

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.07.2015

Pronounced on : 20-11-2015

Coram :

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 612 of 2014
and
M.P. No. 1 of 2014

1. M. Rathinavelu
2. R. Padmini
3. Rajarajeshwari
4. R. Elumalai
5. R. Viswanathan

... Petitioners

Versus

1. The State represented by
Inspector of Police
G-3, Kilpauk Police Station
Chennai

2. D. Sangeetha
(R2 impleaded as per the order dated
21.07.2014 passed in MP No. 3 of 2014
in CrI.RC No. 612 of 2014)

.. Respondents

Criminal Revision Case filed under Section 397 and 401 of Criminal Procedure Code against the order dated 15.05.2014 passed in CrI.M.P. No. 1112 of 2014 in C.C. No. 6488 of 2012 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.

For Petitioners : Mr. M. Raghupathy, Senior Advocate
for M/s. R.M. Kingsly

For Respondents : Mr.S.Shanmuga velayutham Assistant by
Mr. V. Arul
Government Advocate (CrI.side) for R1

Mr. A. Thiagarajan, Senior Counsel
for Mr. S. Ramesh Kumar for R2

ORDER

The accused in C.C. No. 6488 of 2012 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai are the revision petitioners in this Criminal Revision Case. They are aggrieved by the order dated 15.05.2014 passed by the trial court whereby the petition filed by them under Section 239 of Cr.P.C. to discharge them from the criminal proceedings, has been dismissed.

2. The case of the prosecution, in brief, is as follows:-

(i) The first accused is the father in law of defacto complainant. The second accused is her mother-in-law, the third accused is the sister-in-law and fourth accused is the husband of the third accused. The fifth accused is the husband of the defacto complainant. According to the defacto complainant, one day prior to her marriage with the fifth accused on 26.08.2014, all the accused came to her house and demanded a sum of Rs.50 lakhs towards dowry and a sum of Rs.25 lakhs was paid to them on the same day. On the date of marriage on 27.08.2014, the father of the defacto complainant gave 100 sovereigns of gold as demanded by the accused. However, on the date of marriage, the accused have made a demand for additional of Rs.25 lakhs out of which Rs.15 lakhs was to be given to A-3 and A-4 and Rs.10 lakhs to be set apart for the marriage expenses of Divyalakshmi, younger sister of A-5.

(ii) Between 09.09.2004 and 17.05.2005, the defacto complainant and the fifth accused stayed at Seattle, United States of America. Even during such stay, the accused 1 to 4 have instigated the fifth accused to harass and compel the defacto complainant to pay the balance Rs.25 lakhs towards dowry. On this pretext, the fifth accused harassed the defacto complainant during their stay at America. Unable to bear the harassment, the defacto complainant returned to India on 17.05.2005. However, on the advise of elders and after discussion, the defacto complainant went back to United States of America on 07.07.2005. During the course of such stay, A-5, at the instigation of A-2, compelled and harassed the defacto complainant to swallow certain tablets due to the effect of which the defacto complainant became unconscious. Thereafter, A-2 and A-5 have left the house while the defacto complainant was lying unconscious by locking the door. After gaining consciousness, the defacto complainant called the police and on

their intervention she was rescued. Thus, once again, the defacto complainant returned to India on 26.02.2006 unable to bear the harassment meted out to her at the hands of A-2 and A-5. Once again, there was a mediation by the elders of both sides and as per their advise, the defacto complainant went back to America on 12.03.2006.

(iii) During April 2006, the defacto complainant became pregnant, but A-2 and A-5 attempted to abort the pregnancy. In fact, the fifth accused kicked the defacto complainant in her abdomen when she was pregnant to ensure miscarriage of the pregnancy. In such circumstances, the defacto complainant was unable to bear the harassment and torture, hence, she left America to India with the help of her father.

(iv) After the defacto complainant returned to India, A-2 and A-3 came to the residence of the defacto complainant at Chennai. During their visit, they have engaged in a quarrel with the defacto complainant and dragged her out and forced her to come to the hospital to abort the pregnancy and she was rescued by her cousin. Ultimately on 14.01.2007, the defacto complainant gave birth to a female child and the same was informed to the accused. However, none of them have even come to see the child. However, on 09.06.2007, A-5 came to the house of the defacto complainant and engaged in a quarrel. During such altercation, A-5 attacked the defacto complainant and attempted to take away the child. When the attempt of A-5 to take away the child was resisted, A-5 scolded the defacto complainant and her parents in vulgar words and threatened them with dire consequences.

(v) On 18.08.2007, the defacto complainant lodged a complaint against the accused before the Vepery Police Station and it was registered as 70/CSR/AWPS/ 2007. On the basis of such complaint, the police have called upon both sides and advised them to settle the dispute amicably.

(vi) During April 2008, the defacto complainant joined Ramachandra Medical College to pursue M.S. Degree course. In order to ensure that the defacto complainant discontinue the course, the fifth accused filed HMOP No. 954 of 2008 before the Family Court, Chennai for restitution of conjugal rights. During March 2009, HMOP No. 954 of 2008 was withdrawn by the fifth accused on assurance that he will look after the defacto complainant well. In such circumstance, the defacto complainant discontinued her further studies and accompanied the fifth

accused to America with a hope to get a fresh lease of life. However, contrary to her expectation, she was subjected to physical and mental torture with demand for dowry to the tune of Rs.10 lakhs out of Rs.25 lakhs. Further, on 06.12.2009, the accused 1 to 5 demanded a sum of Rs.5,00,000/- from the father of defacto complainant even for meeting the expenses for the ear boring ceremony of the minor daughter Amritha and it was also paid by the father of the defacto complainant. On 16.05.2011, the defacto complainant, A-5 and the minor child came to India to attend the marriage ceremony of the second sister in law of the defacto complainant namely Divyalakshmi. At this juncture, on 17.05.2011, the accused came to the residence of defacto complainant and made a demand for Rs.10 lakhs to meet the marriage expenses of Divyalakshmi. The parents of the defacto complainant expressed their inability to pay such amount and on such refusal, they have demanded 50 sovereigns of gold jewels belonging to the defacto complainant with an assurance to return the same, therefore, the jewels were entrusted. However, the gold jewels were never returned to the defacto complainant.

(vii) On 07.06.2011, A-1, A-2, A-5, defacto complainant along with the minor child left India to United States of America. During their stay, on 28.03.2012, A-5 harassed and tortured the defacto complainant in all forms and manifestations. Ultimately, A-5 has driven the defacto complainant and the child out of the matrimonial home and locked the door from inside. The defacto complainant and the minor child were made to stand out of the matrimonial home in the very cold weather. The defacto complainant sought the help of the American police and they forced A-5 to open the door. In this context, A-5 was arrested and he was produced before the Court. Consequently, a "No Contact Order" has been passed by the District Court of Washington for the Country of King in Case No. 412072819 on 25.05.2012 under the Domestic Violence Act and no contact order was passed for endangering the life of the defacto complainant and the child, thereby A-5 was restrained from gaining access towards the child in any manner. After this incident, defacto complainant once again returned to India. In the meantime, on 05.05.2012, A-1 to A-4 came to the residence of defacto complainant and demanded the dowry amount of Rs.10 lakhs from her parents and threatened them that if the amount is not paid, they would kill the defacto complainant and the minor child at U.S.A..

(viii) The defacto complainant, narrating all the above events, has filed a private complaint on 18.05.2012 before the

learned II Metropolitan Magistrate, Egmore, Chennai and it was referred to the respondent/police for investigation. Upon investigation, the respondent police has registered a case in Crime No. 461 of 2012 for the offences punishable under Sections 498-A, 406 and 506 (i) of IPC against the accused. Upon investigation, a charge sheet was filed on 31.12.2012 praying to try the accused for the offences punishable under Sections 498-A, 406, 420 and 506 (i) of IPC read with Section 4 and 6 of Dowry Prohibition Act. The charge sheet was taken on file by the trial Court in C.C. No. 6488 of 2012. During the pendency of the trial in C.C. No. 6488 of 2012, the petitioners/accused have filed Crl.M.P. No. 1112 of 2014 in C.C. No. 6488 of 2012 for discharging them from the purview of criminal prosecution by contending that there is no material brought on record to connect them to the offences complained of. The trial Court, by order dated 15.05.2014, refused to discharge the petitioners/accused by holding that their guilt or involvement in the offences alleged by the defacto complainant can be gone into only during the course of trial and that the accused has to stand trial. Aggrieved by the order dated 15.05.2014 of the trial court, the present Criminal Revision Case is filed.

3. The learned Senior counsel appearing for the petitioners would contend that there is no documentary evidence produced by the prosecution to show the alleged entrustment of the properties in the form of jewels or there was any evidence to prove that the same were unlawfully withheld by the petitioners/ accused. There is no specific allegations or overt act attributed against the petitioners 1 to 4/accused 1 to 4 in the offence complained of, especially harassment or cruelly treating the defacto complainant and therefore the court below ought to have atleast discharged the accused 1 to 4 from the purview of criminal prosecution. The trial court failed to take note of the fact that the accused No.3 is the sister-in-law of the defacto complainant and accused No.4 is the husband of accused No.3, they got married in the year 1999 and residing separately at Anna Nagar, Chennai. The accused Nos. 3 and 4 were falsely implicated in this case and they have nothing to do with the cruel treatment or harassment meted out to the defacto complainant, as alleged. The accused Nos. 3 and 4 are in no way connected with the matrimonial relationship between the fifth accused and the defacto complainant. The learned senior counsel for the petitioners further pointed out that the complaint was filed 7 years after the marriage and the present complaint has been filed without giving any complaint to the Officer nominated under the Prevention of Dowry Prohibition Act. The trial Court

also failed to take note of the fact that even according to the defacto complainant, the offences alleged against the accused have been committed both in India and outside India and therefore before prosecuting the accused, the prosecution ought to have obtained sanction as contemplated under Section 188 and 189 of Criminal Procedure Code. In this context, the learned Senior counsel for the petitioners relied on the decision of the Honourable Supreme Court in the decision rendered in the case of (Thota Venkateswaralu vs. State of Andhra Pradesh through Principal Secretary and another) reported in (2011) 9 Supreme Court Cases 527 to contend that if the offence committed in India as well as out side the Country, sanction for prosecution is necessary. Though, for framing of charge, sanction is not necessary, before trial such permission has to be obtained by the prosecution. In Para No. 12 and 13 of this decision, the Honourable Supreme Court held in para No. 12 to 15 which are extracted herein as follows:-

"12. The question which we have been called upon to consider in this case is whether in respect of a series of offences arising out of the same transaction, some of which were committed within India and some outside India, such offences could be tried together, without the previous sanction of the Central Government, as envisaged in the proviso to Section 188 Cr.P.C.

13. From the complaint made by the Respondent No.2 in the present case, it is clear that the cases relating to alleged offences under Section 498-A and 506 I.P.C. had been committed outside India in Botswana, where the Petitioner and the Respondent No.2 were residing. At best it may be said that the alleged offences under Sections 3 and 4 of the Dowry Prohibition Act occurred within the territorial jurisdiction of the Criminal Courts in India and could, therefore, be tried by the Courts in India without having to obtain the previous sanction of the Central Government. However, we are still left with the question as to whether in cases where the offences are alleged to have been committed outside India, any previous sanction is required to be taken by the prosecuting agency, before the trial can commence.?

14. The language of Section 188 Cr.P.C. is

quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal's case (supra), it was held that sanction under [Section 188 Cr.P.C.](#) is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even in his concurring judgment, R.M. Sahai, J., observed as follows :-

"29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one -- commission of an offence; second -- by an Indian citizen; and third -- that it should have been committed outside the country."

15. Although the decision in Ajay Aggarwal's case (supra) was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of [Section 188 Cr.P.C.](#) The proviso to [Section 188](#), which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of [Section 188](#) is required till commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence."

4. The learned Senior counsel for the petitioners would contend that the present complaint has been filed without exhausting the remedy available before the Dowry Prohibition

Officer and therefore, the present complaint is not maintainable before the trial Court. In this context, the learned Senior counsel for the petitioners relied on the decision of this Court in the case of (Romaiah vs. State by Inspector of Police, All Women Police Station, Chintadripet Police Station, Chennai - 2) reported in 2008 3 MLJ 1303 wherein it was held that the object behind enacting Section 498-A of IPC and the Dowry Prohibition Act is to check and curb the menace of dowry and at the same time to save the matrimonial homes from destruction. In the said decision, this Court has dealt with the role of the Dowry Prohibition Officer and issued guidelines for the Police Department/ Government while dealing with matrimonial offences. It was also further pointed out in this decision that when a complaint alleging demand of dowry is made, it is not necessary to cause arrest mechanically.

5. Next, the learned Senior counsel appearing for the petitioners placed reliance on the decision in the case of (Bhushan Kumar Meen vs. State of Punjab and others) reported in (2011) 8 Supreme Court Cases 438 to contend that when a complaint does not make out a prima facie case and it goes to trial and when the Courts find that such complaint has been filed based on misunderstandings between the parties, the accused can be discharged. In Para Nos. 13 and 14, it was held as follows:-

"13. In our view, the learned single Judge of the High Court did not appreciate the nature of the on-and-off relationship between the appellant and Respondent 2, which caused him to dismiss the appellant's application under Section 482 Cr.P.C. on the ground that there were serious allegations in the FIR which have been registered against the appellant regarding his alleged cruelty and maltreatment of Respondent 2 and even misappropriation by him.

14. We are unable to agree with the reasoning of the learned Single Judge, since from the entire records available it is clear that the complaint made by Respondent 2 did not make out a prima facie case to go to trial under Section 498-A of IPC."

6. The learned Senior counsel for the petitioners further relied on the decision of the Allahabad High Court in the case of (Umesh @ Banti and others vs. State of U.P. and another) reported in I (2013) DMC 480 wherein it was held that Court

should not frame charges mechanically. While framing charges on police report, if Magistrate finds that there is ground for presuming that accused has committed the offence, he can frame charge, but if the Magistrate found that the allegations made in the FIR are so absurd and inherently improbable on the basis of which it is not possible to proceed against the accused, they can be discharged.

7. Lastly, the learned Senior counsel appearing for the petitioners would contend that there is no evidence made available to show that the defacto complainant was cruelly treated during her stay at United States of America especially when the defacto complainant got pregnant during such stay with A-5. Therefore, the learned senior counsel for the petitioners pray for setting aside the order passed by the trial court by allowing this Criminal Revision Case.

8. On the other hand, the learned Government Advocate appearing for the first respondent would contend that the allegations raised by the petitioners that the prosecution did not obtain sanction for prosecuting them inasmuch as offences has been alleged to have been committed both in India and outside the Country is legally not sustainable. The learned Government Advocate submits that as per the decision of this Court in the case of (Muralikrishna vs. State (S.I. of Police), W-23, All Women Police Station, Royapettah, Chennai - 600 014 and others) reported in 2014-1-Law Weekly (Criminal) 264, when it is a continuing offence and such an offence is committed in India and in furtherance of that, further offence also has been committed in a foreign country, before trying the offence, previous sanction of the Central Government is not necessary. The learned Government Advocate also would contend that the prosecution has made available prima facie evidence against the accused to prove the offence complained against them. The allegations against the accused can only be proved during the course of trial and the present petition filed by them to discharge them from the purview of criminal prosecution is premature. The learned Government Advocate (Criminal side) appearing for the first respondent, therefore, would pray for dismissal of this Criminal Revision Case.

9. The learned Senior counsel appearing for the defacto complainant would contend that in the counter affidavit filed by the defacto complainant before the trial court as well as this Court, she has categorically brought out the sequence of events that led her to file the complaint against the accused. The

learned Senior counsel for the defacto complainant also would contend that in the complaint given by the defacto complainant and as per material documents made available by the prosecution while filing the charge sheet, a prima facie case has been made out. For framing charges against the accused, the trial Court has to look into whether a prima facie evidence has been made out against the accused, which is abundantly available in this case, for framing a charge and not for convicting the accused. The prosecution has brought on record the evidence of the witnesses recorded under Section 161 of Cr.P.C. which would clearly indicate that the offence complained of by the defacto complainant has been made out against the accused. In this context, the learned Senior counsel for the defacto complainant relied on the decision of the Honourable Supreme Court in the case of (Shoraj Singh Ahlawat and others vs. State of U.P. and another) AIR 2013 Supreme Court 52 to contend that where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. It is further contended that when the allegations made against the accused are specific not only against the husband but also against the parents-in-law of the complainant-wife, whether or not those allegations are true is a matter which cannot be determined at the stage of framing of charges. Any such determination can take place only at the conclusion of the trial. In para No.17 of this decision, it was held as follows:-

"17. Coming then to the case at hand, the allegations made against the appellants are specific not only against the husband but also against the parents-in-law of the complainant-wife. Whether or not those allegations are true is a matter which cannot be determined at the stage of framing of charges. Any such determination can take place only at the conclusion of the trial. This may at times put an innocent party, falsely accused of commission of an offence to avoidable harassment but so long as the legal requirement and the settled principles do not permit a discharge the Court would find it difficult to do much, conceding that legal process at times is abused by unscrupulous litigants especially in matrimonial cases where the tendency has been to involve as many members of the family of the opposite party as possible. While such tendency needs to be curbed, the Court will not be able to speculate whether the

allegations made against the accused are true or false at the preliminary stage to be able to direct a discharge. Two of the appellants in this case happen to be parents-in-law of the complainant who are senior citizens. Appellant No.1 who happens to be the father-in-law of the complainant-wife has been a Major General, by all means, a respectable position in the Army. But the nature of the allegations made against the couple and those against the husband, appear to be much too specific to be ignored at least at the stage of framing of charges. The Courts below, therefore, did not commit any mistake in refusing a discharge.

10. The learned Senior counsel for the defacto complainant also relied on the decision of this Court rendered in (Rathinam vs. State, rep. by the Inspector of Police, SPE.CBI.ACB, Chennai) reported in 2008 1 MLWN CrI.52 to contend that at the stage of framing charges, probative value of the materials on record cannot be gone into and materials on record to be accepted as true at that stage. In this decision, this Court followed the decision of the Honourable Supreme Court in the case of State of Maharashtra vs. Som Nath Thapa, 1996 SCC (CrI) 820 at 831.

11. The learned Senior counsel for the defacto complainant next placed reliance on the decision of the Honourable Supreme Court in the case of (Rashmi Kumar (Smt) vs. Mahesh Kumar Bhada) reported in (1997) 2 Supreme Court Cases 397 wherein the Honourable Supreme Court has held that at the time of taking cognisance of the offence, the Court has to consider only the averments made in the complaint or in the charge sheet filed under Section 173, as the case may be. It is not open for the Court, at that stage, to sit or appreciate the evidence with reference to the material and come to the conclusion that no prima facie case is made out. Relying on this decision, the learned Senior counsel for the defacto complainant vehemently contended that in the complaint given by the defacto complainant as well as the charge sheet filed by the prosecution abundant materials have been made available which would indicate a prima facie involvement of the accused in the offence complained of. The learned Senior counsel for the defacto complainant also brought to the notice of this Court that in the very same decision, the Honourable Supreme Court also observed that in matrimonial disputes where the allegations relate to continuing offence, the Courts has to exercise caution in quashing the

criminal proceedings and the power under Section 482 of Cr.P.C. has to be exercised sparingly to sub serve the interest of justice.

12. The learned Senior counsel for the second respondent also placed reliance on the counter affidavit filed before this Court wherein it was specifically pointed out that in the earlier round of litigation, A-5 has filed CrI.OP No. 30704 of 2012 praying to direct the first respondent therein viz., Deputy Commissioner of Police, Kilpauk Range to withdraw the look out Circular issued to the Immigration Officer, Chennai Airport against the fifth accused and permit him to go abroad. By order dated 04.01.2013, this Court observed that the investigation in this case has been completed and charge sheet is likely to be filed by the investigation officer. This Court, therefore, allowed the Criminal Original Petition by quashing the look out circular on condition that the fifth accused shall deposit Rs.10,00,000/- in the name of the minor Child Amirtha in any of the Nationalised Bank within a period of 10 days. It was also observed that if the presence of the fifth accused is required either by the investigating officer or by the learned Judicial Magistrate, he shall be secured by following the due process of law. As against the order dated 04.01.2013 passed by this Court, the fifth accused has filed SLP (Criminal) No. 1339 of 2015. When the Special Leave Petition was taken up for hearing on 17.12.2013, it was represented on behalf of the fifth accused that the fifth accused is intending to change some other counsel. Subsequently, when the case was listed for hearing before the Honourable Supreme Court on 28.02.2014, an undertaking was given on behalf of the fifth accused that he would appear before the trial court and cooperate for early disposal of the case. On the basis of such undertaking, the Special Leave Petition was disposed of by the Honourable Supreme Court. Subsequent to such order passed by the Honourable Supreme Court, the fifth accused appeared before the trial Court and received the charge sheet. Immediately after receiving the charge sheet, the petitioners have filed the instant application seeking discharge. The learned Senior counsel for the defacto complainant further submits that the filing of the Special Leave Petition before the Honourable Supreme Court and the undertaking given thereof by the fifth accused have been suppressed in the present Criminal Revision Case by the accused. Further, the fifth accused has suppressed the order passed against him by the American Court. Now, the fifth accused has left the Country.

13. As regards the allegations raised on behalf of the petitioners that the complaint has been given by the defacto complainant after 7 years and therefore the complaint is hit by the provisions of Section 468 of Cr.P.C, the learned Senior counsel for the defacto complainant relied on the decision of the Honourable Supreme Court in the case of (Vanka Radhamanohari (Smt) vs. Vanka Venkata Reddy and others) reported in (1993) 3 Supreme Court Cases 4, wherein it was held that the bar of limitation as enshrined under Section 468 of Cr.P.C. cannot be stretched to or made applicable to matrimonial disputes, where the allegations of cruelty, torture and assault by the husband or other members of the family to the complainant has to be examined on the basis of the complaint given by the wife. In Para No.7 of this judgment, it was held as follows:-

"7. It is true that the object of introducing Section 468 was to put a bar of limitation on prosecutions and to prevent the parties from filing cases after a long time, as it was though proper that after a long lapse of time, launching of prosecution may be vexatious, because by that time even the evidence may disappear. This aspect has been mentioned in the statement and object, for introducing a period of limitation, as well as by this Court in the case of *State of Punjab v. Sarwan Singh*. But, that consideration cannot be extended to matrimonial offences, where the allegations are of cruelty, torture and assault by the husband or other members of the family to the complainant. It is a matter of common experience that victim is subjected to such cruelty repeatedly and it is more or less like a continuing offence. It is only as a last resort that a wife openly comes before a Court to unfold and relate the day-to-day torture and cruelty faced by her, inside the house, which many of such victims do not like to be made public. As such, Courts while considering the question of limitation for an offence under Section 498A i.e. subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interest of justice".

14. The learned Senior counsel for the defacto complainant would contend that in any event, prima facie evidence has been made available against the accused and they have to stand trial. The trial Court has rightly appreciated the above said factual aspects and came to the correct conclusion that the petition filed by the accused for discharge is premature. The learned Senior counsel for the defacto complainant therefore submitted that the order passed by the trial Court warrants no interference by this Court and he prayed for dismissal of this Criminal Revision Case.

15. I heard the learned Senior counsel for the petitioners, learned Government Advocate (Crl.side) for the State and the learned Senior counsel for the defacto complainant. I have carefully examined the materials produced on record, including the order passed by the trial Court refusing to discharge the petitioners from the purview of criminal prosecution.

16. The main argument advanced on behalf of the petitioners is that for attracting the offences punishable under Section 498-A and Section 406 of IPC, there is no specific materials brought either by the defacto complainant or by the prosecution. The alleged entrustment of the properties to the accused has not been made out by producing any documents and consequently it has to be held that the offence under Section 406 of IPC, relating to Criminal Breach of Trust, is also not made out against the petitioners. It is mainly contended that the relationship between the defacto complainant and the fifth accused was on and off. On three occasion, the defacto complainant came back to India from America and whenever she came to India, she was sent back to America after mediation by elders. It is also contended that the complaint has not been given by the defacto complainant before the Dowry Prohibition Officer and therefore the complaint itself is not maintainable. It is further contended that the Accused 3 and 4 have nothing to do with the matrimonial dispute between the defacto complainant and the fifth accused and they were roped in falsely to wreck vengeance. It is further pointed out that the complaint was given after seven years from the date of marriage and it is hit by the provisions of Section 468 of Cr.P.C. It is also contended that since the offence alleged to have been committed in India and outside the Country, sanction for prosecution is necessary.

17. On the other hand, on behalf of the second respondent, it is contended that there is no bar in preferring a complaint after 7 years from the date of marriage especially when it is a continuous offence and last such offence was committed just prior to the date of complaint. It is further contended that there is no denial of the fact that the accused have demanded and offered Rs.25 lakhs as dowry and after receipt of such amount, they have raised additional demand. Such demand was made even before and after the marriage. Further, during the stay of the defacto complainant in India, she pursued Masters Degree in Medicine, however, in the guise of re-union, she was made to discontinue the course. From the date of marriage till the presentation of the complaint, the defacto complainant was subjected to inhuman treatment, harassment and cruelty in all forms and manifestation with demand for dowry. Even during the stay of the couple in America, the defacto complainant was to be rescued by the American police and the fifth accused was arrested. Ultimately, a "No Contact Order" was passed by the American Court against the fifth accused thereby depriving him to have access to the minor child. These facts, according to the learned Senior counsel for the defacto complainant, have to be assessed by the trial Court only during the course of trial and it is premature on the part of the accused to have filed the instant petition for discharge.

18. First let me deal with the contentions urged on behalf of the petitioners relating to limitation as envisaged under Sections 468 and 469 of Cr.P.C. It is contended on behalf of the petitioners that the complaint was given by the defacto complainant seven years after the marriage and therefore it is hit by the provisions of Section 468 and 469 of Cr.P.C. In this context, as rightly pointed out by the learned Government Advocate, when it is a continuing offence and such an offence is committed both within India and outside the Country, the question of limitation does not arise. This position of Law is reiterated by the Honourable Supreme Court in the case of (Vanka Radhamanohari (Smt) vs. Vanka Venkata Reddy and others) reported in (1993) 3 Supreme Court Cases 4, wherein it was held that the bar of limitation as enshrined under Section 468 of Cr.P.C. cannot be stretched to or made applicable to matrimonial disputes, where the allegations of cruelty, torture and assault by the husband or other members of the family to the complainant has to be examined on the basis of the complaint given by the wife. I hold that the argument advanced on behalf of the petitioners relating to limitation are hereby rejected.

19. Next, it has been urged on behalf of the petitioners that before initiating prosecution against the accused on the basis of the complaint given by the defacto complainant, previous sanction is necessary inasmuch as the alleged occurrence said to have been committed by the accused both within India and outside the Country. Even in the decision of the Honourable Supreme Court in (Thota Venkateswaralu vs. State of Andhra Pradesh through Principal Secretary and another) reported in (2011) 9 Supreme Court Cases 527 relied on by the learned Senior counsel for the petitioners, it was held that if the offence is alleged to have been committed in India as well as out side the Country, sanction for prosecution is necessary. Though, for framing of charge, sanction is not necessary, before trial such permission has to be obtained by the prosecution. Following this decision, this Court reiterated the same proposition of law in (Muralikrishna vs. State (S.I. of Police), W-23, All Women Police Station, Royapettah, Chennai - 600 014 and others) 2014-1-Law Weekly (Criminal) 264, Therefore, following the above said decisions, I hold that for framing charges, sanction is not necessary to be obtained by the prosecution and at this stage the question of the prosecution obtaining sanction from the Central Government does not arise. Consequently, this argument advanced on behalf of the petitioners is also rejected.

20. Next let me analyse as to whether prima facie case is made out in the complaint given by the defacto complainant as well as in the charge sheet filed by the prosecution. For finding out whether a prima facie case is made out by the defacto complainant, at the stage of framing of charge, it is well settled that the probative value or otherwise of the materials on record need not be looked into and the materials produced at this stage has to be accepted as true. This position of law is reiterated by this Court in the decision rendered in (Rathinam vs. State, rep. by the Inspector of Police, SPE.CBI.ACB, Chennai) reported in 2008 1 MLWN Cr1.52 following the decision of the Honourable Supreme Court in the case of State of Maharashtra vs. Som Nath Thapa, 1996 SCC (Cr1) 820 at 831. In the present case, the sequence of events narrated by the defacto complainant in the complaint relating to the demand and acceptance of dowry, matrimonial cruelty inflicted on her by the accused, the withdrawal of the post graduate course by the defacto complainant at the instance of the accused in the guise of re-union, the "No Contact Order" passed by the American Court against the fifth accused thereby depriving him to have access to the minor child and the receipt

of gold jewels with an assurance to return it to the defacto complainant for being used towards the marriage of younger sister of the fifth accused but not returned would only indicate a prima facie case for consideration. The defacto complainant, a Doctor by profession, has categorically stated in her complaint that one day prior to her marriage with the fifth accused, all the accused came to her house and demanded Rs.50 lakhs as dowry out of which Rs.25 lakhs was paid to the accused on that day. Not content with, according to the defacto complainant, the accused have raised their demand for dowry. These allegations, would indicate that a prima facie case has been made out by the defacto complainant in the complaint given by her. That apart, the prosecution has brought on record the evidence of the witnesses in the form of statement recorded under Section 161 of Cr.P.C. which would clinchingly establish that a prima facie case has been made out against the accused and the validity, correctness or otherwise of such evidence can only be looked into and examined at the time of trial in the criminal case.

21. It is seen from the records that one Durrirajan, one of the witnesses examined by the prosecution under Section 161 of Cr.P.C. has stated that even though the child was born on 14.01.2007, none of the accused have come to see the child. Only on 09.06.2007, the fifth accused came to see the child and on that day, he attempted to take away the child from the defacto complainant. He also deposed that when the defacto complainant was pursuing her higher studies, she was made to discontinue her course on the ground that she will be given a fresh lease of life and her matrimonial life would be peaceful. By such assurance, the defacto complainant was taken back from India to America. This part of the evidence of Durairajan corroborates and supports the allegations made by the defacto complainant in her complaint.

22. Mrs. Vasanthakumari, mother of the defacto complainant was examined who has narrated the sequence of events relating to demand and acceptance of the dowry amount by the accused on various dates. She has also stated that when the defacto complainant and fifth accused were staying in America, the other accused came to her house, made demand for dowry and on refusal, they have threatened to even kill the defacto complainant and the minor child living in America. A similar statement was given by one Suresh, one of the witnesses, who has given statement under Section 161 of Cr.P.C. The statement of almost all the witnesses are in corroboration with the allegations made by the defacto complainant in the complaint.

These statements, prima facie, makes out a case for proceeding the accused with the criminal prosecution and it is a matter to be decided in the course of trial.

23. The learned Senior counsel for the petitioners vehemently contend that the accused 3 and 4 were married in the year 1999 and are residing separately at Anna Nagar, Chennai and therefore, the trial Court ought to have held that they have nothing to do with the alleged offence. Such a contention urged on behalf of the petitioners cannot be countenanced. The materials placed on record prima facie indicates the involvement of the accused 3 and 4 in the offence complained of. In any event, such involvement of the accused 3 and 4 can be examined only at the time of trial and at this stage, this Court cannot hold that the accused 3 and 4 have not involved themselves in the offence complained of.

24. The learned Senior counsel for the petitioners would contend that there is a growing tendency to rope in all the family members in the criminal prosecution relating to matrimonial disputes without any material evidence against them and this is one such case. A similar submission was made before the Honourable Supreme Court and the Honourable Supreme Court had an occasion to consider such submission in the case in (Shoraj Singh Ahlawat and others vs. State of U.P. and another) AIR 2013 Supreme Court 52. The Honourable Supreme Court observed that so long as the legal requirement and the settled principles do not permit a discharge, the Court would find it difficult to do much, conceding that legal process at times is abused by unscrupulous litigants especially in matrimonial cases where the tendency has been to involve as many members of the family of the opposite party as possible. While such tendency needs to be curbed, the Court will not be able to speculate whether the allegations made against the accused are true or false at the preliminary stage to be able to direct a discharge. Applying the ratio laid down by the Honourable Supreme Court in the above decision to the facts and circumstance of the, this Court is of the view that it is not possible for this Court, at this stage, to examine whether the complaint given by the defacto complainant against the family members are true or false and it shall be tested and examined only at the time of trial.

25. The trial Court, in the order impugned in this Criminal Revision Case, has appreciated the above factual matrix and came to the conclusion that the allegations or otherwise made in the complaint given by the defacto complainant and the

charge sheet filed by the prosecution can only be gone into at the time of trial. Such a conclusion arrived at by the trial Court is based on the materials made available before it and therefore, in my opinion, the order passed by the trial Court deserves no interference and it is legally sustainable.

26. Before parting with, it is to be mentioned that the accused 1 and 2 are father and mother of the fifth accused and they are Senior Citizens. The third accused is the sister of the fifth accused. Having regard to the facts and circumstance of the case, this Court is of the view that their appearance shall be dispensed with before the trial Court except on those days where their presence is required. On all other dates of hearing in the criminal case, the accused 1 to 3 shall be represented by their advocates before the trial Court. Accordingly, the appearance of the Accused 1 to 3 before the trial Court is dispensed with for the present and they shall appear before the trial court as and when their presence is required. On all other days, the accused 1 to 3 shall be represented by their counsel before the trial Court.

27. It is seen from the records that the fifth accused has given an undertaking before the Honourable Supreme Court to appear before the trial Court and it was duly recorded by the Honourable Supreme Court in the order dated 28.02.2014. The fifth accused is therefore directed to comply with the undertaking given by him which was recorded in the order dated 28.02.2014 by the Honourable Supreme Court, appear before the trial court and cooperate for early disposal of the criminal case.

28. In the result, the Order dated 15.05.2014 passed in CrI.M.P. No. 1112 of 2014 in C.C. No. 6488 of 2012 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai is confirmed. The Criminal Revision Case is dismissed. Connected Miscellaneous Petition is closed. It is made clear that the trial Court shall take up the Calander Case on its file and deal with the same independently without being influenced by any of the observations made by this Court in this Criminal Revision Case.

Sd/-

Assistant Registrar(CCC)

True Copy

Sub Assistant Registrar

To

1.The Chief Metropolitan Magistrate
Egmore, Chennai

2.The Inspector of Police,
G-3, Kilpauk Police Station,
Chennai.

3.The Public Prosecutor,
High Court Madras.

+1cc to Mr.S.RameshKumar, advocate Sr.63080

+1cc to Mr.R.M.Kingsly, Advocate Sr.63341

Pre-delivery Order in
CrlRC. No. 612 of 2014

kji[col]
srg 27/11/2015



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