



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.04.2015**

CORAM:

THE HONOURABLE MR.JUSTICE **S.NAGAMUTHU**

CRL.RC.(MD)No.424 of 2014

and

M.P.Nos.1 and 2 of 2014

1.S.Mahalingam
2.Saroja
3.S.Gurusamy
4.Manimala
5.Ambika

: Petitioners/Accused No. 1 to 5

Vs.

The State, Rep by
Inspector of Police,
All Women Police Station,
Tirunelveli Town,
Crime No.4 of 2011.

: Respondent/Complainant

PRAYER: Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to the order passed by the Additional Mahila Court, Tirunelveli in Cr.M.P.No.157 of 2014, in C.C.No.546 of 2013, vide its order dated 29.09.2014 and set aside the same and consequently pass an order discharging the petitioners from all the charges referred to in the above said calendar case.

For Petitioners : Mr.R.Anand

For Respondent : Mr.P.Kannithevan
Government Advocate [Criminal Side]

O R D E R

The petitioners are the accused in C.C.No.546 of 2013, on the file of the learned Judicial Magistrate/Additional Mahila Court, Tirunelveli. The said case was registered on the complaint of one Ms.Gomathi. The respondent herein registered the said case on 01.06.2011, for offence under Section 498(A) of the Indian Penal Code. On completing the investigation, the respondent filed a final report before the Lower Court, thereby reporting that the accused have committed offences punishable under Sections 506(i) and 498(A) of the Indian Penal Code and Sections 4, 5 and 6 of the Child Marriage Restraint Act, 1929. The learned Judicial Magistrate taken cognizance of these offences and issued summons to the accused. The petitioners filed a petition in Cr.MP.No.157 of 2014 for discharge. The learned Judicial Magistrate, by order dated 29.09.2014, dismissed the said petition. As against the same, the petitioners are now before this Court with the present Criminal Revision Case.



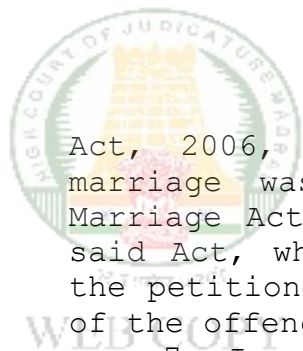
2. I have heard the learned counsel appearing for the petitioners, the learned Government Advocate [Criminal Side] appearing for the respondent and perused the records carefully.

3. At the outset, when it was pointed out to the learned counsel for the petitioners that as to how this Criminal Revision Case could be entertained, when the *de facto* complainant is not a party to this proceedings, the learned counsel for the petitioners submitted that it is true that the *de facto* complainant should be impleaded as a party, but due to inadvertence, she was not impleaded as a party. Though it is absolutely necessary that the *de facto* complainant should be heard in this revision, in view of the order, which I am going to pass, which, in my considered opinion, may not be prejudicial to the *de facto* complainant, I proceed to dispose of this revision in the absence of the *de facto* complainant.

4. The case of the prosecution is that the *de facto* complainant - Gomathi, was less than 18 years of age as on 25.03.2010. The first petitioner married her with the assistance of other petitioners on the said date, as per the Hindu Rites Customs. After the marriage, the first petitioner did not consummate the marriage, because, the *de facto* complainant happens to be a poor girl. He told her that he had married her as his second wife only to treat her as a housemaid to take care of the household works. He had also intimidated her and even beaten her, on few occasions. With the above allegations, the final report has been filed. In the petition filed before the Lower Court, the petitioners contended that the Child Marriage Restraint Act, 1929, has been repealed by the Prohibition of Child Marriage Act, 2006 and thus, the order of the learned Judicial Magistrate, taking cognizance of the said offence, is void. It was further contended that from the materials available on record, the offence under Section 498(A) of the Indian Penal Code has not been made out and therefore, the order of the learned Judicial Magistrate, taking cognizance of the said offence, is also not legal. It was also contended before the Lower Court that the allegations do not make out an offence punishable under Section 506(i) of the Indian Penal Code. Thus, order taking cognizance is also not legal.

5. The Lower Court, while dismissing the petition, has rejected all such contentions. The petitioners are, thus, aggrieved by the said order.

6. The learned counsel for the petitioners would submit that admittedly, the Child Marriage Restraint Act, 1929, has been repealed by the Prohibition of Child Marriage Act, 2006 and therefore, the order of the learned Judicial Magistrate, taking cognizance of the said offences under the said Act, is illegal. This argument, in my considered view, deserves acceptance. However, on that score alone, the entire case cannot be quashed. From the materials available on record, the Lower Court ought to have seen as to whether any offence, for which cognizance could be taken, had been committed or not. For the failure of the Court to consider the same properly, the parties cannot be made to suffer. The Lower Court ought to have taken note of the fact that the Child Marriage Restraint Act, 1929, has been repealed by the Prohibition of Child Marriage Act, 2006. After having taken note of the same, the Lower Court ought to have seen as to whether any offence under the Prohibition of Child Marriage



Act, 2006, has been made out. In the instant case, admittedly, the marriage was on 25.03.2010, on which date the Prohibition of Child Marriage Act, 2006, was in force. According to Sections 10 and 11 of the said Act, when there is a prima facie, a charge could be framed against the petitioners. Therefore, the Lower Court ought to have taken cognizance of the offences and framed appropriate charges.

7. Insofar as the offence under Section 498(A) of the Indian Penal Code is concerned, the learned counsel for the petitioners would submit that absolutely, there is no material making out an offence under Section 498(A) of the Indian Penal Code. I find force in the said argument made by the learned counsel for the petitioners. Section 498(A) of the Indian Penal Code consists of two parts, which read as follows:-

"(a). any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health [whether mental or physical] of the woman; or

(b). harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

8. In the case on hand, there is no allegation of any harassment with a view to coerce the *de facto* complainant or her relatives for any property or valuable security. Therefore, Section 498(A) of the Indian Penal Code and Explanation (B) are not applicable to the case of the present case. Insofar as Explanation (A) is concerned, it speaks of any wilful conduct, which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health of the woman. There is no material to satisfy any of these requirements. Thus, as rightly pointed out by the learned counsel for the petitioners, Section 498(A) of the Indian Penal Code is also not made out. Insofar as Section 506(i) of the Indian Penal Code is concerned, there are materials making out such offence warranting to frame charge under the said provision.

9. The learned counsel appearing for the petitioners would submit that for the offence under Sections 10 and 11 of the Prohibition of Child Marriage Act, 2006, the period of limitation for the Lower Court to take cognizance is only three years. But, in this case, according to him, cognizance was taken beyond the period of limitation. However, the learned counsel for the petitioners is not able to demonstrate as to how it is barred by limitation, inasmuch as he is not able to tell even the date of taking cognizance. From the records available, it is seen that the final report has been filed even in the year 2011. At any rate, since the Lower Court has taken cognizance of the offence under Section 498(A) of the Indian Penal Code also, such order, taking cognizance, cannot be said to be beyond the period of limitation. Therefore, this argument is also rejected.

10. In view of all the above, the Criminal Revision Case is disposed of in the following terms:-

The Trial Court shall proceed to frame charges under Section 506(i) of the Indian Penal Code and Sections 10 and 11 of the Prohibition of Child Marriage Act, 2006, against the petitioners herein.

Consequently, connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar

<https://hcservices.ecourts.gov.in/hcservices/>

/True copy/

sub Assistant Registrar(c.s)



To

1.The Additional Mahila Court, Tiruenveli

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

3.The Inspector of Police,
All Women Police Station,
Tirunelveli Town.

Copy to

The Section officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.R.Anand, Advocate in SR.No. 18357

TS/22.04.2015/4P-6C

ORDER MADE IN
CRL.RC. (MD) No.424 of 2014

DATED - 09.04.2015