

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2016

CORAM

THE HONOURABLE MS.JUSTICE R. MALA

CRL.O.P.No.28047 of 2015

and

M.P.Nos.1 and 2 of 2015

1. Abdul Rahiman
2. Siyamah Rahiman ... Petitioners/Accused 2 and 3

... Vs ...

1. State represented by,
Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai. ... 1st Respondent/Complainant

2. Shereen Taj ... 2nd Respondent/De facto Complainant

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records and quash the proceedings in C.C.No.15164 of 2014 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai.

For Petitioners: Mr.M.Antony Jesurajan

For R-1 : Mr.C.Emalias,
Additional Public Prosecutor

For R-2 : Notice Served

ORDER

The petitioners, who are the accused 2 and 3, have come forward with this petition seeking to quash the proceedings in C.C.No.15164 of 2014 pending on the file of the learned X Metropolitan Magistrate, Egmore, Chennai.

2. Heard the learned counsel appearing for the petitioners as well as the learned Additional Public Prosecutor appearing for the first respondent. Though the second respondent has been served and her name is also printed in the cause list, she has not appeared either in person or through counsel.

3. The learned counsel for the petitioners submitted that the petitioners, who are the parents of the first accused, are

arrayed as Accused Nos.2 and 3. The marriage between the petitioners' son and the de facto complainant was solemnized on 01.09.2004. After the marriage, they left USA on 25.09.2004. Out of the wedlock, a child was born at USA on 24.09.2005. During her first visit from USA, the de facto complainant, directly, went to Trichy along with her child to show the child to her parents. Then, the de facto complainant returned to USA from Trichy via Chennai. Both the first accused and the de facto complainant lived together as husband and wife in USA till 19.09.2008. During the stay at abroad, due to intolerable violent actions, threatening to commit suicide by the de facto complainant, differences and disputes arose between them and the de facto complainant left from USA on 19.09.2008. The de facto complainant willfully and voluntarily withdrawn the conjugal rights and deserted the petitioners' son without sufficient reason. All the efforts taken by the petitioners to resolve the dispute between the first accused and the de facto complainant had ended in vain and hence, the first accused was forced to give triple 'Talaq' i.e., on 21.09.2009, 06.02.2010 and 07.05.2010 respectively. Three times 'Talaq' was told before the witnesses and the same was accepted and judgment was also pronounced as per Islamic law vide letter dated 10.01.2011. Subsequently, it was authenticated by the Chief Kazi to the Government of Tamil Nadu vide his letter dated 03.02.2011. Till such time, the de facto complainant has not given any complaint and now, the present complaint was given to harass the petitioners in their old age. Hence, the learned counsel for the petitioners prays for quashing of the proceedings stating that the petitioners are innocent and they have been falsely implicated in the case.

4. Resisting the same, the learned Additional Public Prosecutor submitted that on the basis of the complaint given by the second respondent/de facto complainant, a case in Crime No.23 of 2014 has been registered for the offences punishable under Sections 498(A), 406, 506(i) IPC and Sections 3 and 4 of Dowry Prohibition Act and after due investigation, the case was altered to Sections 498(A), 406 and 506(i) IPC. It is further submitted that prima facie, the ingredients of the offences under Sections 498(A) and 406 of IPC have been made out. The de facto complainant was subjected to cruelty in the hands of the in-laws and the same has been mentioned in the statements of the de facto complainant and others recorded under Section 161 of Cr.P.C. Further, the ingredients of the offence under Section 506(i) of IPC also have been made out. Merely because the petitioners/accused 2 and 3 are the senior citizens, it is not a ground for quashing the proceedings and hence, the learned Additional Public Prosecutor prays for the dismissal of the petition.

5. On a perusal of the typed set of papers, it is seen that the marriage between the petitioners' son and the de facto

complainant was solemnized on 01.09.2004 and after the marriage, both the first accused and the de facto complainant went to USA on 25.09.2004 and out of the wedlock, a child was also born to them. Thereafter, the de facto complainant, directly, went to Trichy along with her child and returned to USA from Trichy via Chennai. Both the first accused and the de facto complainant were lived together as husband and wife in USA till 19.09.2008 and the de facto complainant left from USA on 19.09.2008. All these facts have been admitted. But the averment in the FIR is that at the time of marriage, the father of the de facto complainant has given 80 sovereigns of gold jewels to the de facto complainant. Subsequently, the petitioners have demanded 50 sovereigns of gold jewels and cash of Rs.3,00,000/- from the father of the de facto complainant. As the father of the de facto complainant was unable to meet out the demand made by the petitioners, the complaint has been given by the de facto complainant against the accused. Based on the said complaint, though a case was registered in Crime No.23 of 2014 for the offences punishable under Sections 498(A), 406, 506(i) IPC and Sections 3 and 4 of Dowry Prohibition Act, subsequently, after due investigation, it was altered to Sections 498(A), 406 and 506(i) IPC. Now, the only point that has to be decided is, whether the ingredients of an offence under Section 498(A) of IPC have been made out against the petitioners.

6. The learned counsel for the petitioners has taken me through the statement recorded under Section 161 of Cr.P.C., wherein, it was specifically mentioned that the de facto complainant was not allowed to enter into the house of the petitioners stating that why the de facto complainant directly went to Trichy. Whether this amount to cruelty to be decided only at the time of trial and the same cannot be decided in the petition filed for quashing of the proceedings. Like wise, the question, as to whether the ingredients of an offence under Section 406 of IPC have been made out or not, has to be decided only after letting oral and documentary evidence.

7. In such circumstances, I am of the view that from the averments made in the FIR and the statements recorded under Section 161 of Cr.P.C., prima facie, the ingredients of offences under Sections 498(A), 406 and 506(i) have been made out. So, it is not a fit case for quashing the proceedings in C.C.No.15164 of 2014 pending on the file of the learned X Metropolitan Magistrate, Egmore, Chennai. This petition is devoid of merits and the same is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed.

8. At this juncture, the learned counsel for the petitioners would submit that the petitioners are the senior citizens and their personal appearance may be dispensed with. It is further submitted that the trial Court may be directed to complete the trial within a short period.

9. Considering the submissions made by the learned counsel for the petitioners and also considering the fact that the petitioners are the father and mother of the first accused and also the fact that since the case is of the year 2014, the learned X Metropolitan Magistrate, Egmore, Chennai, is directed to complete the trial, within a period of six months from the date of receipt of copy of this order. The learned Magistrate is also directed to consider the personal appearance of the petitioners/A.2 and A.3, whenever they filed an application for dispensing their personal appearance.

The connected Miscellaneous Petitions are closed.

Sd/-

Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

Jrl

To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam, Chennai.
3. The Public Prosecutor,
High Court, Madras.

1 cc to Mr.M. Antony Jesurajan, Advocate, Sr. 8963

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SR (CO)
kk 25/2