

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.O.P. No.20761 of 2016

and

CrI.M.P. Nos.9659 & 9660 of 2016

1 Kannan  
2 Viswamithran  
3 Sangeetha  
4 Ramesh Kumar Petitioners/ Accused

vs.

1 State represented by  
the Inspector of Police  
All Women Police Station  
Vellur  
Namakkal District  
Crime No.5 of 2004

2 G. Malathi Respondents/ Complainant

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for records pertaining to the proceeding in C.C. No.153 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Paramathi, Namakkal District and quash the same.

For petitioner Mr. A. Balamurugan

For R1 Mr. C.Emalias,  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for records pertaining to the proceeding in C.C. No.153 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Paramathi, Namakkal District and quash the same.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

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

4. Kannan [A1] married Malathi [de facto complainant/R2] on 23.02.2004 and they lived together only for 30 days. Thereafter, they got estranged. Malathi lodged a complaint with the first respondent police, based on which a case in Cr.No.4 of 2004 was registered on 06.07.2004 and after completing investigation, the police filed a Final Report in C.C.No.153 of 2004 for offences u/s 498-A, 506(ii) IPC and Section 4 of Dowry Prohibition Act against Kannan and four others [his family members] before the District Munsif-cum-Judicial Magistrate, Paramathi, challenging which the accused are before this Court.

5. It is reported that one of the accused, Padmavathy [A3] had died in the meantime. Notice was issued to Malathi, the second respondent and it is reported by the learned Additional Public Prosecutor, on instructions from the respondent police, that she is not traceable.

6. On a reading of the complaint given by Malathi, it is seen that she has alleged that her marriage with Kannan lasted only for thirty days and she was sent back to her parental home by the accused, for want of more dowry. She has also stated in the complaint that several panchayat and mediation talks were held, but were futile.

7. Malathi filed HMOP No.63 of 2008 before the Sub Court, Namakkal u/s 13(1)(ia) of the Hindu Marriage Act, 1955 against Kannan, for divorce on the ground of cruelty and she obtained an ex parte decree in her favour on 23.10.2008. She was also paid Rs.4 lakhs as maintenance by Kannan. When the trial Court issued summons for the appearance of Malathi, the police were not able to serve summons on her, as she had gone missing since 2011. In fact, her father Govindaraj lodged a complaint, based on which Paramathi Police Station Cr.No.44 of 2013 has been registered on 30.01.2013 for "woman missing" and still Malathi's whereabouts are not known to anyone. In the complaint given by Govindaraj, he has clearly stated that Malathi got married to Kannan and obtained a decree of divorce and also a sum of Rs.4 lakhs as maintenance. It is further averred in the complaint that Malathi went to the ration shop on 20.10.2011 by cycle and after leaving the cycle in the ration ship, she never returned home. Thus, Malathi had gone missing as early as 20.10.2011, but Govindaraj has lodged the complaint only on 30.01.2013, based on which, as stated above, a case in Paramathi Police Station Cr.No.44 of 2013 is pending for "woman missing".

8. This Court perused the FIR and the Final Report. The allegations are indeed vague. Malathi has stated that she lived with Kannan only for thirty days and they got separated

thereafter. She has implicated all the family members of her husband in the complaint and they have been facing this prosecution from the year 2004 without any serious progress therein. The Supreme Court in Arnesh Kumar v. State of Bihar and another [(2014) 8 SCC 273] has held that in matrimonial cases, there is a growing tendency by the complainants to implicate all the members of the husband's family and therefore, the Supreme Court has given a note of caution to the police not to be hasty by arresting the accused on the ipse dixit of the complainant.

9. Taking into consideration the aforesaid facts and also the fact that the allegations in the complaint and the Final Report are too frail, this Court is of the view that this is a fit case to quash the prosecution.

In the result, this petition is allowed and the proceedings in C.C. No.153 of 2004 on the file of the District Munsif-cum-Judicial Magistrate, Paramathi, Namakkal District is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

gms

To

- 1 The District Munsif-cum-Judicial Magistrate  
Paramathi  
Namakkal District
- 2 The Inspector of Police  
All Women Police Station  
Vellur  
Namakkal District
- 3 The Public Prosecutor  
Madras High Court  
Chennai 600 104

1 cc to Mr.A. Balamurugan, Advocate, Sr. 60792

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