

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.12.2015

Date of Verdict: 18.01.2016

CORAM

THE HONOURABLE MR. **JUSTICE R.SUBBIAH**

Crl.O.P.No.14943 of 2015

Reserved on 08.12.2015

Nirmala

... Petitioner

Vs

1. The State, represented by
the Assistant Commissioner of Police,
Adyar Range,
Chennai-600020.

2. D.K.Ganesh Babu ... Respondents
Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the records in SC No.552 of 2006 on the file of the
learned Special Mahila Court, Chennai and quash the same as against
the petitioner is concerned.

For Petitioner	:	Mr.A.Ramesh, SC for for M.S.Sivakumar
For Respondents	:	Mr.C.Emalias Additional Public Prosecutor-R1 Mr.R.K.Ayyappan for R2

ORDER

The present criminal original petition has been filed by one
Mrs.Nirmala, who has been arrayed as A5 in Crime No.1358 of 2006
registered on the file of the first respondent, for the offences under

Sections 498A, 304(B) and 34 IPC r/w Section 4 of Dowry Prohibition Act. After completion of the investigation, the first respondent has filed a charge sheet before the IX Metropolitan Magistrate, Saidapet, who in turn, after taking it on file as PRC No.116 of 2006, had committed the same to the file of the Special Mahila Court, Chennai. On such committal, the said case was taken on file vide S.C.No.552 of 2006 on the file of the Special Mahila Court, Chennai.

2. Now the petitioner has come forward with the present petition, seeking to quash the proceedings pending in S.C.No.552 of 2006 on the file of the Special Mahila Court, Chennai, as against her.

3. The brief facts, which are necessary for disposal of the present petition, are as follows:

a) The accused (A1) is the husband of the deceased, Mrs.Madhu Devi and the accused (A2, A3 and A4) are mother-in-law, sister-in-law and father-in-law of the deceased respectively.

b) Marriage between Naveen Kumar/A1 and the deceased Madhu Devi, sister of the defacto complainant, took place on 3.11.2000. At the time of marriage, 500 gms of

gold jewellery, diamond jewellery worth about 5 lakhs, silver and other articles worth about 1 lakh, were given as dowry. In spite of the same, A1 to A4 were torturing the deceased by demanding more dowry and abused her in filthy language. One Nirmala is a T.V.Actress. Since A1 was having an illegal affair with her, the deceased questioned the same, for which, A1 had shouted at the deceased to go out from his house. The quarrel taken place between the deceased and A1 was informed to the mother of the deceased over phone by the deceased. Thereafter, the deceased left to 'Rain Forest' restaurant in which, she was a partner, where, she had committed suicide by hanging. Later, the brother of the deceased lodged a complaint before the first respondent/police. The said complaint was registered as in Crime No.1358 of 2006 for the offences under Sections 498A, 304(B) and 34 IPC r/w Section 4 of Dowry Prohibition Act.

4. Mr.A.Ramesh, learned senior counsel appearing for the petitioner would submit that the petitioner is a T.V.Actress and she is no way connected with the family of A1 nor with the family of the deceased and absolutely, there is no allegation against her attracting

the offence under Sections 498(A) 304(B) or Section 4 of Dowry Prohibition Act and therefore, the trial proceedings against her pending in S.C.No.552 of 2006 on the file of the Special Mahila Court, cannot be proceeded against her. He would draw the attention of this Court and submitted that the only allegation against the petitioner is that A1 was having an illegal affair with the petitioner and nowhere it was alleged against her that she had harassed the deceased or abetted her to commit suicide. The learned senior counsel further submitted that to qualify one to fall within the ambit of Section 304(B) IPC, such person should be husband or relative of the husband, alleged to have caused the death of a woman, who was subjected to cruelty or harassment for, or in connection with, any demand for dowry and likewise, Section 498-A IPC also asserted the punishment against the person, being the husband or relative of the husband of a woman, alleged to have subjected her to cruelty. Therefore, the learned senior counsel would submit that the petitioner is neither relative of the husband of the deceased nor she was alleged to have harassed the deceased in order to proceed against her. He pointed out that even according to the prosecution, the petitioner is a T.V.Actress and was allegedly having illegal affair with the husband of the deceased, by which, it cannot be held that such alleged illegal affair had driven the deceased to commit

suicide as there were specific allegations against the husband (A1) and his relatives (A2 to A4) under Sections 304-B and 498-A IPC. In support of his submissions, the learned senior counsel relied upon a decision reported in "(2013) 10 SCC 48 (**Pinaki Mahiptray Rawal versus State of Gujarat**)", wherein, it has been held by the Supreme Court as under in para 19 and 20.

"19. "Marital relationship" means the legally protected marital interest of one spouse to another which include marital obligation to another like companionship, living under the same roof, sexual relation and the exclusive enjoyment of them, to have children, their upbringing, services in the home, support, affection, love, liking and so on. Extramarital relationship as such is not defined in the Penal Code. Though, according to the prosecution in this case, it was that relationship which ultimately led to mental harassment and cruelty within the Explanation to Section 498-A and that A1 had abetted the wife to commit suicide. We have to examine whether the relationship between A1 and A2 amounted to mental harassment and cruelty.

20. We have to examine the correctness or otherwise of the findings recorded by the trial Court, affirmed by the High Court, as to

whether the alleged relationship between A1 and A2 has in any way constituted "Cruelty" within the meaning of the Explanation to Section 498-A IPC. The facts in this case have clearly proved that A1 has not ill-treated the deceased either physically or mentally, demanding dowry and was living with A1 in matrimonial home till the date she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498-A. ..."

5. Relying on the above, the learned senior counsel would submit that mere allegation that the husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to cruelty, but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498-A IPC and therefore, the learned senior counsel would submit that the petitioner who is neither relative of the husband of the deceased nor alleged to have harassed the deceased, would fall within the ambit of Sections 304-B or 498-A IPC. For the same proposition, the learned senior counsel also relied upon a decision reported in "(2009) 6 SCC 757 (**U.Suvetha versus State, by Inspector of Police and another**)".

6. Per contra, the learned counsel appearing for the intervenor/defacto complainant, would submit that on earlier occasion, this Court quashed the proceedings as against A2 to A4, who are the parents-in-law and sister-in-law of the deceased, however, on appeal preferred by the defacto complainant, the Hon'ble Supreme Court, after taking over the entire factual aspects into consideration, set aside the order of this Court, holding that there were prima facie allegations comprising all the ingredients of the offences for which, the trial Court framed charges against the respondents and there are materials which taken on their face value would lead to the inference of the respondents' guilt and it is not a case which could be quashed by this Court even at the stage of framing of charge by the trial Court and the respondents must be made to face the trial. Thus, the learned counsel for the intervenor would submit that since already the Hon'ble Supreme Court held that it is not appropriate to quash the proceedings even at the stage of framing of charges and the accused must be made to face the trial, it is not appropriate to quash the proceedings against the petitioner. Hence the learned counsel sought for dismissal of the petition.

7. The learned Additional Public Prosecutor would submit that it

is not a fit case for quashing the proceedings since the allegations made against the petitioner would prima facie constitute the offence since the deceased suffered mentally as her husband A1 was allegedly having illegal affair with the petitioner. He would also submit that the citation relied upon by the learned senior counsel for the petitioner will not be made applicable to the facts of the present case since they were rendered by the Hon'ble Supreme Court in the appeal as against the conviction and sentence imposed by the trial Court. Thus, the learned Additional Public Prosecutor has strongly opposed the petition to quash the proceedings.

8. By way of reply, the learned senior counsel would submit that on earlier occasion, while setting aside the order of this Court in respect of quashing the proceedings against A2 to A4, the Hon'ble Supreme Court observed that A2 to A4 are the relatives of the husband of the deceased and the documents, viz., suicide note, FIR and the contents of the charge sheet undeniably contain allegations of demand of dowry and hence, the learned senior counsel would submit that as regards the petitioner is concerned, she is neither relative of the husband of the deceased nor she is alleged that she had subjected the deceased to cruelty and therefore, she is standing on different

footing and hence, there cannot be a bar to quash the proceedings against her.

9. Having heard the learned senior counsel for the petitioner, I find reasonableness in the contentions advanced on behalf of the petitioner in regard to connecting the petitioner with the offences punishable under Sections 498-A and 304-B IPC since admittedly, the petitioner is neither the relative of the husband of the deceased nor there was an allegation against her stating that she had harassed the petitioner and subjected her to cruelty. However, it cannot be ignored that the deceased was driven to commit suicide, not only being allegedly ill-treated by the husband and his relatives for want of dowry, but also being subjected to mental cruelty. In the suicide note, the deceased had specifically stated that the parents-in-law, sister-in-law and Nirmala (the petitioner herein) are responsible for her mental torture and for her death. Therefore, apart from dowry harassment by the accused 1 to 4, it is the case of the prosecution against the petitioner is that the husband was having illicit affair with the petitioner, which caused extreme pain and disturbance to the deceased since she had undergone serious emotional stress, which drove her to commit suicide. The charge sheet has been filed as against the

accused not only for the offence under Sections 498-A and 304-B IPC but also for the offence under Section 306 IPC for abetment of committing suicide. Taking note of the suicide note, wherein the deceased had stated under what circumstances she committed suicide, the abetment by the accused cannot be ruled out at this stage. However, whether the behaviour of the petitioner with the husband of the deceased as alleged by the deceased in her suicide note, would fall within the definition of abetment or whether the petitioner intended to or had necessary mens rea that the deceased should take extreme step of committing suicide, etc., are obviously subject to the final view that the Court may take upon trial. In fact, on earlier occasion, while setting aside the order of this Court in respect of quashing the proceedings against A2 to A4, the Hon'ble Supreme Court, having gone through the suicide note, the first information report and the contents of the charge-sheet, observed that there are prima facie allegations comprising all the ingredients of the offences for which the trial Court framed charges against them and there are materials which taken on their face value would lead to the inference of the accused guilty and hence, it is not a case which could be quashed by the High Court even at the stage of framing of charge by the trial court and the accused must be made to face the trial. As regards the petitioner also, there

are allegations comprising the ingredients of the offence for which, the trial Court had already framed the charges and as rightly observed by the Hon'ble Supreme Court, the veracity of the charges framed is always subject to the matter of evidence.

10. The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude, require a great caution in its exercise. Power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases. In "**Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi and Others**" reported in (1976) 3 SCC 736, the Hon'ble Supreme Court has enunciated the circumstances under which the process against the accused can be quashed or set aside, which read as under :

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and

arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like".

11. Keeping in mind the above, when the case on hand is analyzed, I am of the opinion that the present case would not fall within any of the above factors.

12. Having regard to the above discussion, I am of the considered opinion that it is not a fit case, in which this Court should exercise its revisional and inherent powers to quash the proceedings against the petitioner and it is for the petitioner to face the trial and prove her innocence, for which she is at liberty to raise what all defence she has raised now in this petition, at the time of trial.

Accordingly, the prayer sought for by the petitioner cannot be granted. Consequently, the Criminal Original Petition is dismissed.

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Index: Yes/No
Internet: Yes/No

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R.SUBBIAH, J

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**Pre delivery order in
CRL.OP.No.14943 of 2010**

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