

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2016

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL

CrI.R.C.No.511 of 2013
and
M.P.Nos.1 & 2 of 2013

1.N.Sagayam

2.Vasantha

3.K.P.Panner Selvam

4.Kalavathy

5.N.Vimal

6.P.Vijayashanthi

7.N.Masilamani ... Petitioners/Accused 2 to8

Vs.

Prabhavathi ... Respondent/complainant

Criminal Revision filed under Sections 397 and 401
Cr.P.C. praying to set aside the order passed by the Learned
Judicial Magistrate, Tambaram in C.M.P.No.941 of 2012 in
C.C.No.501 of 2011 dated 27.09.2012.

For Petitioners: Mr.M.Murali

For Respondent : Mr.S.M.Muralidharan

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O R D E R

The Petitioners/Accused 2 to 8 have focused the instant
Criminal Revision Petition as against the order dated 27.09.2012
in CrI. M.P.No.941 of 2012 in C.C.No.501 of 2011 passed by the
Learned Judicial Magistrate, Tambaram.

2.The Learned Judicial Magistrate, Tambaram, while passing
the impugned order in CMP.No.941 of 2012 in C.C.No.501 of 2011
(filed by the Revision Petitioners/Accused) under Section 245 of

the Criminal Procedure Code at paragraph 9 had observed the following:

"9.Sworn statement of P.W.1 and other evidences perused. Several authorities cited by the petitioners as well as respondent are not applicable for this case and at this stage. The merits and demerits of the evidence and acceptability of the same beyond all reasonable doubt can be gone into only at the time of final stage. Out of evidence, this Court find some reasonable ground exist to frame the charges. Absolutely, there is no material available for the petitioners to discharge them. This Court cannot weigh the evidence at this stage. If sufficient materials are available, the Court has to frame charges. Hence, this Court feels prima facie case made out against the accused." and resultantly, dismissed the Petition as devoid of merits.

3. Being dissatisfied with the order dated 27.09.2012 in C.M.P.No.941 of 2012 in C.C.No.501 of 2011 passed by the Learned Judicial Magistrate, Tambaram, the Petitioners/Accused 2 to 8 have filed the instant Revision Petition before this Court (as aggrieved persons) primarily contending that the order of the trial Court is contrary to Law, weight of evidence and probabilities of the case.

4. The Learned counsel for the Petitioners/A2 to A8 submits that the Petitioners/A2 to A8 are the family members of A1 and that the Petitioners 1 and 2 are elder Father-in-Law and Mother-in-Law, Petitioners 3 and 4 are Father-in-Law and Mother-in-Law and Petitioners 5 & 6 are Brother-in-Law and Sister-in-Law who are studying in college and school respectively. Insofar as the Sixth Petitioner is concerned, she is a minor and filed a petition to that effect. The Seventh Petitioner is the person who stood as mediator to the marriage.

5. The primordial submission of the Learned counsel for the Petitioners/Accused 2 to 8 before this Court is that once the police authorities had rejected the case of the De-facto complainant, she has to challenge the report of the police notice by means of protest petition before the trial Court. However, in the instant case, the Respondent/Complainant had preferred a complaint in terms of the ingredients of Section 200 of the Criminal Procedure Code which is per se not maintainable.

6. Advancing his argument, the learned counsel for the Petitioners takes a stand that the trial Court had failed to

appreciate that the petitioners/Accused 2 to 8 were not involved in the family affairs of the Respondent/Complainant. That apart, it is represented on behalf of the Revision Petitioners that the Respondent/Complainant improved her case during enquiry, which was not mentioned in the complaint.

7. Conversely, it is the contention of the Learned counsel for the Respondent/complainant that the marriage between the Respondent/Complainant and the first Accused was solemnised on 25.02.2010 at Raja Rajeswari Kalyana Mandapam, Anagaputhur, Chennai-70 as per Hindu Rites and Customs in the presence of elders, well wishers of both sides. After marriage, the Respondent/Complainant and A1 commenced their joint family life at Manapakam.

8. The Learned counsel for the Respondent/Complainant proceeds to submit that a complaint dated 22.03.2011 was lodged by the Respondent/Complainant before the Sankar Nagar Police Station, Pammal, Chennai-75. The said complaint was transferred to All Women Police Station, Tambaram, Chennai-45 and according to the Learned counsel for the Respondent/Complainant, the police officials had not taken any action against the complainant.

9. It comes to be known that the police had investigated the complaint filed before the Inspector of Police, Sankar Nagar Police Station, Pammal and thereafter, the other complaint lodged before the All Women Police Station, Tambaram and according to the Revision Petitioners, since no prima facie case was made out, the police had not taken any action against them.

10. The Learned counsel for the Respondent/Complainant represented before this Court that the Respondent/Complainant was perforced to file a complaint on 22.04.2011 under Section 200 of the Criminal Procedure Code before the trial Court and that the trial Court had taken cognizance of the same.

11. According to the Learned counsel for the Respondent/Complainant, the trial Court had opined that there are materials available to frame the charges. In fact, the trial Court had examined the witnesses P.W.1 to P.W.8 (by means of sworn statement) and came to the conclusion that there was no material to discharge the Petitioners from the case.

12. At this juncture, this Court pertinently points out that in C.M.P.No.941 of 2012 in C.C.No.501 of 2011 (filed under Section 245 of Cr.P.C., praying for discharge from the main case) before the trial court, the Petitioners/Accused had averred that the marriage between A1/Vinodh Kumar and the Respondent/Complainant took place on 25.02.2010 at Raja

Rajeswari Kalyana Mandapam, Anakaputhur, Chennai-70 according to Hindu Rites and Customs. Subsequent to the marriage, it was averred that A1 and complainant had lived as husband and wife at A2 and A3's house at Anakaputhur Village. In fact, A1 and complainant had not lived with the Accused 4 to 7. Already, the Respondent/Complainant lodged a complaint in All Women Police Station, Tambaram and the prima facie case was not made out and that the police had not taken action against them. Moreover, as per the direction of the Inspector of All Women Police Station, A1/Vinodh Kumar had handed over the jewels, Indica Car and household articles to the Respondent/Complainant. The evidence adduced by the complainant and her mother were vague and frivolous. Indeed, the evidence of P.W.3 to P.W.5 had not corroborated the evidence of P.W.1 and P.W.2. In this backdrop, the Respondent/Complainant filed a private complaint and the offences under Section 498(A) and 420 of IPC were not at all made out against the Petitioners. Hence, they pray for discharging them from the main case.

13. In the counter filed by the Respondent/Complainant (before the trial Court) it was averred that after marriage, the Respondent/Complainant and A1 commenced their joint family life at Manapakkam and the balance 15 $\frac{1}{4}$ sovereigns of jewels and 49 household articles were not given to the Respondent/Complainant. A2 and A3, (husband and wife) are elder Father-in-Law and Mother-in-Law of A1, gave harassment daily to the complainant and they, on many occasions, advised their son everyday to demand gold sovereign and to get money from the Respondent/Complainant's parents. They also assured that their son would make arrangements for second marriage and insult met out by the A2 and A3 went to the extreme level. All the accused in the family demanded dowry and money which would point out that A1 is interested only in money and more particularly, to extract money and jewels alone.

14. As per Section 245 of Cr.P.C., the Learned Magistrate is required to consider the evidence with a view to forming prima facie case for conviction. When a prima facie case is made out, the charges should be framed as per decision in R.S.Nayak V. Antulay, AIR 1986 SC 2045. The test of 'Prima facie' is to be pressed into service before framing of charge. As per Section 245(2) of Cr.P.C., the term 'Groundless' means that the evidence is such that no conviction can be rested on it and not that the evidence does not disclose any offences whatsoever.

15. It is to be noted that Section 245 Cr.P.C., enjoins that the Learned Judicial Magistrate to discharge the accused only if after taking all the evidence referred to in Section 244 Cr.P.C., the Magistrate considers for reasons to be recorded

that no case against the accused has been made, which, if unrebutted, would warrant his conviction and not otherwise.

16.At this stage, this Court very relevantly points out that the acid test of prima facie case is to be applied by a Court of Law before framing of charge. The term 'prima facie' means a case established by ex-facie evidence which in turn means evidence sufficient in Law to raise a presumption of fact or establish fact in question unless rebutted.

17.At the time of considering the 'Discharge Petition', it is not for the Court to weigh the pros and cons of evidence and to analyse them in a meticulous fashion. Section 245 of Cr.P.C., is meant for filtering frivolous or vexatious private complaints and to protect the accused from the harassment.

18.On a careful consideration of the contentions advanced on either side and also this Court, taking note of the entire conspectus of the facts and circumstances of the present case in an integral manner, comes to a consequent conclusion that the view taken by the Learned Judicial Magistrate, Tambaram in dismissing the CrI.M.P.No.941 of 2012 in C.C.No.501 of 2011 dated 27.09.2012, does not suffer from any material irregularities, legal infirmities or patent illegalities in the eye of Law. Consequently, the Criminal Revision Petition fails.

19.In the result, the Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Judicial Magistrate,
Tambaram.
+1 cc to Mr.S.M.Muralidharan Advocate sr.22968
+1 cc to M/s.S.Sairaman Advocate sr.23248

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