

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Cr1.O.P.No.11328 of 2013

and M.P.Nos.1 and 2 of 2013

1.Natarajan
2.G.Subramaniam
3.Pachaiammal
4.Aruna
5.Vanitha .. Petitioners

Vs.

1.State
Rep.by the Inspector of Police,
All Women Police Station,
Dharmapuri.
2.Umasankari .. Respondents

Prayer:-Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records in C.C.No.53 of 2013 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

For Petitioners : Mr.N.Manokaran for
Mr.R.Jayaprakash

For R1 : Mr.C.Emalias
Additional Public Prosecutor

For R2 : Mr.V.Rajamohan

सत्यमेव जयते

ORDER

The petitioners who are the accused in C.C.No.53 of 2013 on the file of the learned Judicial Magistrate No.I, Dharmapuri, have come forward with this petition to quash the proceedings initiated against them for the offences punishable under Sections 498(A) and 494 IPC.

2. Learned counsel for the petitioners submits that the first petitioner is a husband, petitioners 2 and 3 are the father-in-law and mother-in-law, petitioners 5 and 6 are the sister-in-laws of the defacto complainant/second respondent. The marriage between the first petitioner and the defacto

complainant was performed on 23.06.2008 and the second respondent has been living separately in her parental home from 26.08.2009. It is further submitted that the first petitioner/husband has filed a petition under Section 13(1)(i) of Hindu Marriage Act, 1955 in H.M.O.P.No.75 of 2012 before the Sub Court, Dharmapuri, for divorce on 19.03.2012. Thereafter, the second respondent has given a complaint on 08.02.2013 before the respondent police, which is only a counter blast for filing of divorce petition. It is also submitted that the ingredients of Sections 498(A) and 494 IPC are not made out against the petitioners. To substantiate the same, the learned counsel for the petitioners relied upon the Judgement of the Hon'ble Supreme Court reported in (i) (2012) 10 Supreme Court Cases 741 (Geeta Mehrotra And Another vs. State of Uttar Pradesh and Another and (ii) (2010) 7 Supreme Court Cases 667 (Preeti Gupta and Another vs. State of Jharkhand And Another. Hence, he prays for quashing the proceedings.

3. Resisting the same, the learned counsel for the second respondent/defacto complainant/wife would submit that the averments made in the FIR, Section 161 Cr.P.C. statement and further statement clearly proves that the offences prima facie made out against the petitioners. He would also submit that explanation (a) in Section 498A IPC is squarely applicable to the facts of the present case and that there is no necessity for causing any injury or forcing the defacto complainant to commit suicide, mere mental agony is sufficient. He would further submit that the first petitioner/husband has filed HMOP.No.75 of 2012 for divorce before the Sub Court, Dharmapuri and the same was dismissed on 11.04.2014. It is to be noted that the first petitioner has married another woman, who has been arrayed as A6 and the petitioners 2 to 5 have arranged the second marriage, which amounts to cruelty. Hence he prays for dismissal of this petition.

4.Learned Additional Public Prosecutor appearing for the first respondent police has adopted the arguments advanced by the learned counsel for the second respondent.

5.Considered the rival submission made by both sides and perused the typed set of papers.

6.A perusal of the typed set of papers reveals that the marriage between the first petitioner and the defacto complainant was solemnised on 23.06.2008, but they have been living separately from 26.08.2009. The first petitioner/husband has filed a petition under Section 13(1)(i) of Hindu Marriage Act, 1955 in H.M.O.P.No.75 of 2012 dated 19.03.2012 before the Sub Court, Dharmapuri for divorce. The first petitioner has also got second marriage. It further reveals that the second respondent has given a complaint before the respondent police on

08.02.2013. On that basis, a case has been registered in Crime No.9 of 2013 for the offences under Sections 498A and 494 IPC. After investigation, a charge sheet has been filed and the same was taken on file in C.C.No.53 of 2013 on the file of the learned Judicial Magistrate No.I, Dharmapuri.

7.Now the point to be decided is that whether the ingredients of Section 498(A) IPC prima facie made out against the petitioners? So it is appropriate to incorporate Section 498A IPC, which runs as follows:

"498A-Husband or relative of husband of a woman subjecting her to cruelty_Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation-For the purpose of this section, "cruelty" means-

(a) Any willful 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 meet such demand."

"Cruelty" has been explained in Explanation (a) and (b). As per explanation (a), it is not necessary 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; It means mental agony also amounts to cruelty.

8.A perusal of Section 161 Cr.P.C. Statement of the defacto complainant reveals that the first petitioner/husband has assaulted her then and there, since she has not given birth to a child. It further reveals that her in-laws have also been scolded her then and there by abusing her that she has not given birth to a child. Further, they scolded her to hand over the thali kodi and asked her to go to her parental home. It clearly shows that the second respondent had met out cruelty at the hands of her husband and in-laws. Further it was stated in Section 161 Cr.P.C. statement, the first petitioner has got second marriage, which has been performed by her in-laws/petitioners 2 to 5. The performance of second marriage

itself caused mental agony to the defacto complainant. Under such circumstances, the argument advanced by the learned counsel for the petitioners that the ingredients of Section 498A IPC have not been made out against the petitioners, does not merit acceptance.

9. Now this Court has to consider the decisions relied upon by the learned counsel for the petitioners reported in 2010 7 Supreme Court Cases 667 (Preeti Gupta and Another vs. State of Jharkhand And Another and submits that if there is any dispute between the spouses, the wife always roped the in-laws and daughter-in-laws in the complaint and hence, they should be exonerated from the criminal liability. For the reason, he relied upon para-33 to 37, which are extracted hereunder:

"33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquillity of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34. Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating the husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real

truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law."

10. In (2012) 10 Supreme Court Cases 741 (Geeta Mehrotra And Another vs. State of Uttar Pradesh and Another), wherein it was held that while giving complaint for the offences under Section 498A IPC and Section 3/4 of the Dowry Prohibition Act, sister and brother in-laws of the complainant were included

casually. So it cannot be overlooked that it would be total abuse of the process of law. Further, it was held that it would be clear abuse of the legal and judicial process to mechanically send the named accused in the F.I.R. to undergo the trial, unless the F.I.R. discloses specific allegation, which would persuade the Court to take cognizance of the offence alleged against the relatives of the main accused, who are prima facie not found to have indulged in physical and mental torture of the complainant/wife. In the case on hand, a specific averment made that petitioners 2 to 5 had conducted the second marriage of the first petitioner, which caused mental agony to the second respondent.

11. Considering the aforesaid facts and circumstances of the case, I am of the view, there is a prima facie material to frame charges against the petitioners for the offences punishable under Sections 498(A) and 494 IPC. Therefore, I do not find any reasons to quash the proceedings initiated against the petitioners. Accordingly, the Criminal Original Petition stands dismissed as devoid of merits. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the matter on merits and in accordance with law. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
All Women Police Station,
Dharmapuri.
2. The Judicial Magistrate No. I,
Dharmapuri.
3. The Public Prosecutor
High Court, Chennai.

+1 cc to Mr. R. Jayaprakash Advocate sr.20162

+1 cc to Mr. N. Mohideen Basha Advocate sr.19911

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