

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.04.2017
Judgment pronounced on : 17.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.1437 of 2016
and CrI.M.P.No.12510 of 2016

Sureshkumar ... Petitioner/Accused

Vs.

1. State rep. By the
Inspector of Police,
East All Women Police Station
Coimbatore.

2. S.Keerthana ... Respondents/Complainant
(Impleaded the second respondent
as per the order of this Court dated
31.01.2017 in CrI.M.P.No.115 of 2017)

Prayer:- This Criminal revision is filed under Section 397 & 401 of Cr.P.C., to set aside the order made in CrI.M.P.No.280 of 2015 in C.C.No.15 of 2015 on 14.10.2016 on the file of the learned Judicial Magistrate, Additional Mahila Court, Coimbatore for discharge of the Petitioner in Crime No.34/2014.

For petitioner :Mr.P.L.Narayanan
for Mr.I.Abrar Md.Abdullah

For 1st Respondent : Mr.R.Ravichandran
For 2nd Respondent : Mr.B.Sivasubramaiyan

O R D E R

The petitioner stood charged for the offences under Section 498A, 324 and 406 IPC. The petitioner filed an application for discharging him from the above charges and the trial court dismissed the application on 14.10.2016. Challenging the above said order, the present revision has been filed.

2.The case of the prosecution in brief is as follows:

The second respondent/Defacto complainant is the wife of the petitioner. The marriage between the second respondent

and the petitioner took place on 30.08.2009 at Chithode, Erode District. At the time of marriage, sufficient dowry was given to the petitioner by the second respondent's family. After the marriage, in the month of February 2010, the petitioner and the second respondent left for Japan and resided there. At that time, the petitioner harassed the second respondent demanding dowry and also forced her for abortion. In the above circumstances, the second respondent came back to India and stayed back at her parental house. Then the second respondent got employed in a company at Chennai. At that time, the petitioner came to India from Japan and met the petitioner and assured her that he will not cause any harassment to the second respondent. Subsequently on 15.09.2014, they have conducted a special pooja at Pannari Amman Temple at Erode District and the petitioner re-tied the Mangalsutra on the second respondent. From 16.09.2014, once again the petitioner started harassing the second respondent and assaulted her with wooden reaper all over the body and slapped her on her face which has caused a perforation in the ear drum and also plucked her nails. Then one of her relatives admitted her in a private hospital at Sathyamangalam and from there she gave a complaint against the petitioner on 20.09.2014. Based on the complaint, a criminal case was registered in Crime No.34 of 2015 for the offences under Section 498(A), 306 and 506(1) IPC. After investigation, the first respondent police filed a final report for the offences under Section 498(A), 324, 325 and 406 IPC and the Court below after taking cognizance of the offences, framed charges. Thereafter, the petitioner filed a petition under Section 239 Cr.P.C in CrI.M.P.No.280 of 2015 in C.C.No.15 of 2015 to discharge him from all the charges. The Court below dismissed the above said petition. Challenging the above order, the present revision has been filed.

3.Heard Mr.P.L.Narayanan, learned Senior Counsel for Mr.I.Abrar Md.Abdullah, learned counsel appearing on behalf of the petitioner, Mr.R.Ravichandran, learned counsel appearing on behalf of the first respondent and Mr.B.Sivasubramaiyan, learned counsel appearing on behalf of the second respondent.

4.Learned counsel appearing for the petitioner would submit that from the material available on record, no prima facie case has been made out against the petitioner to proceed with further. In so far as the offences under Section 324 and 325 IPC are concerned, even though it is stated that the petitioner attacked the second respondent with wooden reaper and also plucked the nails with nail cutter, nothing was recovered by the respondent police. Even from the statement of the Doctor, there is only contusions on the body and the injuries also are not grievous in nature and hence the charges under 324 and 325 IPC is not made out. The learned counsel further

contended that even according to the prosecution, a part of the offence have been committed at Japan, hence prior sanction from the Central Government is necessary as per Section 188 Cr.P.C. and without obtaining the sanction, the prosecution cannot proceed on with the investigation. Hence, filing of the final report itself is non est in the eye of law. Apart from that, even from the material available on record, there is no material to show that the petitioner and respondent lived together at the time of occurrence and hence contended that in the absence of any material on record, the Court cannot frame charges against the petitioner and there is no prima facie case made out as against the petitioner and hence he should be discharged from the above said charges.

5. Per contra, learned counsel for the respondents would submit that there are ample materials available on record to proceed against the petitioner. During the investigation, the prosecution has recorded the statement of witnesses and collected the materials, which clearly establish a prima facie case against the petitioner and the Trial Court also considering the same, dismissed the petition and there is no reason to interfere with the well considered order passed by the Court below.

6. I have considered the rival submissions made by the learned counsels on either side.

7. It is settled principal of law that at the initial stage of framing of a charge, the Court is concerned not with proof, but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. At this stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But, at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

8. In the instant case, according to the prosecution after the marriage in the month of February 2010, the petitioner and the second respondent lived together in Japan for sometime. At that time, the petitioner harassed the second respondent

demanding dowry and he has also caused miscarriage. Thereafter, the second respondent came to India and living with her parents. Then, the petitioner came to India and after giving assurance to the de-facto complainant that he will not commit any harassment, they lived together for sometime. But, once again the petitioner assaulted the de-facto complainant and caused injuries. Then she was admitted in a private hospital, the de-facto complainant has given a statement to that effect, apart from that, the prosecution also recorded statement of various witnesses with regard to the harassment suffered by the second respondent, and the Doctor, who has given treatment to the second respondent also examined according to him he found injuries on the body of the second respondent and she was treated as in-patient in his hospital, and he has also issued an accident register. Considering all the above materials, the Trial Court found that there is a prima facie case made against the petitioner and framed charges. I have carefully gone through the entire records and found that there are prima facie materials available on record to proceed against the petitioner.

9. So far as the next contention of the learned counsel for the petitioner is that since a part of the offence has taken place in Japan and without sanction of the Central Government under Section 188 Cr.P.C, the Court below ought not to take cognizance of offence and framed charges. It is settled law that no previous sanction under Section 188 Cr.P.C is required at the stage of taking cognizance and if any sanction is required it can be obtained before the trial commences. The Hon'ble Supreme Court in Thota Venkateswarlu V. State of A.P. reported in 2011(9) SCC 527 observed as follows:

"16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required."

10. In the above circumstances, the Magistrate is free to proceed against the accused in respect of offences having been committed in India without being inhibited by the other alleged offences, for which the sanction is required. The Hon'ble Supreme Court in another judgment reported in 1993(3) SCC 609 (Ajay Agarwal Vs. Union of India and others) has held

that a sanction under Section 188 Cr.P.C is not a condition precedent to take cognizance of offence and if any sanction is needed it can be obtained before the trial commences.

11.In the above circumstances, if at all any sanction is required in the instant case, it could be obtained before the commencement of the trial and for that reason the petitioner cannot be discharged. The Court below has considered all the materials and had rightly dismissed the petition and I find no illegality or irregularity in the order passed by the Court below, hence the revision fails and deserves to be dismissed.

12.In the result, the Criminal Revision is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Additional Mahila Court,
Coimbatore.

2.The Inspector of Police,
East all Women Police Station,
Coimbatore.

3.The Public Prosecutor,
Chennai.

+1cc to Mr.I.Abrar MD.Abdullah, Advocate Sr.22943

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