

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017
CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.30156 of 2010
and
M.P.Nos.1 and 2 of 2010

1.P.Murugesu Pandian
2.Jayalakshmi

... Petitioners

vs.

1.State Rep. by
The Assistant Commissioner of Police,
S-6, Sankar Nagar Police Station,
Tambaram Range, (Cr.No.839/2007)
Tambaram.

2.P.Muniasamy ... Respondents
(Impleaded the 2nd respondent as per the order
of this Court dated 06.01.2011 in MP.No.1/2011)

Prayer: Criminal Original Petitions filed under Section 482 of
Cr.P.C., to call for the records in P.R.C.No.76 of 2010 on the
file of the learned Judicial Magistrate, Tambaram, quash the
proceedings therein.

For Petitioners : Mr.C.S.Dhanasekaran

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

JUDGMENT

The brief facts necessary to dispose of this Criminal
Original Petition is recapitulated as under: The marriage
between the petitioner's son namely Ponrajan and Kalaiselvi the
daughter of the 2nd respondent herein was solemnized on
01.11.2006 as per Hindu rites and customs.

2.According to the petitioners, after marriage their son and
daughter-in-law Kalaiselvi lived separately at Pammal and they
had no nexus with them. While so, on 05.10.2007 the daughter-in-

law of the petitioners herein committed suicide by hanging herself at Pammal.

3.Pursuant to the above said occurrence, a case was registered in Crime No.838 of 2007 under section 174(2) Cr.P.C. and the same was under investigation. The Sub-divisional Magistrate, Chengalpet conducted inquest and submitted his report on 10.10.2007 to the 1st respondent police. Thereupon final report was filed on 17.12.2009 for the offence under Section 498-A and 306 I.P.C. before the learned Judicial Magistrate, Tambaram in P.R.C.No.76 of 2010 arraying the petitioners herein as 2nd and 3rd accused respectively and their son was arrayed as 1st accused. Challenging the same the petitioners have filed the above Criminal Original Petition under Section 482 of the Code of Criminal Procedure to quash the final report.

4.It is contented by the learned counsel for the petitioners that the 1st accused, the son of the petitioners herein and her wife Kalaiselvi lived separately at Pammal from their marriage. The petitioners lived separately at Madambakkam and they never ever visited the place of the alleged incident. The implication of the petitioner in the above final report is meant only to harass and humiliate the in-laws of the deceased Kalaiselvi.

5.It is further contented that in the above report filed by the Sub-Divisional Magistrate, Chengalpet, it has been specifically stated that the deceased Kalaiselvi has committed suicide by hanging herself due to mental agony caused by her parents and for non-visiting her frequently after the marriage. In the report, it is further stated that the suicide of the deceased Kalaiselvi was not caused by the ill-treatment for dowry. More so, there is no specific overt act against the petitioners. Therefore, allowing the above criminal case to see the ordeal of trial as against the petitioners would be an abuse of process of law.

6.Per contra, the learned Government Advocate (Criminal side) argued that prima facie materials are available against the petitioners herein and strongly objected to quash the final report filed against the petitioners herein in P.R.C.No.76 of 2010.

7.I heard Mr.C.S.Dhanasekaran, learned counsel for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate

(Criminal Side) for the 1st respondent and perused the materials available on records. There is no appearance on the side of the 2nd respondent.

8.The petitioners are found to be the in-laws of the deceased Kalaiselvi. The report of Sub-Divisional Magistrate, Chengalpet dated 11.10.2007 states that there is no dowry demand or harassment made by these petitioners towards deceased Kalaiselvi and further report detailed that the suicidal death might have been due to the non-visiting of parents of the deceased.

9.At this juncture this Court would like to emphasis a Recent Decision of the Hon'ble Apex Court in the case of Rajesh Sharma and others Vs. State of U.P. and another reported in 2017 (4) CTC 667 holding that

"Section 498-A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a women as mentioned in the statement of objects and reasons of the Act 46 of 1983. The expression "cruelty" in section 498-a covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continues to be filed under section 498-A alleging harassment of married women. We have already referred to some of the statistics from the crime records bureau. This court had earlier noticed the facts that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At that time of filling of the complaint, implications and consequences are not visualized. At time such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This court had earlier observed that a serious of the provision was warranted".

10.In this context it would also relevant to look into yet another decision of the Hon'ble Apex Court in the case of Preeti Gupta and Anr Vs. State of Jharkhand and Anr. reported in 2010 (7) SCC 667 holding that

"It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motion. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern."

11. From the above cited decisions of the Hon'ble Supreme Court, it is very clear that most of the complainants related to matrimonial disputes such that under Section 498-A IPC and Section 3 and 4 of Dowry Prohibition Act are filed in the heat of the moment over trivial issues. Most of the complaints are lacking bona fide. At the time of filing complaints, implication and consequence are not visualized by the parties and such complaints lead to uncalled for harassment not only to the accused, but also to the complainants. The misuse of sec 498-A IPC and roping in all family members of the husband in the complaint on the strength of vague and exaggerated allegations has to be deprecated.

12. Now coming to the case on hand, firstly it has to be seen as to whether the Charge as well as the averments made against the petitioners would attract an offence under Sections 498-A IPC and 306 IPC.

13. In this regard, this Court likes to refer and rely upon the decision of this Court made in the matter of Suresh Kumar Versus State reported in 2014 1 MLJ (Cri) 303 explaining the scope of criminal liability with regard to an offence under Section 498-A IPC, as following that

"Section 498-A IPC reads as under:

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 purposes of this section, "cruelty" mean-

(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 to meet such demand."

14. It is clear from the explanation to Section 498A IPC that the husband or his relative can be prosecuted under Section 498A IPC for their willful conduct which is of such a nature as is likely to drive her to commit suicide.

15. Having discussed as to the scope and criminal liability over an alleged offence of 498-A IPC as above and while dealing with alleged offence of 306 of IPC against the petitioner/husband therein for having allegedly scolded her wife and of which the respondent wife committed suicide, this Hon'ble Court held as following that

"4. A complete reading of the final report and the 161 Statements reveal that apart from scolding his wife for allowing the child to eat sour food, the petitioner has not done anything to instigate or aid the commission of suicide by his wife.

5. Section 306 IPC reads as follows:

"306. Abetment of suicide: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

6. The word "abetment" used in Section 306 IPC is defined in Section 107 IPC, which reads as under:

"107. Abetment of a thing: A person abets the doing of a thing, who- First: -Instigates any person to do that thing; or Secondly: -Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly: -Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1: A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

7. To attract the offence of abetment of suicide under Section 306 IPC, the accused must have done any

one of the overt acts enumerated in Section 107 IPC. Ignoring this salutary requirement, it is seen that frequently people are arrested and prosecuted indiscriminately under Section 306 IPC for the suicide of another person. When a person commits suicide, the whole neighbourhood rises in unison to clamor for the scalp of another and the police, unable to withstand social pressure, look out for a scapegoat to arrest and prosecute under Section 306 IPC."

16. Now coming to the facts of the instant case, the records disclose that there are totally two allegations leveled against the petitioners, that is to say:

1. The petitioners disallowed the deceased to light an Oil lamp.
2. The petitioners separated themselves from their son and the deceased by refraining to live a joint family and thereby made their son and the deceased to live separately in Pammal.

17. It is needless to say for this Court to say that the above allegations and the nature of accusation over petitioners would demonstrate that they being the in-laws of the deceased Kalaiselvi are found to be roped in the heat of the movement on such baseless and deplorable allegation. In actual the petitioners by their act and conduct of living away from their son and daughter in law have saved themselves from possibilities of hue and cry.

18. Admittedly both the report of the Sub Divisional Magistrate and FIR has no incriminating material against the petitioners so as to connect them into the above case for the offence under Sections 498-A and 306 of I.P.C.

19. Considering the Scope of Section 306 IPC and in the light of decisions stated above and facts involved in the case, absolutely there is no material to show that there was an intention and mens rea on the part of the petitioners to induce or instigate the deceased to commit suicide.

20. In view of discussion made above and in the light of the judgments cited supra, this court is of the considered opinion that the ordeal of trial in the above criminal case would defeat the rights of the petitioners. Hence to prevent abuse of process of law the charge sheet filed in P.R.C.No.76 of 2010 is liable to be quashed and accordingly quashed.

21.In the result, this criminal original petition is allowed and the final report in PRC.No.76 of 2010 on the file of the Learned Judicial Magistrate, Tambaram stands quashed in so far as the petitioners are concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vs

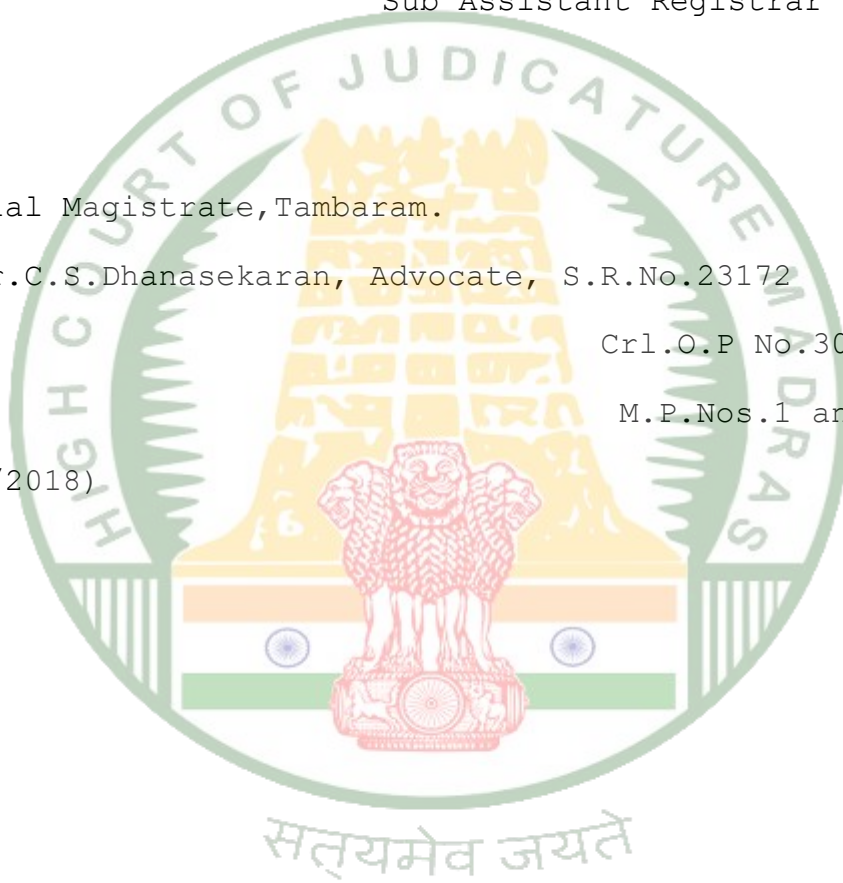
To

The Judicial Magistrate, Tambaram.

+1cc to Mr.C.S.Dhanasekaran, Advocate, S.R.No.23172

Crl.O.P No.30156 of 2010
and
M.P.Nos.1 and 2 of 2010

RRK(14/03/2018)



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