

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Cr1.O.P.No.25801 of 2015

and M.P.No.1 of 2015

Marisamy

... Petitioner

Vs

1. State rep by,
The Superintendent of Police,
Nilgiris District.
2. The Inspector of Police,
G.1, Nilgiris West Town Police Station,
Nilgiris District.
3. Gopalakrishnan @ Babu
4. Umadevi
5. Kavitha

... Respondents

(R.3 to R.5 impleaded as per order dated 19.11.2015 made in M.P.No. 2 of 2015 in Cr1.O.P.No.25801 of 2015)

Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 21.5.2015 passed by the learned Judicial Magistrate at Udhagamandalam, Nilgiris District in Cr1.M.P.No.3032 of 2015 and thereby to allow the relief prayed for by the petitioner in Cr1.M.P.No.3032 of 2015 on the file of the learned Judicial Magistrate at Udhagamandalam, Nilgiris District.

For Petitioner : Mr.M.Velmurugan

For Respondents: Mr.C.Emalias,
Addl.Public Prosecutor,
for R.1 and R.2
Mr.K.V.Sridharan,
for R.3 to R.5

ORDER

The present criminal original petition has been filed to set aside the order dated 21.05.2015 passed by the learned Judicial Magistrate at Udhagamandalam, Nilgiris District in CrI.M.P.No.3032 of 2015 and thereby to allow the relief prayed for by the petitioner in the said petition.

2. It is the case of the petitioner that his daughter Manjula @ Manju was given marriage to one Gopalakrishna @ Babu as per Hindu rites and customs at Krishna Dhama Kalyana Mandapam, Mysore. Subsequent to the marriage, his daughter Manjula lived with her husband at No.351/A1, Vivekanandha Nagar, Rose Mount, Ooty, Nilgiris District. Out of their wedlock, a son was born to them, who was named as Dheeran. On the date of naming ceremony at Mysore, the said Gopalakrishnan, who was in an inebriated condition, abused the petitioner and his daughter Manjula with filthy language and left the house on the same day along with her daughter Manjula. The petitioner's daughter Manjula was living with her husband, her mother in law Uma Devi and two married sister in law viz., Kavitha @ Kavitha Srinivas and Sangeetha Ravikumar. One of the sisters in law lived with them. His daughter Manjula was subjected to frequent immense cruelty and harassment by her husband, mother in law and sisters in law. They demanded her to bring more dowry from her parents' house. On 21.06.2013, Manjula's mother in law Uma Devi had beaten her with footwear in order to bring more money and to extract work. On 23.06.2013 at about 2.15 p.m., the petitioner was informed that his daughter Manjula committed suicide by using Thuppatta. Hence, the petitioner lodged a complaint with the respondent police on the same day and the same was registered in Crime No.105 of 2013 for the offence under Section 174(3) Cr.P.C. As the death had occurred within 7 years of marriage, the Sub Divisional Magistrate cum Revenue Divisional Officer, Coonor conducted an enquiry. Subsequently, the police altered the section into one under Sections 498-A and 306 read with 34 I.P.C. The petitioner was completely dissatisfied with the investigation conducted by the respondent police and also the RDO enquiry as they never considered or recorded the serious allegation of dowry harassment and cruelty. Hence, the petitioner sent representations to them pointing out the glaring errors and omissions and sought for re-investigation or transfer of the investigation. However, the petitioner's request was not considered and charge sheet was filed before the learned Judicial Magistrate at Udhagamandalam, Nilgiris District and the same was taken on filed as P.R.C.No.31 of 2014 and it was committed to Sessions Court. Hence, the petitioner filed a petition before this Court in CrI.O.P.No.7734 of 2015 seeking re-investigation and framing of new charges against the accused. But, this Court disposed of the said petition by directing the petitioner to file a protest petition before the concerned Magistrate Court and also directed the lower Court to rely on the judgment in (2013) 5 SCC 762 while disposing the protest petition. As directed by this Court, the petitioner filed a protest petition in CrI.M.P.No.3032 of 2015

before the learned Judicial Magistrate at Udthagamandam, Nilgiris District seeking to hand over the investigation to a different specialised authority. The learned Magistrate by order dated 21.5.2015 closed the said petition. Hence, the petitioner has come forward with the present petition to set aside the said order.

3. It is the main contention of the learned counsel appearing for the petitioner that a perusal of the final report would clearly go to show that the offence under Section 304-B I.P.C. is made out. But, charge sheet was filed only for the offences under Sections 498-A and 306 read with 34 I.P.C. Hence, the petitioner sought for further investigation or in the alternative, to direct the respondent police to include Section 304-B I.P.C. in the charge sheet.

4. Learned Additional Public Prosecutor submitted that in this case, charge sheet has already been filed and it was taken on file as P.R.C.No.31 of 2014 and committal proceedings are also over. Hence, at this stage, the question of further investigation or inclusion of a new section does not arise.

5. Keeping the submissions made on either, I have carefully gone through the entire materials available on record and I find that the learned Magistrate in his order dated 21.5.2015 made in Crl.M.P.No.3032 of 2015, has clearly observed that already on completion of investigation, a positive report was filed and the same was also accepted by the Court. At this stage, if the petitioner's prayer is entertained, it would tantamount to an order of directing fresh / de novo / re-investigation. Since, the positive report filed by the police has already been accepted, now the Court has no power to review the said order of taking cognizance and committal. Thus, the learned Magistrate closed the petition. I find no infirmity in the said order. Further, since the committal proceedings are already over, this Court is not inclined to give any direction for further investigation or inclusion of a new section. Hence, the present criminal original petition is dismissed. However, it is open to the jurisdictional Court to include such a charge while framing the charges, if the materials on record warrant so. Consequently, connected miscellaneous petition is closed.

sbi

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

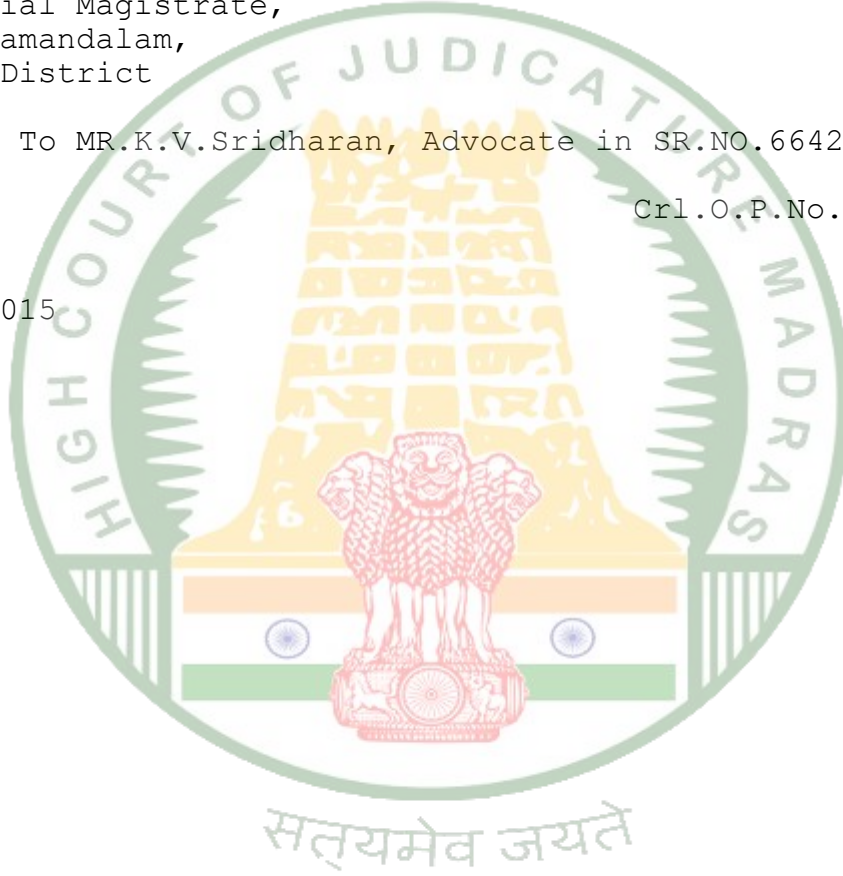
To

1. The Superintendent of Police,
Nilgiris District.
2. The Inspector of Police,
G.1, Nilgiris West Town Police Station,
Nilgiris District.
3. The Public Prosecutor,
High Court, Madras.
4. The Judicial Magistrate,
at Uthangamandalam,
Nilgiris District

+1 C.C. To MR.K.V.Sridharan, Advocate in SR.NO.66423

Crl.O.P.No.25801 of 2015

RSK(CO)
sd : 23/12/2015



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