



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2015

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

CRL.O.P (MD) No.4504 of 2013

and

M.P (MD) .No.1 of 2015

1.Akila
2.Prema
3.hema
3.Leema

... Petitioners/Accused Nos.4 to 7
Vs.

1.State of Tamilnadu represented by its
Inspector of Police,
All Women Police Station,
Nagercoil.

...1st Respondent/Complainant

2.Amutha

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C
praying to call for the records relating to the proceedings in
C.C.No.82 of 2012, now pending on the file of the Judicial
Magistrate, Bhoothapandi, Kanyakumari District and to quash the same
in so far as the petitioners are concerned.

For Petitioners : Mr.N.Subramanian

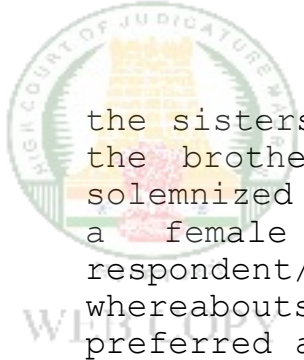
For R1 : Mr.K.Anbarasan
Government Advocate (Crl.Side)

For R2 : Mr.R.Murugan

O R D E R

This Criminal Original Petition has been filed under Section 482 Cr.P.C seeking to quash the proceedings in C.C.No.82 of 2012 on the file of the learned Judicial Magistrate, Bhoothapandi, Kanyakumari District.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.side) appearing for the first respondent police and the learned counsel appearing for the second respondent/defacto complainant.



the sisters-in-law of the defacto complainant. The marriage between the brother of the petitioners and the defacto complainant was solemnized on 13.05.2005 and the defacto complainant gave birth to a female child on 13.04.2006. The husband of the second respondent/defacto complainant left away from home and his whereabouts was not known. In the meanwhile, the defacto complainant preferred a complaint and at the stage of enquiry itself, the said complaint was closed recording the undertaking of the petitioners' mother that she is willing to settle the entire dispute immediately after securing the husband of the defacto complainant.

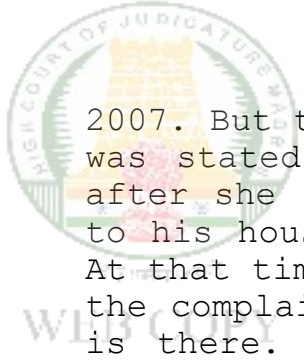
ii) Thereafter, the defacto complainant filed a private complaint in Cr.M.P.No.7432 of 2011 and as per the order of the Judicial Magistrate No.II, Nagercoil, the case in Crime No.2 of 2012 was filed against the accused 1 to 7. After completion of investigation, the first respondent filed a charge sheet in C.C.No.82 of 2012 on the file of the learned Judicial Magistrate, Bhoothapandi, Kanyakumari District, for the offences punishable under Sections 498(A), 406, 420 and 34 IPC and Sections 3 and 4 of Dowry Prohibition Act and Sections 2 and 4 of Tamilnadu Prohibition of Women Harassment Act, 2002.

4. The learned counsel for the petitioners submitted that after the marriage of the defacto complainant, the first petitioner/A4 was residing at her matrimonial home and the petitioners 2 to 4 are students and they are spinsters and they have nothing to do with the commission of offence and the second respondent falsely roped all these petitioners. He would further submit that there is delay in preferring the complaint and there is no allegation of demand of dowry by these petitioners and hence, he prayed for quashing of the proceedings in C.C.No.82 of 2012 in respect of the petitioners, who are A4 to A7.

5. Resisting the same, the learned counsel appearing for the second respondent/defacto complainant would submit that in the complaint itself, it is stated that the petitioners herein have abused the defacto complainant that she is an illiterate and married his brother. Hence, he further submitted the defacto complainant was hurt by these petitioners. Further, he would submit that all the accused jointly harassed the defacto complainant/the second respondent and she was driven out of the matrimonial home in the year 2007. The learned counsel further submitted that in the cases of Section 498(A)IPC, the Court shall not quash the FIR at the threshold and hence, prayed for dismissal.

6. On hearing the rival submissions made by both sides, the following facts are admitted facts:

The petitioners/A4 to A7 are the sisters of one Rajesh with whom the second respondent/defacto complainant got married on 13.05.2005. Due to the lawful wedlock, one female child was born. According to the learned counsel for the second respondent, the second respondent was driven out of the matrimonial home in the year



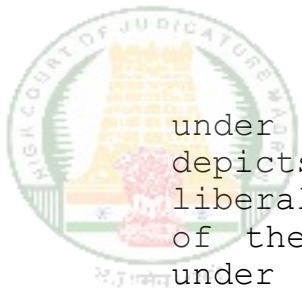
2007. But the complaint was given on 20.08.2011. In the complaint it was stated that the whereabouts of the husband was not known and after she received the information that the first accused has gone to his house, she has gone to her matrimonial home on 20.08.2011. At that time she was not permitted to see her husband and then only, the complaint has been given, but, to substantiate the same nothing is there. According to the defacto complainant, the marriage was performed on 13.05.2005 itself and the accused were demanding more dowry. The defacto complainant left the matrimonial home and she has not returned and she gave a complaint on 20.08.2011. Furthermore, in clause - 11, it was stated that these petitioners 2 to 4, who are the accused 5 to 7, have abused her that she is an illiterate and she came from the rural area and they demanded Rs.1 lakhs for their educational expenses.

7. Now the point to be decided is that as to whether any overt act is mentioned against these petitioners since the case was registered for the Penal provisions of Sections 406, 420 and 498(A) IPC and Section 3 and 4 of Dowry Prohibition Act and Sections 2 and 4 of Tamilnadu Prohibition of Women Harassment Act.

8. On consideration of facts and circumstances of the case and on perusal of records, it is seen that the defacto complainant left the matrimonial home after she gave birth to a female child. According to the complaint itself, the first accused, who is the husband of the defacto complainant, has not seen the child and on 07.02.2007 she resumed to her matrimonial home but she was there for some time and then only, she was driven out from the matrimonial home. The complaint was given on 20.08.2011.

9. Though, it is submitted by the learned counsel for the second respondent that in cases of 498(A) IPC, the court shall not quash the FIR at the threshold, in *Arnesh Kumar vs. State of Bihar and Another* reported in (2014) 3 MLJ (Cr1) (SC) 353, the Apex Court held as follows:

"6. 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 an increase 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.

7. Arrest brings humiliation, curtails freedom and cast scars forever. Law makers know it so also the police. There is a battle between the law makers and the police and it seems that police has not learnt its lesson; the lesson implicit and embodied in the Cr.PC. It has not come out of its colonial image despite six decades of independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has by Courts but been emphasized time and again has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

13. We are of the opinion that if the provisions of Section 41, Cr.PC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 Cr.PC for effecting arrest be discouraged and discontinued.

14. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

- (1) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under



the parameters laid down above flowing from Section 41, Cr.PC;

- (2) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

- (3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

- (4) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

- (5) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

- (6) Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

- (7) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.

- (8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

15. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."

10. Considering the above aspects and considering the age of the petitioners 2 to 4, who are the unmarried sisters-in-law of the second respondent and the first petitioner was residing in her matrimonial roof, I am of the view that it is a fit case to quash the proceedings in C.C.No.82 of 2012 on the file of the Judicial Magistrate, Bhoothapandi, Kanyakumari District against the petitioners/A1 to A7.



11. In the result, this Criminal Original Petition is allowed. The proceedings in in C.C.NO.82 of 2012 on the file of the Judicial Magistrate, Bhoothapandi, Kanyakumari District against the petitioners/A4 to A7 who are sisters-in-laws of the second respondent is hereby quashed. Consequently, connected M.P is also closed.

Sd/-
Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

ses

To

1.The Judicial Magistrate,
Bhoothapandi,
Kanyakumari District.

2.The Inspector of Police,
All Women Police Station,
Nagercoil.

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

+1cc to Mr.R.Murugan, Advocate SR NO.46634
+1cc to Mr.S.Subbiah, Advocate Sr NO.46502

CRL.O.P (MD) No.4504 of 2013
and M.P (MD) .No.1 of 2015
14.08.2015

rg.26.08.2015 6p/6c