

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :05.01.2017

Delivered on : 11.01.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.21980 of 2009
and
M.P.No.1 of 2009

1. Mrs.M.Alamelu
2. Mr.Murali Murugesan
3. Mrs.M.Tenila
4. Mrs.Sobana ... Petitioners

- Vs -

1. State by
The Inspector of Police,
Fairland Police Station, Salem City,
Salem.
(Crime No.1961/2005)

2. Mrs.Chemmalar ... Respondents

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the entire records, pertaining to the proceedings in C.C.No.238/2008, pending on the file of the Judicial Magistrate No.V, Salem and quash the same.

For Petitioners : Mr.V.Jayachandran

For 1st Respondent : Mr.B.Ramesh Babu
Govt. Advocate (Crl.Side)

For 2nd Respondent : Mr.S.Dorai Samy

O R D E R

Invoking the provisions of Section 482 of Cr.P.C., this petition is filed to quash the criminal proceedings of the case in C.C.No.238 of 2008 pending on the file of the learned Judicial Magistrate No.V, Salem.

2. The petitioners herein are ranked as A1, A2, A3 and A4 in the above said case. The 1st respondent is the Inspector of Police, attached to Fairland Police Station, Salem City and the 2nd respondent is the complainant.

3. Heard Mr.V.Jayachandran, learned counsel for the petitioners and Mr.B.Ramesh Babu, learned Govt. Advocate (Crl.Side) for the 1st respondent and Mr.S.Dorai Samy, learned counsel for the 2nd respondent/complainant.

4. The 2nd respondent herein is the wife of one Mr.Arul (since deceased). Her husband Arul is none other than the son of one Murugesan (since deceased) and the 1st petitioner M.Alamelu.

5. The marriage between the said Arul and the 2nd respondent was solemnized on 15.11.1999 at Salem. The 2nd

petitioner Murali Murugesan is the elder brother of Arul. The 3rd petitioner M.Tenila is the sister of Arul and the 4th petitioner Shobana is the wife of the 2nd petitioner Murali Murugesan. In her complaint dated 05.01.2004, the 2nd respondent had alleged that she was harassed, ill treated, infuriated and beaten up by the petitioners in connection with demanding of more dowry.

6. It is also revealed from her complaint that at the time of her marriage, though her father had agreed to present 100 sovereigns of gold and Rs.1,00,000/- in cash towards dowry, he was able to present only 85 sovereigns of golden jewellery and the remaining balance of 15 sovereign was agreed to be presented within a weeks time. But, on the previous day of the marriage, her father-in-law, Murugesan(P2), her mother-in-law, M.Alamelu(P1), Sister-in-law, Tenila(P3) and Sobana(P4), wife of Murali Murugesan had insisted her father R.Kattabomman to give the remaining balance of 15 sovereigns of golden jewels on the very same day, otherwise the declared marriage would be stalled. Finding no other way, her father Kattabomman had managed to present the remaining balance of 15 sovereigns of golden jewelleryes and performed the marriage.

7. After her marriage, she started living along with her husband in the joint family at 1/52 R, Thirumal Nagar, Alagapuram, Salem. Since the harassment of the petitioners was intolerable the 2nd respondent's father Kattabomman had put the 2nd respondent along with her husband Murali in a separate house at Coimbatore at Ganapathy Alamelu Mangalapuram, and had also invested Rs.1,00,000/- for running a separate business by her husband Murali. Her father had also purchased entire household articles and given to her for her peaceful marital life with her husband.

8. In the absence of her husband, the petitioners came to her house at Coimbatore and abused and assaulted her and compelled to vacate the rented house at Coimbatore and go to Salem. The 1st petitioner Alamelu(A1), Sister-in-law, Tenila (A3), and Sobana (A4) kicked her over her stomach and the 2nd petitioner Murali (A2) had caught her tuft and slapped on her cheek and she was in her family way, her pregnancy was aborted at 3.00 p.m., on the same day due to the physical assault caused by the petitioners. Immediately, she was taken into hospital by her landlord and his wife.

9. When the 2nd respondent was in her parental house at

Hosur, the petitioners came there and stealthily taken all her house hold articles to Salem.

10. In the interregnum she had delivered a female baby in her mother's house. Even thereafter also their harassment with regard to the demanding of dowry was continued. That on 23.06.2003, the petitioners came to her house and threatened her that they would strangulate and kill her and by saying so, they had forcibly removed her golden thali chain. On the information given to her parents, her father came down to Salem and taken the child along with him to Hosur on 24.06.2003. She had also alleged in her complaint that the 1st petitioner and the petitioners 3 and 4 had stealthily opened her bureau and taken away her jewels weighing about 49 sovereigns. Even prior to that, the petitioners 1, 3 and 4 had requested her to part with her jewels weighing about 50 sovereigns in order to attend a marriage function. She had also given her jewels weighing about 50 sovereigns to them but they had not returned the jewelleries.

11. That on 01.01.2004, she was informed that her husband Arul had died at Salem, Alagapuram house and that his body was taken to Mallasamudram Village for funeral.

12. Since she had suspected the death of her husband, she had lodged a complaint before the Mallasamudram Police. But, they did not receive the complaint and directed her to present it before Alagapuram Police Station since the death was occurred in the Alagapuram Village, and she had therefore, lodged the complaint before the Alagapuram Police Station. According to the 2nd respondent, the petitioners and their father Murugesan might have caused blood injuries to her husband and as a result of which he had succumbed to injuries. Even she was not permitted to attend the funeral of her husband.

13. Based on her complaint a case in crime No.1961 of 2005 was registered by the Inspector of Police attached to Alagapuram Police Station under Sections 323, 326, 454, 379, 498(A), 406, 395, 506(ii), 176, 302 and 201 of IPC r/w Sections 3 & 4 of Dowry Prohibition Act and Section 3 of Harassment of Women Prevention Act. After the completion of the investigation, the Investigating Officer had obtained the opinion of Deputy Director of prosecution, Salem Region. In his opinion, dated 02.05.2008, the Deputy Director of prosecution has stated as follows:

'In this case the FIR was registered u/s.302 & 201 of IPC and u/s.323, 326, 454,

379, 498(A), 406, 395, 506(ii), 176 of IPC and u/s.4 of D.P.Act. On perusal of the 161(3) statements and final case diary of the I.O. it is found that the offences given in the draft final report alone made out and hence I am giving draft final report u/ss.406, 498(A), 506(ii), 454, and 380 of IPC and u/s. 4 of Dowry Prohibition Act. With regard to the murder punishable u/s.302 there is no iota of evidence to link the accused with murder. The doctor's certificate also reveals that the death of Arul was only a natural death."

14. From the opinion of the Deputy Director of prosecution it is thus made clear that with regard to the offence u/s.302 IPC there is no iota of evidence to connect the accused persons and that the death of the 2nd respondent's husband Arul was only a natural death. The Investigating Officer had therefore, laid a charge sheet as against the petitioners under Section 4 of the Dowry Prohibition Act, 498-A, 406, 506(ii), 454 and 480 of IPC.

15. The learned Judicial Magistrate, V Salem had taken the Final report on his file in C.C.No.238 of 2008. Now, the trial is pending on the file of Judicial Magistrate, No.V, Salem.

16. With reference to the scope and ambit of power conferred on this Court under Section 482 Cr.P.C., the Hon'ble Supreme Court in **State of Maharashtra v. Ishwar Piraji Kalpatri**, 1996 CrLJ 1127 (SC) has observed that :

''117. Scope and ambit of power to quash criminal proceedings.- The Court should not, except in extraordinary circumstances exercise its jurisdiction under S.482 Cr.P.C., so as to quash the prosecution proceedings after they have been launched. The power of quashing a criminal proceedings should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/Complaint, the extraordinary or inherent power does not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.''

17. In another case 'viz' **T.J.Stephen v. Parle Bottling Co. (P) Ltd.**, AIR 1985 SC 994, the Apex Court has also held that :

''A complaint could not be quashed by referring to the investigation records particularly when the petition of the complainant did allege facts which prima facie show commission of an offence.''

18. On coming to the instant case on hand, Mr.V.Jayachandran, learned counsel for the petitioners has contended that the 2nd respondent/complainant had left the matrimonial house at the end of June 2003. As there was some mis-understanding with her husband Arul, all the efforts taken by the 1st petitioner/A1 and her husband deceased Murugesan were ended in vain. He has also contended that the 2nd respondent/complainant was not only adamant to come back and return to matrimonial home but gone to the extent of issuing notice on 28.06.2003 making false allegations against the 1st petitioner/A1 and her deceased husband.

19. He has added further that she had initiated a matrimonial proceedings in H.M.O.P. No.47 of 2003 on the file of the Subordinate Judge, Hosur for restitution of conjugal rights and in the said matrimonial proceedings, she had falsely alleged that she was forcibly driven out of the matrimonial home by her husband and his parents and that there was not even any whisper about the other petitioners, namely, the petitioners 2 to 4 herein.

20. Secondly, he would contend that her husband Arul

had lost his mental balance as well as peace due to the matrimonial problem and the harassment made by the 2nd respondent/complainant by separating her child from him and subsequently he was died on 01.01.2004. He has further maintained that the 2nd respondent/complainant had issued notice dated 05.01.2004, wherein she had claimed to allot the share of her husband to her within a weeks time from the date of receipt of a copy of the notice and that her intention was to extract the properties from the petitioners and when she was not successful in all her attempts she had approached the 1st respondent police with a complaint dated 05.01.2004. Since no action was taken on her complaint she had filed a petition in CrI.O.P.No.9677 of 2005 under section 482 Cr.P.C. to issue a direction to the police to register a case on her complaint dated 05.01.2004.

21. He has also indicated that in pursuant to the direction of this Court dated 20.07.2005, the 1st respondent had registered a case in Crime No.1961 of 2005 dated 20.08.2005. The learned counsel has also taken this Court through the statements of the listed prosecution witnesses and submitted that no grounds were available to proceed against the petitioners. Based on the allegations made by

the 2nd respondent in her complaint, he has also pointed out that though the FIR was registered in respect of various offences, the alleged offence under Section 302 of IPC was subsequently deleted on the ground of want of adequate evidences to link the petitioners into the criminality. Further, he has added that even on the basis of the statement of listed witnesses, nothing was available to prosecute the petitioners under Section 4 of Dowry Prohibition Act and Sections 498(A), 406, 506, 454 and 380 of IPC and therefore, he has urged this Court to quash the criminal proceedings pending on the file of the learned V Judicial Magistrate, Salem under Sections 498(A), 406, 506(ii), 454 and 380 of IPC and u/s. 4 of Dowry Prohibition Act.

22. On the other hand, the learned Government Advocate (Crl.Side) has submitted that the trial was yet to be commenced and the prosecution witnesses were yet to be produced before the trial court and that the burden was ultimately rested upon the prosecuting agency to prove the allegations levelled against the petitioners in the above said case beyond all reasonable doubts.

23. This Court has carefully perused the 161(3)

Cr.P.C., statements of the prosecuting witnesses, which were recorded by the Investigating Officer at the time of his investigation. Based on the statements of the 2nd respondent/complainant, her father Kattabomman(LW2), her mother Nagalakshmi(LW3), Elango(LW5), Krishnan(LW6), Venkatramanan(LW8), Sadagopan(LW9), Jothi, W/o.Muralidharan (LW12), Muralidharan(LW14), this Court has come to the definite conclusion that prima-facie case is made out to proceed against the petitioners under Sections 4 of D.P.Act, 498(A), 406, 506(ii), 454 and 380 of IPC.

24. As rightly observed by the Punjab & Haryana High Court in **Mukand Singh v. Sub-Div.Magistrate, 1996 CrLJ 2378 (P&H)**, a party suppressing material facts and not coming with clean hands is not entitled to any relief under S.482 Cr.P.C.

25. In **Aravindakshan v. State of Kerala, 1985 CrLJ 1389 (ker)**, it is observed that a person who is invoking inherent jurisdiction must come with clean hands and with equitable background.

26. The Apex Court in **Mithabhai Pashebbhai Patel v. State of Gujarat, (2009) 6 SCC 332** has rightly observed

that the Courts exist for dispensation of justice and not for its denial for technical reasons when law and justice otherwise demand. Even though inherent power saved under this Section is only in favour of High Courts, the subordinate criminal Courts are also not powerless to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision, provided there is no prohibition and no illegality or miscarriage of justice is involved. All the criminal Courts are having such an auxiliary power subject to restrictions which justice, equity, good conscience and legal provisions demand provided it will not unnecessarily prejudice somebody else.

27. From the above context, this Court would like to say that the Courts exist for dispensation of justice not only for the accused and also for the affected persons both financially and physically as well as mentally.

28. Keeping in view of this fact, this Court is also of considered view that the decisions viz, ***Preethi Guptha and another v. State of Jharkand and another (2010) 7 SCC 667 and Ramesh and others v. State of Tamil Nadu (AIR 2005 SC 1989)*** are not made applicable to the facts and

circumstances, which are narrated in the case on hand as sufficient grounds are available to proceed against the petitioners.

29. In the result, this Criminal Original Petition is dismissed and the trial court is directed to dispose the case in C.C.No.238 of 2008 within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

11.01.2017

Index: Yes / No
Internet: Yes / No
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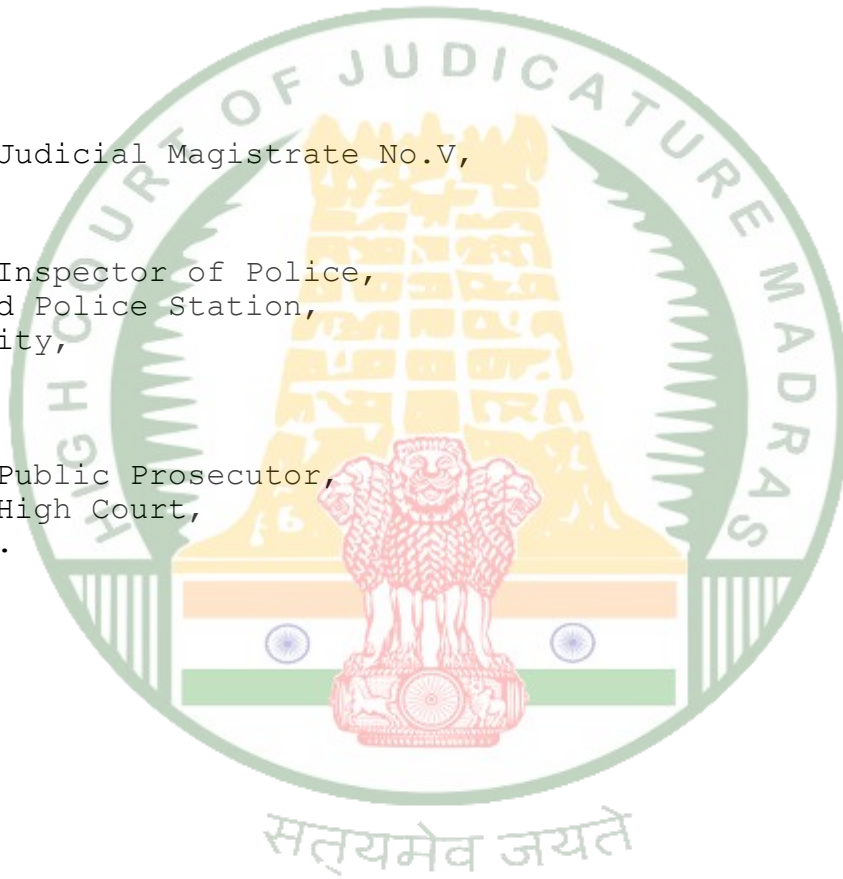
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To

1. The Judicial Magistrate No.V,
Salem.

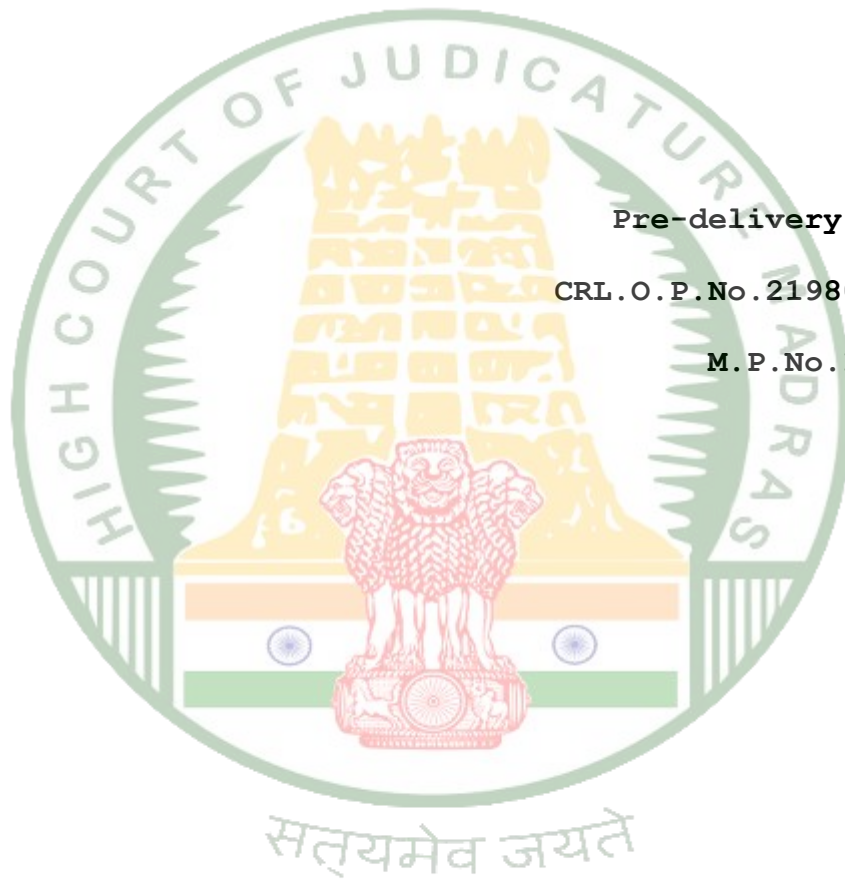
2. The Inspector of Police,
Fairland Police Station,
Salem City,
Salem.

3. The Public Prosecutor,
Madras High Court,
Chennai.



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T.MATHIVANAN, J. ,



Pre-delivery Order in
CRL.O.P.No.21980 of 2009
and
M.P.No.1 of 2009

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