

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.21346 of 2009 and
M.P.No.1 of 2009

1.Itta Badrinath
2.Itta Parthasarathy
3.Vijayalakshmi

.. Petitioners

Vs

1.State rep. By
The Inspector of Police,
All Women Police Station,
W-25, T'Nagar, Chennai - 600 017.

2.Sundaram @ Raghu
(R2 impleaded as per order of
this Court dated 14.10.2009
in M.P.No.2 of 2009).

... Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C.,
to call for the records in C.C.No.6296 of 2005 on the file of the
learned IV Metropolitan Magistrate, Saidapet, Chennai and quash the
same.

For Petitioner :Mr.S.Y.Masood

For R.1 :Mr.C.Emalias,
Additional Public Prosecutor

For R.2 :No Appearance

ORDER

Heard the learned counsel for the petitioner and the learned
Additional Public Prosecutor appearing for the first respondent.
Though, the name of the second respondent is printed in the cause
list, there is no representation for the second respondent.

2.It is the case of the prosecution that, Rekha got married to
Badrinath (A.1) on 07.07.2002. After marriage, they went to U.S.A.,
and there they set their matrimonial home. It is alleged by Rekha
that their marriage was not consummated and that her husband was
postponing the consummation of marriage on some pretext or the other.
It is further alleged by Rekha that she was subjected to cruelty by
her husband in U.S.A.

3. According to the prosecution, Rekha returned to India on 12.02.2004 and joined her parents in Madurai. On the complaint given by Sundaram @ Raghu, the father of Rekha, the Madurai Police initially registered a case in Crime No.5/2004 and the case was transferred to the file of W.25, All Women Police Station, Chennai for want of territorial jurisdiction.

4. The first respondent police re-registered the case as Crime No.6/2004 on 15.05.2004 and took up investigation of the case. In the mean time, Rekha filed H.M.O.P.No.135/2004 before the Family Court, Madurai for divorce under Sections 13(1)(a) and 12(1)(a) of the Hindu Marriage Act. The Family Court, Madurai allowed the petition exparte and the marriage was declared as null and void on the ground of impotence of the husband.

5. The first respondent police completed the investigation in Crime No.6/2004 and filed final report in C.C.No.6296/2005 against four accused including the petitioners herein for offences under Sections 498(A) and 406 I.P.C. From the year 2005 to 2009, nothing happened before the trial Court. V.N.Subramaniam (fourth accused) died in the mean time. The petitioners herein filed this quash petition in the year 2009 and notice has also been served on Sundaram @ Raghu (defacto complainant).

6. This Court carefully perused the final report and the accompanying documents. The learned Additional Public Prosecutor appearing for the first respondent submitted that there are several materials for the prosecution to proceed and therefore, this is not a fit case to quash the proceedings.

7. It is seen that immediately after marriage, Rekha went to U.S.A., and she was living with her husband there. She has sent an e-mail to her father from there in which, she has stated that the marriage was not consummated and that her husband is giving excuses to avoid consummation of marriage. She has also stated that she was subjected to cruelty and all the other usual allegations are found in that. There are no allegations as against the other accused namely A.2 to A.4.

8. In Arnesh Kumar v. State of Bihar and another (2014 (8) SCC 273), the Hon'ble Supreme Court has made the following observations:-

"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."

9.The facts of this case directly fall into the aforesaid observations made by the Hon'ble Supreme Court. The entire prosecution is based on the inability of the first petitioner to consummate the marriage and that is why Rekha has approached the Family Court in Madurai and has obtained a decree of nullity of marriage under Section 12(1)(a) of the Hindu Marriage Act. The entire allegations against A.1 relate to events that had allegedly taken place in U.S.A. From U.S.A., Rekha sent a mail to her father in Madurai, based on which, the Police complaint was lodged. Hence, sanction under Section 188 Cr.P.C., is essential for prosecuting A.1. That has not been obtained in this case.

10.Though, no sanction for investigation is required, yet a sanction under Section 188 Cr.P.C., is required for enquiry and trial by the criminal court for the acts committed outside India. On a conspectus of the facts obtaining in this case, in the considered opinion of this Court, the prosecution against the petitioners herein in C.C.No.6296 of 2005 is an abuse of process of law and hence, the same deserves to be quashed.

11.In the result, the Criminal Original Petition is allowed and the proceeding in C.C.No.6296 of 2005 is quashed as far as the petitioners are concerned. Consequently, connected miscellaneous petition is closed.

jbm

s/d-
Assistant Registrar(CS-III)

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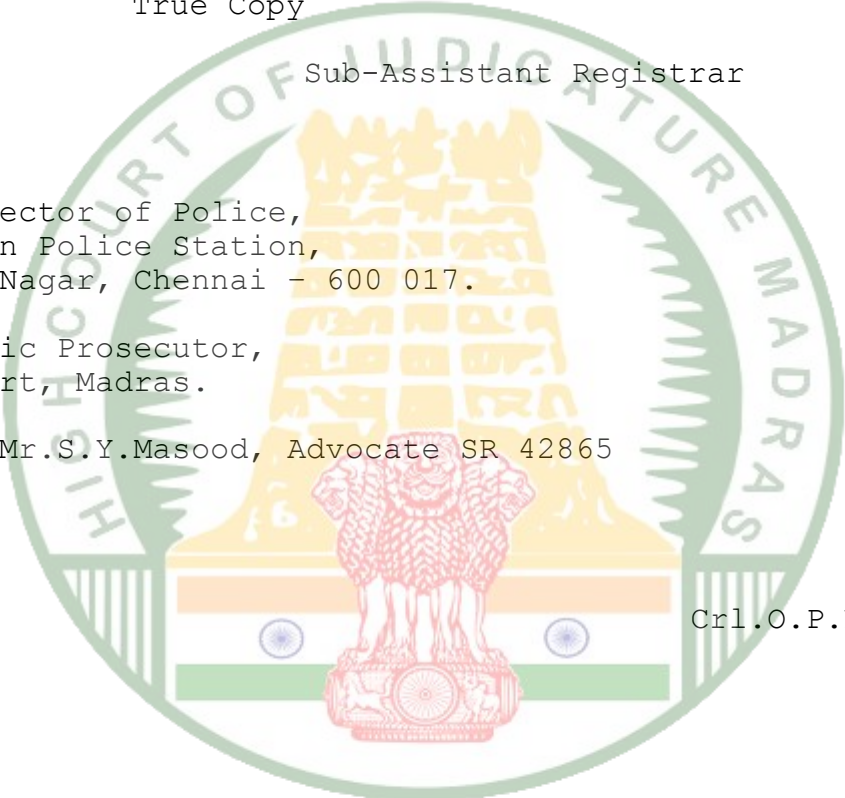
Sub-Assistant Registrar

To

- 1.The Inspector of Police,
All Women Police Station,
W-25, T'Nagar, Chennai - 600 017.
 - 2.The Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.S.Y.Masood, Advocate SR 42865

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prk1/9

Crl.O.P.No.21346 of 2009



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