

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.142 of 2015

and

M.P.No.1 of 2015

1.Radha
2.Mallika
3.Malarkodi
4.Vijaya
5.Arul Kodi

.... Petitioners/Accused 2 to 6)

vs.

State rep. By
The Inspector of Police,
Tharamangalam Police Station,
Salem District.

.... Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Criminal Procedure Code to set aside the order passed in Crl.MP.No.3834 of 2014 in SC No.54 of 2014, dated 23.12.2014 on the file of the learned Principal Sessions Judge, Salem.

For Petitioners: Mr.Uday Kumar for M/s.Karan&uday

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

JUDGMENT

Being aggrieved by the order made in Crl.MP.No.3834 of 2014 in SC No.54 of 2014, dated 23.12.2014, on the file of the learned Principal Sessions Judge, Salem, dismissing the petition, filed under Section 409 CrPC, to transfer the case in SC.No.54 of 2014, to the Mahila Sessions Court, to be tried along with SC.No.98 of 2014, the present revision is filed.

2.Material on record discloses that a case in Crime No.97 of 2012, has been registered on 29.03.2012, under Sections 366A, 376, 417 and 506(i) IPC, against one Ganesan, on the complaint made by one Nagaraj, father of victim Nandhini Priya. Ganesan is said to be the tuition master.

3. Crime No.98 of 2012 has been registered on 30.03.2012 on the file of the same police station. A complaint in Crime No.98 of 2012 has been made by one Sulochana, mother of the deceased Kalavathi, stated to have committed suicide by hanging, on 30.03.2012, due to the inducement of Ganesan, husband of the deceased, Kalavathi and others.

4. In Crime No.97 of 2012, a final report dated 17.08.2012 has been filed by the Inspector of Police, Tharamangalam Police Station, against Ganesan under Sections 376(1), 506(i), 468 and 420 IPC and taken on file in SC No.98 of 2014.

5. Insofar as Crime No.98 of 2012 is concerned, the Inspector of Police, Tharamangalam Police Station, has filed a final report under Section 498A and 306 IPC against Ganesan, accused in SC No.54 of 2014 and 5 others.

6. In the transfer petition, filed under Section 409 IPC in CrI.MP.No.3834 of 2014 on the file of the learned Principal Sessions Judge, Salem, the Inspector of Police, Tharamangalam Police Station, in his counter affidavit, has stated that the occurrence in both the cases have taken place in different places, on different dates and time and that the witnesses in both the cases are also different. However, he has stated that Kalavathi had committed suicide on account of the fact that Ganesan, accused in both the cases, Ganesan had illicit intimacy with one Nandhini Priya, victim in SC.No.98 of 2014 on the file of the learned Principal Sessions Judge, Salem. Though the Inspector of Police, Tharamangalam Police Station, has stated that there is no necessity, to transfer of SC No.54 of 2014, to be tried along with SC.No.98 of 2014, pending on the file of the learned Mahila Sessions Court, Salem, for the reasons extracted supra, however, at Para 7, he has further stated as follows:

"7. If the petitioners want to be tried along with SC.No.98 of 2014, there is no bar to transfer the case SC.No.98 of 2014 from Hon'ble Mahila Court to this Hon'ble Principal District and Sessions Court, since the Mahila Court is under this Hon'ble District and Sessions Court."

7. Considering the averments made in the counter affidavit and the objection of the learned Additional Public Prosecutor, the learned Principal Sessions Judge, Salem, vide order dated 23.12.2014, has dismissed the transfer petition, as hereunder:

"4. The case in SC.No.98 of 2014 is for the offences committed by the 1st accused Ganesan and others u/s 376 (1), 468, 420, 506(i) IPC. But this case is pending for the alleged offences against the accused that the 1st accused Ganesan tortured his wife Kaladevi along with his relatives and she committed suicide at the cruelty of all the petitioners. The occurrence took place in both

the cases are in various places and the witnesses were also different people. So no prejudice will be caused to the petitioners in trying the cases in different Courts and there is no chance for pronouncing Judgments in a different manner if both the cases are tried by different cases.

5.Considering the facts and circumstances of the case and also the materials available on records, this Court is of the considered opinion that there is no necessity to transfer this case in SC.No.54 of 2014 to the file of the Mahila Sessions Court, Salem, to be tried along with SC.No.98 of 2014 pending therein and no prejudice will be caused to the petitioners in conducting the cases in two different Courts and I do not find any merits in this application and the same is liable to be dismissed."

8.Assailing the correctness of the abovesaid order, Mr.Uday, learned counsel for the petitioner submitted that the Court below has failed to consider that Ganesan had alleged to have illicit intimacy with one Nandhini Priya, victim in SC.No.98 of 2014, pending on the file of the learned Mahila Sessions Court, and that was stated to be cause for Kalavathi, Wife of Ganesan, to have committed suicide, and in the abovesaid circumstances, it is just and necessary that both the cases are to be tried together, to find out the real truth. He further submitted that the Court below ought to have considered that if both the cases tried together, then, the Court below would be in a position to arrive at a proper conclusion that suicide committed by Kalavathi was only because of the conduct of the accused, Ganesan, who had illicit intimacy with Nandhini Priya and not due to the insult of the petitioners, and that there is a chance of petitioners' getting acquittal, in the trial of SC.No.98 of 2014.

9.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

10.Material on record discloses that a case in Crime No.97 of 2012 has been registered against one Ganesan on 29.03.2012 on the file of the Inspector of Police, Tharamangalam Police Station, Salem District, under Sections 366A, 376, 417, 506(i) IPC, on the complaint of Nagarajan, father of Nandhini Priya, alleged to have been raped.

11.On the complaint of Sulochana, mother of the deceased, a case has been registered on the file of the same Police Station under Section 174 CrPC against Ganesan, on the next day, that his wife Kalavathi has committed suicide. Complaint discloses inducement and abetment caused by the husband Ganesan and others, forcing Kalavathi to commit suicide.

12.As stated supra, Ganesan has been charge sheeted in SC.No.98 of 2014 under Sections 376(1), 506 (i), 468 and 420 of IPC and that the case is pending on the file of the learned Mahila Sessions Court, Salem. On the final report filed by the Inspector of Police, Tharamangalam Police Station in Crime No.98 of 2012, accused Ganesan and 5 others have been charge sheeted under Sections 498A and 306 IPC in SC.No.54 of 2014.

13.Though the alleged offences have taken place in different places and that the witnesses are also different, the fact remains that both the cases, relate to offences against women. Mahila Sessions Courts, are constituted to try cases against women. Though the petitioners have sought for a joint trial, the same cannot be ordered, for the reason that offences, are entirely different. As the witnesses are different, place of occurrence and dates are different, joint trial cannot be ordered. However, considering the fact that constitution of Mahila Sessions Court is for trying the offences against women, Sessions Case in SC No.98 of 2014, can be transferred to the learned Mahila Sessions Court, Salem. It is made clear that joint trial is not ordered.

With the above directions, this Civil Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar
Dated:16.3.15

True Copy

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Salem.

2.The Public Prosecutor,
High Court of Madras,
Chennai.

3.The Inspector of Police,
Tharamangalam Police Station, Salem.

vsn(co)
krd 23/3

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and
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