

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.Nos.7375, 22195 of 2009 and 8654 of 2010  
and  
M.P.Nos.1 and 1 of 2009 & 1 of 2010

Leena ... Petitioner/Accused 5 in  
Crl.O.P.No.7375/2009

Kamalnath ... Petitioner/Accused 4 in  
CrlOP.No.22195/2009

1.Sasikath  
2.Raja @ Nagasubramanian  
3.Lalitha ... Petitioners/Accused 1 to 3 in  
Crl.O.P.No.8654/2010

vs

1.State by  
The Inspector of Police,  
W-25, all Women Police Station,  
T.Nagar, Chennai-17. ... 1<sup>st</sup> Respondent/Complainant in  
CRL.OP.No. Nos.7375/09, 22195/09  
& 8654/10

2.Gayathri Viswanathan ... 2<sup>nd</sup> Respondent/Defacto Complainant  
all Crl.O.Ps.7375, 22195/09 & 8654/10

(R2 impleaded as per the  
order of this court dated 03/02/2014  
in M.P.No. 3/2009 in  
Crl.O.P.No. 7375/2009)

Criminal Original Petitions filed under Section 482 of Code of  
Criminal Procedure, to call for records in C.C.No.9887 of 2008  
pending on the file of the XVII Metropolitan Magistrate,  
Saidapet, Chennai and quash the same.

For Petitioners : M/s.K.Sumathi in all OPs  
For Respondents : Mr.B.Ramesh Babu (for R1)  
Govt. Advocate (Crl.Side)  
in all OPs

## COMMON ORDER

These Criminal Original Petitions have been filed by the petitioners to call for records in C.C.No.9887 of 2008 pending on the file of learned XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2. The petitioner in Crl.O.P.No.7375 of 2009 is the 5<sup>th</sup> accused; the petitioner in Crl.O.P.No.22195 of 2009 is the 4<sup>th</sup> accused and petitioners in Crl.O.P.No.8654 of 2010 are accused Nos.1 to 3 in C.C.No.9887 of 2008 pending on the file of learned XVII Metropolitan Magistrate, Chennai. Since the issue arising out of the same case and also the issue involved in these petitions are one and the same, all the petitions were heard together and disposed of by this common order.

3. The second respondent in these Criminal Revision Petitions had lodged a complaint before the 1<sup>st</sup> respondent police stating that her parents conducted her marriage with the 1<sup>st</sup> accused on 4.5.2006. At the time of marriage, her parents gave 60 sovereigns of gold ornaments, 2 kgs of silver articles and also household articles to the 1<sup>st</sup> accused. After the marriage, the 1<sup>st</sup> accused and his parents, accused Nos.2 and 3 and his brother, 4<sup>th</sup> accused had given continuous torture and harassment to her. During 2006, the 1<sup>st</sup> accused gone to United States of America for his employment purpose and in the year March 2007, the complainant also went to USA and stayed together for 10 months. During the said period, accused Nos.2 to 4 through conference call created problems between the complainant and the 1<sup>st</sup> accused. It is stated in the complaint that the petitioner in Crl.O.P.No.7375 of 2009, who was the cousin of the 1<sup>st</sup> accused and had also residing opposite to the complainant's house at USA had also given torture. While so, in the year 2008, the 1<sup>st</sup> accused abandoned the complainant at USA and when the complainant had taken steps to contact him, he was not picked up the phone and he had sent messages stating that he will cut her work permit and also threatened her to go to India. Immediately, the complainant conveyed the above ill-treatment to her mother, who in turn lodged a complaint on 16.6.2008, which was registered as CSR.No.81 of 2008. During pendency of the enquiry, the complainant came to India and on 26.6.2008, she had lodged a complaint before W-25 All Women Police Station, T.Nagar and the police has registered the case in Crime No.14 of 2008 under Sections 498-A and 506(ii) of IPC against the accused 1 to 5. After investigation and on examination of the witnesses, the 1<sup>st</sup> respondent police filed a final report on 22.7.2008 and the learned XVII Metropolitan Magistrate, Chennai has taken cognizance of the offence in C.C.No.9887 of 2008.

4. Resisting the petitions, the 1<sup>st</sup> respondent State

filed counter in Crl.O.P.No.8654 of 2010 stating that based on the complaint lodged by the complainant, the 1<sup>st</sup> respondent investigated the case and after examination of witnesses including the complainant and also after obtaining legal opinion from the Assistant Public Prosecutor, Saidapet, Chennai, the 1<sup>st</sup> respondent has filed the charge sheet against the accused 1 to 5 and the case was taken on file as C.C.No.9887 of 2008. It is further submitted that during the course of pending trial, on 4.9.2015, the complainant sent a representation along with the order in O.P.No.2819 of 2008 dated 25.11.2008 passed by the learned I Additional Family Court, Chennai seeking to close the case. The petitioner also sent e-mail communication dated 10.9.2015 to the 1<sup>st</sup> respondent stating that she re-married on 6.4.2009 and settled with her husband and children in USA and requested the 1<sup>st</sup> respondent to close the case. Since the 1<sup>st</sup> respondent has conducted fair investigation in this matter, the 1<sup>st</sup> respondent has no power to close the case and prayed for dismissal of the petition.

5. I heard M/s.K.Sumathi, learned counsel for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1<sup>st</sup> respondent. Despite service of notice in Crl.O.P.No.8654 of 2010, the 2<sup>nd</sup> respondent has not entered appearance.

6. Assailing the criminal proceedings in C.C.No.9887 of 2008 initiated against the accused 1 to 5, the learned counsel for the petitioners in these petitions submitted that when the complainant and the 1<sup>st</sup> accused lived in USA, there was a wordy quarrel between them. For the said wordy quarrel, the mother of the complainant lodged a complaint against the accused 1 to 5 requesting the 1<sup>st</sup> respondent to call parents of the 1<sup>st</sup> accused and advice them not to harass her daughter and also advice the 1<sup>st</sup> accused to live happily with her daughter who were living in USA.

7. The learned counsel further submitted that on 26.6.2008, the mother of the complainant has given a letter to the 1<sup>st</sup> respondent police requesting to stop action as her daughter wants to give complaint as soon she returned from USA. On the same date i.e., on 26.6.2008, the complainant, lodged a complaint alleging that her husband and his parents had not allowed her to live happily while she was living with her husband in USA. The learned counsel would submit that in her complaint, the complainant alleged that the 1<sup>st</sup> accused was behaving like a psycho and the 5<sup>th</sup> accused, who was related to the 1<sup>st</sup> accused and living in USA near their house has also harassed her. According to the petitioners, as per the recital of the complaint, the whole occurrence took place at USA that too through telephonic conversation and there were only wordy

quarrel.

8. The learned counsel for the petitioners further submitted that the complainant had already filed O.P.No.2819 of 2008 for divorce before the learned Family Court, Chennai and the same was allowed on 25.11.2008. After the divorce granted, the complainant got re-married and living happily. Only to harass the petitioners, the complainant had lodged the complaint and none of the ingredients were available in the final report to make out the offence under Section 498-A IPC as also Section 506(ii) IPC.

9. On the other hand, the learned Government Advocate (Criminal Side) admits that spouses separated by way of decree of divorce after filing of the final report before the Court. Since the 1<sup>st</sup> respondent conducted fair and free investigation and laid charge sheet, they have no power to close the case based on the letter and e-mail received from the complainant requesting them to close the case.

10. It appears that the wordy quarrel alleged by the complainant in her complaint was taken place at USA when spouses lived together in USA. Admittedly, no complaint was lodged against the petitioners by the complainant in USA. As per Section 188 Cr.P.C., no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government. In this case, nothing has been produced to show that only after obtaining permission, the criminal prosecution has been launched against the petitioners.

11. It also appears that after filing of the final report by the 1<sup>st</sup> respondent, the complainant had filed O.P.No.2819 of 2008 before the learned Family Court, Chennai seeking divorce. By an order dated 25.11.2008, the learned Additional Family Court I, Chennai, allowed O.P.No.2819 of 2008 filed by the complainant and granted divorce.

12. In the counter, the 1<sup>st</sup> respondent stated that they have received letter dated 04.09.2015 and e-mail dated 10.9.2015 from the complainant, wherein she had requested to close the case. Thus, from the above, it is seen that the complainant do not want to prosecute the case any further, as immediately after the divorce granted, she re-married on 06.4.2009. It is also seen that after re-marriage, the complainant settled with her husband and children in USA.

13. Coming into the merit of the complaint is concerned, nothing has been produced by the complainant before the the learned Magistrate or before this Court to show that there was dowry harassment by the accused 1 to 5. In fact, in these petitions, the complainant remained silent after receipt of notice. For mere wordy quarrel, she lodged the complaint before the 1<sup>st</sup> respondent police that too for the quarrel took place in USA.

14. There is nothing in the complaint which connects the

accused 1 to 5 with an offence under Section 498-A or any other offence of which cognizance was taken by the 1<sup>st</sup> respondent police. Certain acts of ill-treatment by the parents of the 1<sup>st</sup> accused and the 1<sup>st</sup> accused and also the 5<sup>th</sup> accused were alleged in the complaint, but they do not pertain to dowry demand. What was said against the parents and the brother of the 1<sup>st</sup> accused is that they have not allowed her to live happily while she was living with her husband in USA. As far as the 5<sup>th</sup> accused is concerned, the complainant alleged that while she was residing at USA, the 5<sup>th</sup> accused used to visit her house and she had also given torture to her. These allegations, even if true, do not amount to harassment with a view to coercing the complainant or her parents to meet an unlawful demand of dowry. At the most, the allegations reveal that accused 1 to 5 were insulting and behaving rudely against her. Therefore, this Court is of the view that neither the FIR nor the charge sheet furnished the legal basis to the learned Magistrate to take cognizance of the offences alleged against the accused 1 to 5.

15. Moreover, the subsequent developments took place in this case also support the case of the petitioners as after the learned Magistrate taken cognizance of the offence, the complainant filed divorce petition and got divorce and also she re-married and settled with her husband in USA. Further, she had also written the letter dated 04.9.2015 and also mail dated 10.9.2015 to the 1<sup>st</sup> respondent requesting them to close the case. Taking into consideration of the subsequent events, this Court feels that proceeding the criminal prosecution against the accused 1 to 5 is total wasting of the judicial time. Further, after re-marriage, it would not be appropriate on the part of the complainant to continue the criminal prosecution against the petitioners including her former husband considering the family atmosphere in which she is now living.

16. For the foregoing reasons, the Criminal Original Petitions are allowed and the proceedings in C.C.No.9887 of 2008 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai shall stand quashed in so far as the petitioners herein are concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vs

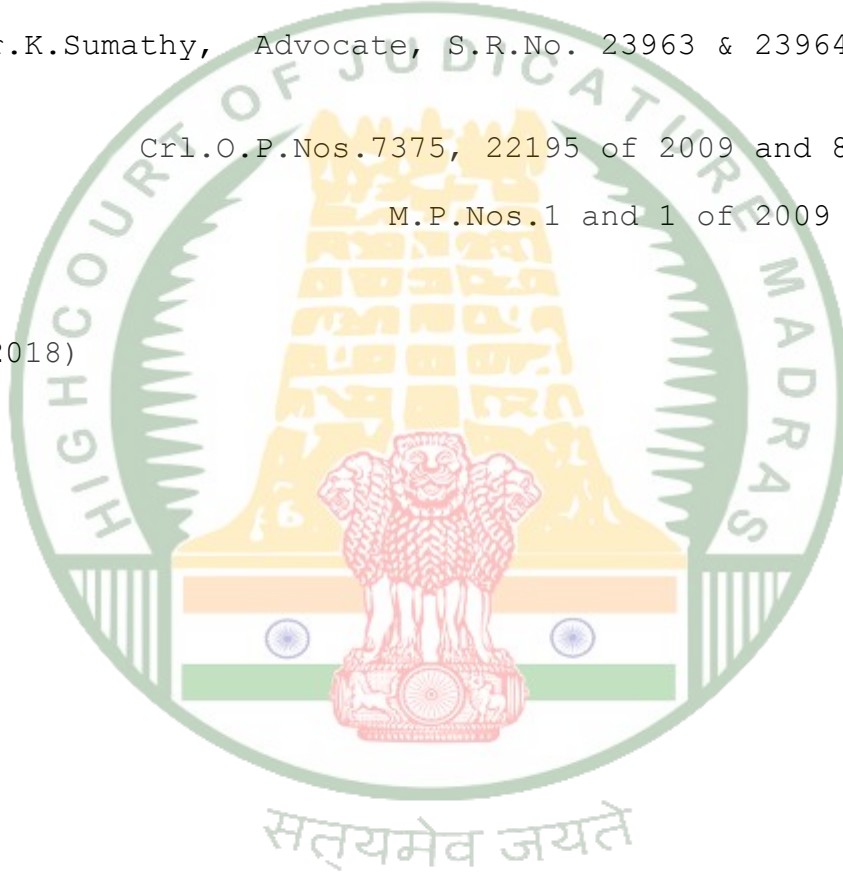
To

- 1.The XVII Metropolitan Magistrate,  
Saidapet, Chennai.
2. The Public Prosecutor,  
High Court, Madras.
3. The Inspector of Police,  
W-25 All Women Police Station,  
T.Nagar, Chennai-17.

+4cc to Mr.K.Sumathy, Advocate, S.R.No. 23963 & 23964

CrI.O.P.Nos.7375, 22195 of 2009 and 8654 of 2010  
and  
M.P.Nos.1 and 1 of 2009 & 1 of 2010

RJI (CO)  
GN(12/11/2018)



WEB COPY