

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.801 of 2015
and M.P.No.1 of 2015

Anthony swamy ... Petitioner/Accused

Vs

1. State Rep. By
Inspector of Police,
All Women Police Station,
Thirukovilur,
Villupuram District.
Crime No.10/2014

2. Jenova Respondents/Complainant

The second respondent is impleaded as per the order of this Court order dated 01.09.2015 made in M.P.2/15 in Crl.R.C.No.801/15.

Prayer:- This Criminal revision petition is filed under Sections 397 & 401 of Crl.P.C., praying to call for records relating to the 02.12.2014 made in C.M.P.No.5950 of 2014 in C.C.No.159 of 2014 on the file of the Judicial Magistrate Court, Sankarapuram and set aside the same.

For Petitioner: Mr.N.Manokaran

For Respondents : Mr.R.Ravichandran

Govt. Advocate (Crl side) for R1

No appearance for R2.

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O R D E R

This revision is filed for setting aside the order dated 02.12.2014 made in Crl.M.P.No.5950 of 2014 in C.C.No.159 of 2014 on the file of Judicial Magistrate's Court, Sankarapuram.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent. Though notice was served on second respondent and her name being printed in the cause list, there is no representation for second respondent either in person or through counsel.

3. The petitioner is the sole accused in C.C.No.159 of 2014. Charges were framed against him for an offence under Sections 498-A IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The de-facto complainant is the wife of the petitioner. Petitioner and the de-facto complainant got married on 06.06.2008, after marriage, the petitioner/husband demanded dowry and harassed the de-facto complainant, and also sent her out of the matrimonial home. Under these circumstances, the de-facto complainant gave a complaint to the first respondent-police, which was registered in Crime No.10/14 under Sections 498-A IPC, r/w 4 of TNPHW Act. After filing final report, the Court below, took cognizance of the offences and framed charges against the petitioner for the above said offences. Thereafter, the petitioner filed CMP.No.5950 of 2014 to discharge him from all the charges. The trial Court, after considering the materials available on record, dismissed the petition holding that the material available on records shows prima-facie case to proceed against the petitioner. Challenging the said order, the present revision petition has been filed by the petitioner/accused.

4. The learned counsel for the petitioner submitted that even as per the complaint, the occurrence took place on 02.02.2014, but six months prior to the occurrence the respondent/complainant left the matrimonial home and she was residing in her parental home. Hence, there is no chance for harassment or demand of dowry. Thereafter, the petitioner sent legal notice to the respondent/complainant and also another notice alleging that the complainant has an intimacy with another, which was also marked as Ex.P.1 and Ex.P2 in the discharge petition. The Court below, without considering all the materials, dismissed the petitioner's application, holding that a prima-facie case has been made out against the petitioner. But, from the available records, absolutely there is no material to frame charge against the petitioner and he sought for allowing the revision.

5. The learned Government Advocate appearing for first respondent/police contended that from the materials available on record, prima-facie is made out against the petitioner for framing charges under Section 498-A IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The Court

below had considered the entire materials and dismissed the petition. There is no reason to interfere with the same.

6. I have considered the rival submissions made by both counsel. At the stage of consideration of an application for discharge of an accused, the Court has only to consider the materials brought on record by the prosecution and from the facts emerging from their face value, there is existence of all the ingredients construing the alleged offence. At that stage, the probative value of the materials cannot be gone into and the Court is not expected to go deep into the matter and hold that materials do not warrant conviction and at that stage of framing charge, the Court has to consider the materials produced by the prosecution alone, the accused is not entitled to produce any material and the Court is also not required to consider any such material produced by the accused.

7. It is worthwhile to refer a decision of the Supreme Court in the case of Sheoraj Singh Ahlawat and another Vs State of Uttar Pradesh and another reported in reported in 2013 (II) Supreme Court Cases 476 held as follows:-

" While framing charges, Court is required to evaluate materials and documents on record to decide whether facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the Court is not required to go deep into the probative value of materials on record. It needs to evaluate whether there is a ground for presuming that accused had committed offence. But it should not evaluate sufficiency of evidence to convict accused. Even if there is a grave suspicion against the accused and it is not properly explained or court feels that accused might have committed offence, then framing of charges against the accused is justified. It is only for conviction of accused that materials must indicate that accused had committed offence but for framing of charges if materials indicate that accused might have committed offence, then framing of charge is proper. Materials brought on by prosecution must be believed to be true ad their probative value cannot be decided at this stage. The accused entitled to urge his contentions only on materials submittd by prosecution. He is not entitled to produce any material at this stage and the court is not required to consider any such such material, if submitted. Whether the prima facie case made out depends upon facts and circumstances of each case. If two views are possible and materials indicate mere suspicion, not being grave suspicion, against accused then he

may be discharged. The Court has to consider broad probabilities of case, total effect of evidence and documents produced before it. The court should not act as mouthpiece of prosecution and it is impermissible to have roving enquiry at the stage of framing of charge" .

8. In the instant case there are materials available on record prima-facie case is made out to proceed against the petitioner and the materials brought by the petitioner cannot be looked into at this stage.

9. Considering the above materials, the trial Court dismissed the petition holding that there are materials available on record against the accused for framing charges. This Court finds no illegality or irregularity in the order passed by the Court below.

10. There being no merits in this revision, it is dismissed. Connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Judicial Magistrate Court,
Sankarapuram.

2. The Inspector of Police,
All Women Police Station,
Thirukovilur, Villupuram District.

+1cc to Mr.N.Manokaran, Advocates Sr.22497

Cr1.R.C.No.801 of 2015
and M.P.No.1 of 2015

nm[co]
srg 05/05/2017