

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.20933 of 2016

1.V.Nagarajan
2.K.Velayutham
3.V.Geetha
4.S.Uma Sundaram .. Petitioners

Vs

1.The State, rep. by
The Inspector of Police
All Women Police Station
Ambattur, Chennai-600 053.

2.B.P.Thangaveni Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the Charge Sheet in C.C.No.25 of 2016 on the file of Judicial Magistrate Court, Ambattur and quash the same and allow the above criminal original petition.

For Petitioners : Mr.P.K.Sabapathi

For R1 : Mr.C.Emalias,
Addl.Public Prosecutor

सत्यमेव जयते
O R D E R

This petition has been filed to call for the records relating to the Charge Sheet in C.C.No.25 of 2016 on the file of the Judicial Magistrate Court, Ambattur, quash the same and allow the above criminal original petition.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the 1st respondent.

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

4. B.P.Thangaveni got married to V.Nagarajan on 01.12.2013 and at the time of marriage, the parents of Thangaveni had given Rs.3 lakhs, which was remitted into the

bank account of Uma Sundaram (A4). Apart from that, 17 sovereigns of gold jewellery, silver articles and other sreedhana articles were given to Thangaveni at the time of the marriage, which were entrusted to the accused herein. After marriage, Nagarajan and Thangaveni had established a separate house in Ambattur, whereas, K.Velayutham (A2), V.Geetha (A3), and S.Uma Sundaram (A4) were living in Susindram.

5. It is alleged by Thangaveni that on 12.05.2014, Nagarajan had thrown boiling water on her; that she escaped from serious injuries; that they had a matrimonial dispute between them and that she asked for return of gold jewellery, silver articles, but the accused refused to return the same.

6. On the complaint lodged by Thangaveni, the first respondent police registered a case in Crime No.7 of 2015 and after completing the investigation, filed a final report in CC No.25 of 2016 before the Judicial Magistrate, Ambattur for offences under Sections 498-A and 406 IPC against V.Nagarajan (A1), K.Velayutham (A2), V.Geetha (A3) and S.Uma Sundaram (A4), challenging which the petitioners/ accused are before this Court.

7. Learned counsel appearing for the petitioners / accused submitted that there is no evidence to show that the gold ornaments were handed over by Thangaveni to K.Velayutham (A2), V.Geetha (A3) and S.Uma Sundaram (A4). He also placed reliance on Section 181(4) Cr.PC and contended that even according to the prosecution, the gold ornaments were entrusted in Susindram, Nagercoil, Kanyakumari District and therefore, the prosecution is not maintainable in the Court of the Judicial Magistrate, Ambattur. He also relied upon the judgment of Supreme Court in Rashmi Kumar (SMT) Vs Mahesh Kumar Bhada, [(1997) 2 SCC 397].

8. Learned Additional Public Prosecutor refuted the contentions raised by the learned counsel appearing for the petitioners/accused.

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

10. As regards absence of the independent witness to prove the prosecution, in matrimonial offences, seldom will there be public witness, who would have seen the incident. Matrimonial offences take place within four walls of the house. Sreedhana articles are handed over in trust and good faith.

11. Learned counsel appearing for the petitioners / accused has also relied upon the exchange of legal notices

between the parties in order to show the falsity in the case of the prosecution.

12. In the considered opinion of this Court, the notices cannot be looked into while deciding a quash application, as disputed questions of fact cannot be gone into U/s 482 Cr.PC. As regards Section 181(4) Cr.PC, in this case, the accused are charged for offences under Sections 498-A and 406 IPC for which Section 220 Cr.PC will apply. The allegations under Section 498-A IPC had taken place within the jurisdiction of the Ambattur Court and therefore, the prosecution for offences under Sections 498-A and 406 IPC before the Judicial Magistrate Court, Ambattur is maintainable. Apart from that, even under Section 181(4) Cr.PC, the Court within whose local jurisdiction the other party is required to return the entrusted goods will also have jurisdiction to try the case. Even if the sreedhana articles are given at Susindram, yet, when Thangaveni demands for the return, it is the duty of the accused to return it at Ambattur.

13. In the judgment relied upon by the learned counsel appearing for the petitioners/accused, it is seen that the Supreme Court has clearly stated that the quash application with regard to the disputed questions of fact should not be entertained under Section 482 Cr.PC, when there are prima facie allegations in the complaint. In this case, the charge sheet discloses prima facie allegations against the petitioners and therefore, this is not a fit case to quash the prosecution as per the law laid down in the judgment of the Supreme Court that has been relied upon by the petitioners/accused.

14. In the result, the petition is dismissed. Whatever is observed herein, it is only for deciding this quash application and the trial Court should proceed with the trial without in any way being influenced by what is stated above.

15. At this juncture, learned counsel appearing for the petitioners/accused sought for a direction to the trial Court to complete the trial expeditiously. Accepting his submission, the trial Court is directed to complete the trial within 6 months from the date of receipt of a copy of this order, provided the accused engage an advocate and co-operate in the trial by cross examining the witnesses on the same day they are examined-in-chief, as held by the Supreme Court in Vinoth Kumar vs. State of Punjab [2015(1) MLJ (Cri) 288].

16. Learned counsel appearing for the petitioners/accused submitted that Geetha (A3) is a heart patient and therefore, her presence before the trial Court may be dispensed with. Accepting his submission, Geetha (A3) is directed to appear before the trial Court for receiving the papers under Section

207 Cr.PC, for answering the charge, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. Geetha (A3) shall file an affidavit of undertaking, before the Trial Court that she will not dispute her identity; that her counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief and that she will not adopt dilatory tactics. On such undertaking, the Trial Court shall dispense with the personal appearance of Geetha (A3). If Geetha (A3) adopts dilatory tactics, it is open to the Trial Court to insist upon her presence.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court, Ambattur.

2. The Inspector of Police
All Women Police Station
Ambattur, Chennai-600 053.

3. The Public Prosecutor, High Court, Madras.

1 cc to Mr.P.K.Sabapathi, Advocate, sr.53190

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rj co
kra 17.10.2016

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