

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.8.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.OP.No.15696 of 2015 and

M.P.Nos.1 and 2 of 2015

1. Jothiammal
2. Kalidas
3. Mr.Gunasekar
4. Kalavathi

... Petitioners (Accused 2 to 5)

Vs

1. State by Deputy Superintendent of Police,
Mangalam Police Station,
Palladam Sub-Division,
Crime No. 101 of 2012,
Tirupur District.

2. Muthulakshmi

3. State Rep by
Assistant Commissioner of Police (South),
Central Police Station,
Tirupur District.

(3rd respondent impleaded as per the order of this Court dated
24.7.2015 made in M.P.No.3 of 2015 in Crl.O.P.No.15696/15)

... Respondents (Complainant &
Defacto Complainant)

Prayer:- Criminal Original Petition filed under Section 482 of the
Code of Criminal Procedure to call for records in PRC.No.9 of 2015
(in Cr.No.101/2012) on the file of the Judicial Magistrate No.2,
Tiruppur and quash the same in respect of the petitioners are
concerned.

For Petitioner :Mr.A.Raghunathan SC for
Mr.P.Kalimuthu

For Respondents :Mr.C.Emalias
1 & 3 Additional Public Prosecutor

ORDER

This petition has been filed to call for records in PRC.No.9 of 2015 (in Cr.No.101/2012) on the file of the Judicial Magistrate No.2, Tiruppur and quash the same in respect of the petitioners are concerned.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent. Though notice has been served on Muthulakshmi (defacto complainant) on 02.08.2015, through police, there is no representation.

3. The case of the prosecution is that Kungumaraj (A1) got married to deceased Kalaivani on 12.07.2006 and they have two children. Kungumaraj (A1) was living separately with Kalaivani (deceased wife) and children in the house of one Ramesh Kumar at Subash Nagar, Eduvampalayam Road, Tiruppur.

4. It is alleged by the prosecution that the couple used to quarrel very frequently. On 09.3.2012 at about 9.30 am, Kalaivani committed suicide by hanging in the matrimonial home and on the complaint given by Muthulakshmi (mother of Kalaivani), the respondent police registered a case in Cr.No.101 of 2012 under Section 309 IPC r/w 174 Cr.P.C. Since the death was within 7 years of their marriage, the respondent police informed the Revenue Divisional Officer to conduct inquest and inquiring into the cause of death. Accordingly, the Revenue Divisional Officer, Tiruppur initiated enquiry. He proceeded to the Government hospital where the body of the deceased was kept and examined witnesses. The body was sent for post mortem and the opinion given by the post mortem doctor is to the effect that Kalaivani's death was due to asphyxia due to hanging.

5. Even according to the prosecution, it is not a case of homicide but a case of suicide. The respondent police completed investigation and filed a final report for offences under Section 4 of Dowry Prohibition Act, 304(B) and 109 IPC against five accused, namely, Kungumaraj(A1), his mother (A2), his brothers (A3 and A4) and his married sister (A5) in P.R.C.No.9 of 2015 before the Judicial Magistrate No.II, Tiruppur, challenging which accused 2 to 5 are before this Court.

6. The learned counsel appearing for the petitioner/A2 to A5 submitted that on a complete reading of the FIR, statements of the witnesses recorded under Section 161 Cr.P.C and other materials called by the prosecution, there is no iota of evidence implicating the petitioners/A2 and A5.

7. The respondent police has filed a counter wherein it is stated in paragraphs 4 and 9 as follows:

"4. It is submitted that the 161 Cr.P.C statement of the witness LW-1 Muthulakshmi, the mother of the deceased, has clearly deposed about the offences committed by the petitioners. The said witnesses has deposed in her 161 statement that the deceased had told her about the role played by the petitioners. As the mother of the deceased there cannot be any reason to disbelieve her statement at this stage.

.....

9. It is submitted that the investigation reveals that the accused A1 Kungumaraj is the husband of the deceased and their marriage took place on 12.7.2006 and they lived at Subbash Nagar, Tiruppur and for the past 3 months, prior to her death on 09.3.2012, within the limits of Mangalam P.S, the Petitioner No.1/Accused No.2 to Petitioner No.4/Accused No.5, the mother, brothers and sister of the accused No.1, instigated the accused No.1 and due to such instigation of the petitioners demanded his wife, the deceased Kalaivani, to get gold jewels as dowry from her mother, the witness Muthulaksmi and thereby committed the offence of demanding Dowry and upon such demand the accused No.1 tortured by beating the deceased Kalaivani and in such continuation on 9.3.2012 at about 9.30 AM and at such matrimonial home at Subbash Nagar, Tiruppur, within the limits of Mangalam P.S, upon the such abetment of the petitioner/Accused A2 to A5 committed cruelty in connection with the Dowry and due to such cruelty which was committed soon before her death the deceased committed suicide by hanging herself and hence the accused A1 was charged under Section 4 of D.P Act and under Section 304-B of IPC and further the accused No.2 to 5/Petitioners are charged with the offence punishable under Section 4 of D.P.Act and under Section 304-B r/w 109 of IPC."

8. This Court is conscious about the presumption laid down under Section 113-B of Indian Evidence Act in cases relating to dowry death on account of which there should not be easy interference under Section 482 Cr.P.C. This Court carefully scrutinized the 161 statements of the witnesses. Even according to the prosecution, Kungumaraj was living separately with his family in the house of one Ramesh Kumar (L.W.6) where Kalaivani committed suicide. Ramesh Kumar (L.W.6) in his statement to the police, has said that Kungumaraj was a tenant in the ground floor portion of his house on a monthly rent of Rs.3000/- and that Kungumaraj was working in a private company. He

used to quarrel every day with his wife and his wife Kalaivani used to threaten him that she will commit suicide either by jumping into a well or by hanging. Fearing that, Kungumaraj would return home late from office. Ramesh Kumar (L.W.6) has also stated that whenever the couple quarrelled, he and other neighbours would interfere and try to pacify them. Ramesh Kumar's wife Chitra (L.W.7) has similarly corroborated the version of her husband Ramesh Kumar. From the reading of the 161 statements of landlord and his wife, it is seen that they have not whispered a word about the petitioners herein nor about dowry demand. On coming to know of Kalaivani's death, her family members came to the house and thrashed Kungumaraj (A1) about which Chithra (L.W.7) has spoken.

9. It may be profitable to refer to the statement of Muthulakshmi (defacto complainant), who is the mother of the deceased Kalaivani. Muthulakshmi in her complaint to the police based on which the FIR in this case has been registered has stated that, Kungumaraj (A1) was having an affair with another lady on account of which, the couple quarrelled frequently. In her complaint, she has simply made sweeping allegations against the petitioners as if the petitioners had instigated Kungumaraj to demand money and jewels from Kalaivani. Except this stray allegation, there is no material worth the salt implicating the petitioners with the offence. Even in the enquiry conducted by the Revenue Divisional Officer, there is no finding implicating the petitioners herein. Admittedly, even according to the prosecution, petitioners were not living in joint house hold with Kungumaraj and Kalaivani. The predicament of Muthulakshmi is quite understandable because she has lost her daughter and in anger, she has made sweeping allegations against all the family members of Kungumaraj as if they had instigated Kungumaraj to inflict cruelty on Kalaivani. It may be apposite to quote the following passage from the Judgment of the Supreme Court in Arnes Kumar Vs. State of Bihar and another reported in 2014(8) scale 250.

"There is phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A of the IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested. "Crime in India 2012 Statistics" published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year

2012 for offence under [Section 498-A](#) of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under [Indian Penal Code](#). It accounts for 4.5% of total crimes committed under different sections of penal code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under [Section 498A, IPC](#) is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal."

10. In the result, this petition is allowed and the proceedings in P.R.C.No.9 of 2015 pending on the file of the Judicial Magistrate No.II, Tiruppur are quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

11. The trial Court is directed to proceed with the trial as against Kungumaraj expeditiously without in any way being influenced by any of the observations made above.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kua

To

1.The Judicial Magistrate No.II,
Tiruppur

2.-do-Thro'The Chief Judicial Magistrate,
Tiruppur

3.Deputy Superintendent of Police,
Mangalam Police Station,
Palladam Sub-Division,
Crime No. 101 of 2012,
Tirupur District.

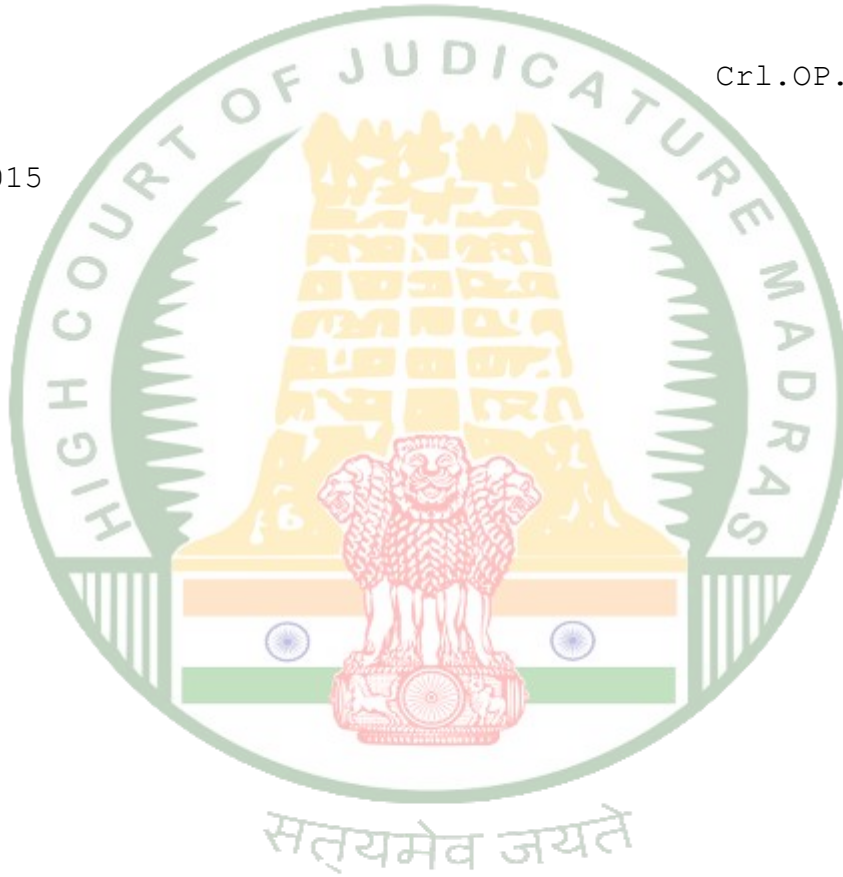
4. Assistant Commissioner of Police (South),
Central Police Station,
Tirupur District.

5.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.P.Kalimuthu, Advocate sr.42717

Crl.OP.No.15696 of 2015

aa04/09/2015



WEB COPY