

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P.No.27605 of 2015

and

M.P.No.1 of 2015

1.R.Nivendran

2.B.Ranjan

3.Saroja

4.Sowbarnika

5.A.Saravanabavan

6.Viji @ Vijayakumari

... Petitioners/Accused

Vs.

State rep by

The Inspector of Police

W7, All Women Police Station,

Anna Nagar

Chennai 600 040.

... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records of the C.C.No.10981 of 2008 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For petitioners : Mr.G.Saravana Kumar

For respondent : Mr.C.Emalias

Additional Public Prosecutor

For intervenor : Mr.R.Vijayaraghavan

RESERVED ON	PRONOUNCED ON
25.10.2016	02.11.2016

O R D E R

This petition has been filed to call for the records of the C.C.No.10981 of 2008 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2. For the sake of convenience, the parties will be referred to by their name.

3. Nivashini [de facto complainant] and Nivendran [A1] were in love and got married on 02.07.2006. Nivashini is a software professional and is now admittedly in the USA. They have one child through the wedlock. Their marriage ran into rough weather and it appears that they got estranged. Nivendran filed O.P.No.352 of 2007 before the Family Court, Chennai, for restitution of conjugal rights and after receipt of notice, Nivashini expressed her willingness to rejoin her husband. The couple reunited and set up an individual household. After getting separated from the joint family set up, once again, their relationship soured and they got separated. Nivashini filed a private complaint before the Chief Metropolitan Magistrate, Chennai against Nivendran/husband and all his family members making allegations of dowry harassment and cruelty. The complaint was forwarded by the learned Magistrate to the respondent police u/s 156 Cr.P.C., pursuant to which, a regular case in Cr.No.6 of 2006 was registered and after completing the investigation, the police filed a charge sheet in C.C.No.10981 of 2008 before the Chief Metropolitan Magistrate, Chennai, for offences u/s 498-A, 406 IPC and Sections 4 and 6 of the Dowry Prohibition Act against Nivendran/husband and five others, challenging which, the accused are before this Court.

4. Heard Mr.G.Saravana Kumar, learned counsel for the petitioners and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State. Though Nivashini was not added as a respondent, her counsel Mr.R.Vijaya Raghavan, intervened and this Court heard him in extenso.

5. Mr.G.Saravana Kumar, learned counsel contended that Nivashini was examined-in-chief on 03.09.2010, 09.12.2010 and 28.12.2011 and thereafter, she went to the US and has not come for giving evidence till date.

6. Learned counsel further contended that the accused are regularly appearing every month before the trial Court, but Nivashini is sitting pretty in the US and is not appearing before the trial Court for the reasons best known to her.

7. Per contra, Mr.Vijaya Raghavan, learned counsel for Nivashini submitted that after Nivashini was examined-in-chief on 03.09.2010, the accused filed a memo on 27.07.2011 objecting to the prosecution of the case being conducted by Mr.Kandasamy, learned Public Prosecutor, on account of which, further proceedings before the trial Court came to a standstill and therefore, Nivashini cannot be blamed for that.

8. Refuting the allegation, Mr.Saravana Kumar, learned counsel, submitted that even after the memo was filed, Nivashini was examined-in-chief on 21.02.2012 and therefore, that memo did not have any effect, as alleged by the learned

counsel for Nivashini.

9. This Court gave its anxious consideration to the rival submissions.

10. This Court called for records from the trial Court and perused the same.

11. Even according to Nivashini, she was in love with Nivendran and they got married. In the complaint given by Nivashini, there is no allegation of any of the accused assaulting her or touching her even. The allegations are that the parents of Nivendran demanded more money from her. In the complaint, she makes sweeping allegations against all the family members of Nivendran in one breath and thereafter, she joins Nivendran and resumes the matrimonial life from 18.04.2007. After rejoining, the couple lived separately in Perungudi. There are no allegations worth the salt against Saravanabavan [A5] and Viji @ Vijayakumari [A6], who are the maternal uncle and aunt of Nivendran.

12. In Arnesh Kumar Vs State of Bihar and another [2014] 8 SCC 273, the Supreme Court has observed that there is a trend in matrimonial cases to make unsubstantiated allegations against all the family members of the husband, only to harass them.

13. This Court perused the evidence of Nivashini and found that except making vague allegations, there are no substantial materials against Saravanabavan [A5] and Viji @ Vijayakumari [A6].

14. In the result, this Court is of the view that in the interest of justice, the prosecution as against Saravanabavan [A5] and Viji @ Vijayakumari [A6], has to be quashed.

15. The learned counsel for Nivashini submitted that Nivashini has recently joined a job in the USA and it will be very difficult for her to come in the near future, to India, to give evidence.

16. Under such circumstances, the presence of B.Ranjan [A2], Saroja [A3] and Sowbarnika [A4] before the trial Court is dispensed with on condition that they shall file an affidavit of undertaking before the Trial Court that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Cr1.) 288]. If the petitioners adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to custody as laid down by the Supreme Court in State of Uttar

Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. They shall be present for examination u/s 313 Cr.P.C. and on the date of judgment.

17. The trial Court is directed to complete the trial in C.C. No.10981 of 2008 within six months from the date of receipt of a copy of this order. The trial Court shall examine the other prosecution witnesses without waiting for examination of Nivashini.

18. The prosecution as against Saravanabavan [A5] and Viji @ Vijayakumari [A6] is quashed and this petition stands dismissed as against Nivendran [A1], B.Ranjan [A2], Saroja [A3] and Sowbarnika [A4].

In the result, this petition is allowed in part. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

gms

To

- 1.The Inspector of Police
W7, All Women Police Station
Anna Nagar
Chennai 600 040.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai.
- 3.The Public Prosecutor
High Court,
Madras 600 104.

+2cc's to Mr.G.Saravana Kumar, Advocate, S.R.Nos.62212 & 61170
+4cc's to Mr.R.Vijayaraghavan, Advocate, S.R.Nos.61983 & 61133

Cr1.O.P.No.27605 of 2015

GJ(CO)
CA(16/11/2016)