on which, a case in Crime No.18 of 1993 for the offences under Section 498A and 406 IPC and Section 4 of the D.P. Act was registered by the police on 25.11.1993. Of course, delay in registering the FIR cannot be held to be fatal in all cases, especially in matrimonial cases, where it is quite understandable that women will not go immediately to the police station and lodge a complaint and they would do everything possible for an amicable settlement.

10. On reading of the averments of Loganayagi in the complaint with regard to the incident that took place on 26.03.1992, she has stated that her husband had cut her perennial part with a blade on 26.03.1992 and thus subjected her to cruelty. Dr.Mangayarkarasi in her statement to the police has not stated that the said injury in the ordinary course of nature would cause death. This Court is aware of the fact that it is not necessary that for fastening criminal liability under section 307 IPC, the victim should have suffered an injury at all. For example, A opens fire at B. But B ducks and the bullet passes over B's head. Though B is not injured, A can be prosecuted under Section 307 IPC. Now, this Court has to see whether the petitioner had any intention to commit the murder of Loganayagi.

11. The complaint and statement of Loganayagi that has already been recorded does not show that the petitioner had any such intention. If Loganayagi had given a 164 Cr.P.C statement as requested by the police and in that statement, if she had stated that her husband had the intention to commit murder, then the contention of the petitioner can be rejected outright. Though the evidence of Dr.Mangayarkarasi is relevant under Section 45 of the Evidence Act, it can only corroborate the evidence of Loganayagi that there was an attempt by the petitioner to murder her. Medical opinion of this nature by itself cannot fasten criminal liability for a charge under Section 307 IPC.

12. In view of the fact that Loganayagi had refused to even give a statement under Section 164 Cr.P.C before the V Metropolitan Magistrate as stated by the Investigating Officer. The filing of amended Final Report for the offence under Section 307 IPC is not sustainable in the facts and circumstances of the case.

13. In the result, this petition is allowed and the amended Final Report in SC.No.121 of 2014 on the file of Mahila Court, Chennai is quashed and the learned Judge is directed to send back

the case records to the committal court for disposal in accordance with law. The Trial Court shall also examine the feasibility of framing a charge under Section 325 or 326 IPC, in view of the statement of Dr.Mangayarkarasi and the treatment records that have been submitted by her. The prosecution shall examine Dr.Mangayarkarasi and other witnesses who were cited in the amended Final Report.

14. With the above direction, this petition is allowed. The trial shall be completed within a period of six months, from the date of receipt of records from the Mahila Court. If the accused do not co-operate with the trial, the Trial Court is at liberty to cancel their bail and remand them to custody under Section 309 IPC and proceed with the trial.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1. The Mahila Court, Judge, Chenna.
2. The Inspector of Police,
W-26, All Women Police Station,
Ashok Nagar, Chennai-83.
3. The Public Prosecutor, High Court, Madras.

+2 ccs to Mr.M. Vijayakumar, Advocate, S.R.No.26104

KU(CO)
EU(18/06/2015)

WEB COPY

CRL.O.P.No.11551 of 2015