

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.03.2015

CORAM

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.172 of 2012

and

M.P.Nos.1 and 4 of 2012

1. Deepak Chandrasekar  
2. Mrs. Savithri Chandrasekar ....Petitioners/Accused -3 & 2  
Vs.

1.State Rep. By Inspector of Police,  
W-22, All Women Police Station,  
Mylapore, Chennai - 600 004.

2.S. Raghuram  
3.Gayathri Raghuram ...Respondents/Complainants

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the entire records pending in C.C.No.251 of 2008 from the learned XVIII Metropolitan Magistrate, Saidapet, hear the counsel for the petitioners and quash the Charge Sheet (Final Report) filed by the first respondent in Cr.No.8 of 2007 of W-22, All Woman Police Station, Mylapore, Chennai.

For petitioners : M/s. \*A.V.Somasundaram  
for M/s. Lakshmipriya Associates

For RR1 : Mr.M. Maharaja  
For RR2 & RR3 : No appearance

O R D E R

Heard the learned counsel for the petitioners and there is no representation for the respondents 2 and 3.

2. It is submitted by the learned counsel for the petitioners that the petitioners are \*A3 and \*A2 and chargesheet was filed in C.C.No.251/2008 on the file of learned XVIII Metropolitan Magistrate, Saidapet, against the petitioners and one another for offences under Sections 498(A), 406 IPC.

3. It is submitted by the learned counsel for the petitioners that the case was registered on the complaint of Mr.S.Raghuram whose daughter was given in marriage to the first petitioner and due to misunderstanding between the husband and wife, the complaint was given by Mr.S.Raghuram and on that basis, after investigation, chargesheet was filed against the petitioners and also against one

another person. He further submitted that during the pendency of the investigation, the first petitioner filed divorce petition before the Hon'ble **\*Superior** Court of California in case # 107FL 140863 and the third respondent, wife of the first petitioner entered appearance through counsel before the Hon'ble **\*Superior** Court of California and an order was passed on 22.01.2008 dissolving the marriage between the first petitioner and third respondent. The third respondent also received through her counsel all personal effects on 23.10.2007 and 24.10.2007 as stated in the typed set of papers in pg-26 to 28.

4. It is submitted that the third respondent also filed FCOP.No. 3677 of 2009 for dissolution of marriage between her and first petitioner and the first petitioner remained absent and divorce was granted by order dated 24.01.2012. He further submitted that the first petitioner also filed application for divorce before the Hon'ble **\*Superior** Court of California on the ground of cruelty and hearing both parties, the marriage was dissolved by the Hon'ble Supreme Court of California. After dissolution of marriage took place, by the said order the third respondent filed FCOP.No.3677 of 2009 on the ground of cruelty and as marriage was already dissolved by the Hon'ble Supreme Court of California, the first petitioner did not enter appearance in FCOP.No.3677 of 2009 as it amounted to futile exercise. He therefore submitted that divorce granted on the ground of cruelty by the Principal Family Court, Chennai in FCOP.3677 of 2009 cannot be considered as a case for cruelty committed by the petitioners.

5. The learned counsel for the petitioners further submitted that even according to the prosecution, the marriage was registered at USA and the alleged cruelty took place in USA and no part of the cause of action arose at India and without previous sanction from Central Government, the prosecution itself is also not maintainable. He therefore, submitted that having regard to the dissolution of marriage and settlement of alimony as per the order of the Hon'ble **\*Superior** Court of California, nothing survives and the charge sheet may be quashed.

6. It is submitted that the second respondent/the Defacto complainant was dead and third respondent, the former wife of the first petitioner was also served and she was also represented by the counsel and there was no representation for the third respondent on 23.02.2015 and even today, there is no representation for the third respondent.

7. The learned Additional Public Prosecutor submitted that having regard to the divorce granted by the Hon'ble **\*Suuperior** Court of California and by the Principal Family Court, Chennai, suitable orders may be passed in the quash petition.

8. The learned counsel for the petitioners relied upon the judgment reported in (1993) 3 SCC 609; (Ajay Aggarwal Vs. Union of India and Others)

(2008) 6 SCC 789 (Fatma Bibi Ahmed Patel Vs. State of Gujarat and Another)

1966 CrL.L.J. 366 (Vol.72,C.N.117) (The State, Appellant Vs. Om Parkash Salig Ram, Respondent) and

AIR (32) 1945 Oudh 231 (Mohammad Zaman - Accused Vs. Emperor) in support of his contention, that when the allegation of cruelty took place in a foreign country without sanction from the Central Government, case cannot be filed in India. He also further relied upon the judgment reported in (2012) 1 MLJ (CrL) 341 (SC) (Thota Venkateswarlu Vs. State of A.P. Tr. Princ. Section and Another) to the same effect.

9. It is seen from the judgment reported in (2012) 1 MLJ (CrL) 341 (SC) (Thota Venkateswarlu Vs. State of A.P. Tr. Princ. Section and Another) that in respect of offences committed outside India, the enquiry cannot be proceeded with nor the accused be tried without sanction from Central Government as per Proviso 188 of Cr.P.C. As per judgment reported in (1993) 3 SCC 609; (Ajay Aggarwal Vs. Union of India and Others) sanction can be obtained before the commencement of trial. He further submitted that the respondent / first respondent police did not examine the third respondent while filing charge sheet and the statement of other witnesses also disclosed that they heard from the third respondent about the alleged dowry demand and cruelty meted out to her and in the absence of any examination of the third respondent, who has stated that she was treated cruelly and dowry was demanded from her, the police should not have filed chargesheet against the petitioners without examining her. He also submitted that this Court in CRL.O.P.No.5887 of 2008 quashed the charges as against the first accused, D.V. Chandrasekaran, who was arrayed as first accused in this case.

10. As rightly submitted by the learned counsel for the petitioners, the proper person to speak about the cruelty, dowry demand is the third respondent who was the wife of the first petitioner herein and admittedly she was not examined and she was not cited as witnesses in the chargesheet.

11. The statements of other witnesses are also to the effect that they heard Gayathri Raghuram about the treatment meted out to her. Therefore, without examining the third respondent, the police should not have filed the charge sheet against the petitioners. Further having regard to the statements of witnesses that the occurrence took place outside India, the prosecution without obtaining sanction from Central Government as per Proviso 188 is also not proper. Further, the marriage between the first petitioner and the third respondent was already dissolved and in the proceedings before the Hon'ble **\*Superior** Court of California on the petition filed by the first respondent, the marriage was dissolved on the ground of cruelty committed by the third respondent and the third respondent appeared and contested the said proceedings and thereafter only, the third respondent filed

FCOP.No.3377 of 2009 before the Family Court, Chennai for divorce on the ground of cruelty and that was also ordered ex parte.

12. Considering all these aspects, **\*after** taking cognizance of the offence, **\*Conduct further enquiry, and filing of charge sheet** without sanction from the Central Government is prohibited and the first respondent police also should not have filed chargesheet without examining the third respondent who was the **\*prime** witness to cruelty and dowry demand. Hence, the petition is allowed and the case in C.C.No.251/2008 on the file of the learned XVIII Metropolitan Magistrate, Saidapet at Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

24.3.2015

\*Corrected and Deleted as per order of the Court dated 30.4.2015.

Sd/-

Assistant Registrar

8.5.2015

//True Copy//

Sub Assistant Registrar

gv

To

- 1.The XVIII Metropolitan Magistrate, Saidapet. to be substituted for the order already despatched on 8.4.2015
2. The Inspector of Police, W-22, All Women Police Station, Mylapore, Chennai - 600 004.

- 3.The Public Prosecutor, High Court, Madras.

3 cc to M/s.Lakshmipriya ,Advocate, SR.No.24110/2015

CRL.O.P.No.172 of 2012

and

M.P.Nos.1 and 4 of 2012

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pmk.26.3.2015

pmk.11.5.2015

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