

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :09.08.2017

PRONOUNCED ON : 05.12.2017

Crl.OP No.17554 of 2014

and

M.P.No.1 of 2014

1.Karthikeyan
2.Senthil
3.K.Raji
4.Usha Rani

.. Petitioners

Vs

1.The Inspector of Police,
All Women Police Station,
Katpadi,Vellore District.

2.Prathima

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.1114 of 2013 on the file of the 1st respondent and quash the same.

For Petitioners :Mr.S.Chakkaravarthi

For R1 :Mr.B.Ramesh Babu,
Govt.Advocate

For R2 :Notice served – No appearance

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in Crime No.1114 of 2013 on the file of the 1st

2.The Accused A1 to A4 are the petitioners herein.

3.The short facts of this case is that the 1st petitioner is the husband of the defacto complainant, the 2nd petitioner is the brother-in-law, the 3rd petitioner is the father-in-law and the 4th petitioner is the mother-in-law of the defacto complainant.

4.According to the petitioner, the first respondent/Inspector of Police, All Women Police Station, Katpadi, Vellore District has filed a final report without considering the earlier complaint given by the second respondent/defacto complainant and there is no material as against the petitioner/A2 to A4 who are in-laws and third party respectively. There was a 3 set of complaints before 3 set of persons with regard to the alleged demand of dowry and the mental cruelty. However, 3 set of complaints in the said 3 set of complaint, 3 different versions are given by the second respondent/defacto-complainant, whose contents one is nullify the contention in the other and hence, sought the quashment of the proceedings.

5. The learned Public Prosecutor has submitted that based upon the complaint given by the second respondent alleging that on 12.10.2013, the 2nd respondent and her parents and relatives went to A-1's residence and at that time also they demanded dowry as stated supra from the 2nd

respondent, if she failed to bring dowry, A2 to A4 will not permit her to lead her life with A1 and also they made arrangement of another marriage with other person, for which they forcibly obtained signature from the 2nd respondent in blank paper. Further, they have abused them in filthy language and also given life threat to her whole family by stating that they have money and muscle power as such the 2nd respondent cannot do anything against them. Further when 2nd respondent's father questioned with A1, in turn, he abused his father-in-law and also beaten him by hands and legs. Hence, the 2nd respondent requested to take necessary action against A1 to A4, and to stop the arrangement of 2nd marriage to A1 and also to get the plain paper signed by the 2nd respondent from A-1's family members.

6. A case was registered by Tmt.Janarthani the then Sub-Inspector of Police in Women Wing, Viruthampattu Police Station Crime No.1114 of 2013 under Sections 498(A),294(b),506(i) I.P.C., & 4 of Dowry Prohibition Act on 22.12.2013 at 18.10 hours against A1 to A4 /petitioners herein and took up the case for investigation.

7. Heard both sides and perused the records.

8. It is seen that the 1st petitioner/A1 filed FCOP petition vide 350/2014 before the District Court, Vellore and the same is also pending. The petitioners/A1 to A4 alleged to have threatened and harrassed the 2nd

respondent by demanding dowry and also thrown out her in-law's place and also A1 filed FCOP petition before the District Court, Vellore and the same was also pending. Subsequently, they have filed this present Criminal Original Petition and obtained interim stay on 09.07.2014 and hence, the 1st respondent police could not able to proceed further process in this case and the 1st respondent had completed the investigation and also prepared charge sheet on 18.06.2014.

9. Though, the second respondent/defacto-complainant was served, she has not entered appearance and hence, her name was directed to print and she has not appeared either in person or through her counsel, she remained un-represented.

10. After hearing, both the parties and also perusing the documents, it is seen that on 30.10.2015, the second respondent who is the wife of the first petitioner has moved the Domestic Violence complaint under Section 12 of the Domestic Violence Act before the Judicial Magistrate, Bengaluru and she also gave an evidence in the said case and sought for protection order and the maintenance and it appears that by an order dated 10.04.2017, the Metropolitan Magistrate, Traffic Court-II, Bengaluru has passed an order, awarding Rs.10,000/- as maintenance.

11. From the records, it is seen that according to the petitioners/accused, she lived with the matrimonial home at Katpadi Vellore for a short time. Thereafter, due to the misunderstanding, both the first petitioner and the second respondent moved out to go Bengaluru and lived separately in a nearby place of her adopting parents.

12. Due to the misunderstanding a memorandum of understanding was entered between the first petitioner and the second respondent on 30.07.2013 which is filed in typed set of papers, wherein the second party namely, the prathima/the second respondent has agreed to come and to live with the first petitioner/husband within a two months period on or before 30th September 2013. As the second respondent filed to maintain the commit and re-union with the first petitioner, the husband/first petitioner appears to have issued a legal notice on 12.09.2013 for which, she replied on 17.09.2013, wherein the second respondent/defacto-complainant denied the execution of the alleged memorandum of the understanding dated 30.07.2013. After expiry of the period of undertaking as stated by the second respondent for re-union with the first petitioner, it appears, he has filed F.C.O.P.No.350 of 2014, Sub-Court, Vellore and Section 9 of the Hindu Marriage Act for Restitution of his conjugal rights on 1.10.2013.

13. At this juncture, it is relevant to note that the sequence of complaint said to have been filed by the second respondent against the

petitioners herein on 30.09.2013. The second respondent preferred a complaint before Superintendent of Police, Vellore District alleging, demand of dowry and also pleaded that her signature was obtained in a blank stamp paper. The next complaint, dated 13.10.2013, addressed to Superintendent of police, Vellore through Post, in which after perusing the complaint, I find that an improvement has been made as if on 12.10.2013, the petitioners have invited the second respondent along with the child to their matrimonial home at Katpadi, Vellore on said occasion, there was a demand of dowry and alleged criminal intimidation and further alleged to have obtained her signature in the blank paper.

14. It remains to be stated that the very same nature of allegation has been alleged in her earlier complaint dated 30.09.2013 without date however, on 13.10.2013 in her complaint, she projected as if the very same content and allegation as mentioned in the complaint 30.09.2013 has taken place on 12.10.2013 and as if, on the very next day, she has filed the complaint. Thus, this Court is unable to understand the genuinity of said complaint which has lead to registration of F.I.R for alleged under Section 498(a) , 294(b) 506(i) and 4 of DP Act in Crime No.1114 of 2013, Virudhampattu Police Station.

15. It is pertinent to state that when the contents of the both the complaints addressed to the very same Superintendent of Police, the alleged

incident said to be on 12.10.2013 (as per the complaint dated 13.10.2013), which has lead to registration of the present F.I.R in which, the final report has filed now, this Court is unable to comprehend the various allegation contended in the present F.I.R. Since according to the present complaint, (dated 13.10.2013), the alleged occurrence has happened on 12.10.2013. While, in her earlier complaint dated 30.09.2013, itself was for very same allegation has been levelled against the accused.

16. The second respondent in her further complaint on 17.10.2013 to the Superintendent of Police, Vellore, wherein the very same contention has been raised with reference to various dates and it appears with the first petitioner-husband has appeared for the enquiry before the concerned first respondent police had given undertaking to return the Rs.3,00,000/- and 16 sovereign gold on or before 20.11.2017 and as per the undertaking given by him, the 2nd respondent-wife also gave a letter to the concerned Police Station for taking the seethana goods and other materials presented at the time of the marriage and F.I.R was registered on 22.12.2013.

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17. Thus, this Court finds that the complaint dated 13.10.2013 and 17.10.2013 is nothing, but an improvement of the earlier complaint dated 13.10.2013. Subsequently, the parties have appeared for the enquiry before the first respondent-police and the first petitioner-husband given undertaking to return all the seethana goods, cash and jewels which was also

acknowledged by the second respondent-wife and on 22.12.2013, F.I.R has been registered for demand of dowry for alleged offence under Sections 498(a), 294(b), 506(i) I.P.C and 4 of D.P.Act.

18. At this juncture, as stated supra, the sum and substance of the complaint in the complaint dated 13.10.2013 which led to registration of his F.I.R in crime No.1114 of 2013 refers to the incident alleged to have taken place on 12.10.2013. While, the very same set of allegations has already been addressed without any date under complaint dated 30.09.2013 itself, assumes significance.

19. Yet another point is that, pending investigation of the above crime no, it seems that the second respondent-wife has moved the Metropolitan Magistrate Court, Bengaluru for alleged Domestic Violence and in CrI.M.P.No.217 of 2015 , the second respondent-wife have entered the witness box and deposed that as P.W.1 on 13th July 2013, the husband herein entered her house and obtained signature in the blank paper and further projected that as per the tradition, the wife along with her parents went to the house of in-law at Gandhi Nagar, Vellore on 12.10.2013 and there was a demand of dowry and also allegations and other incidental allegations are also be referred to.

20. It remains to be stated that the crux of the allegations in the present F.I.R is already been elaborately mentioned by the R2 in her complaint on 13.09.2013 . While, being so, in her subsequent complaint on 13.09.2013, she projected very same allegations and very same set of facts and however projected as if the occurrence has taken place on 12.10.2013 which, this Court finds that not only an improvement after obtaining the legal advice have changed the entire genesis of the prosecution.

21. The sequence of facts as narrated in preceding paragraphs, in effect makes it impossible to continue this criminal proceedings. On perusing the 3 set of complaints given by the second respondent-wife. While, when the criminal complaint lodged on 13.09.2013 alleging the set of facts relating to demand of dowry and cruelty and criminal intimidation, however, she is chosen to mention in her subsequent complaint dated 13.10.2013 as if the occurrence has taken place on 12.10.2013 wherein she has robbed in each and every relative of her husband and improve and enlarged the allegations as contended in complaint dated 13.09.2013 by a newly improved and enlarged version on 13.10.2013 .

22. Yet, another issue is that, in her complaint before the Judicial forum under the Domestic Violence Act, as stated supra, she entered into witness box as P.W.1 and deposed that as mentioned in her 3rd complaint.

Therefore, this court is of the considered view that the un-contraverted allegations contained in the present F.I.R. Based upon the complaint dated 13.10.2013 cannot stand legally scrutiny since for the reasons observed in the previous paragraphs that the very same set of facts are already been alleged in complaint dated 13.09.2013 except the date. The difference between the 3 complaints is that in her first complaint it was a vague in nature and against her husband however subsequent complaint was enlarged to rob-in the father-in-law, mother-in-law and the third complaint, wherein various dates have been inserted to fit the prosecution. This Court has put the public prosecutor on notice about the absence of the second respondent before this Court and on instruction from the first respondent/the Public Prosecutor submitted that before filing of the final report, they have sent several summons to the second respondent for certain clarification and however there was no response from the second respondent and hence, based upon the available material they have alleged the final report is filed before the Magistrate Court.

23. After considering, all the 3 complaints and also the complaint filed before the Judicial Magistrate, Bengaluru which has culminated in an order in CrI.M.P.No.217 of 2015, this Court is of the considered view that allegations against the petitioner No.2-father in law, Petitioner No.3- mother-in-law, Petitioner No.4-third party to the family does not sufficient enough to ask them to face the trial and even to go by the uncontraverted statement

made by the second respondent in the 3 various complaint, this Court is of the considered opinion that it is nothing but abuse of process of law.

24. It is trite in law that while exercising power under Section 482 of Cr.P.C is to

- a) to do justice
- b) to undo injustice
- c) to prevent misuse or abuse of process of law

24. On facts and circumstances and on material produced before this Court, this Court is of the considered view that the facts and circumstances of the case as could be seen from the records and is narrated above clearly indicates that it is nothing but abuse/misuse of the process of law as against the petitioner No.2,3,4 and accordingly, I have no hesitation to come to the conclusion that criminal proceedings initiated against the petitioner 2 to 4/accused 2 to 4 are liable to be quashed however as against the first petitioner, this Court is not expressing any view as some of the allegations even in the earlier proceedings are to be controverted only by way of trial by letting in evidence and after affording an opportunity to the petitioner to cross examination the prosecution witnesses. Since the averments and allegations made against the first accused are to be decided only during the course of the trial, this Court is of the considered view that the original petition as against first accused/first petitioner stand negative while as against the petitioner 2 to 4 /accused 2 to 4 stand allowed.

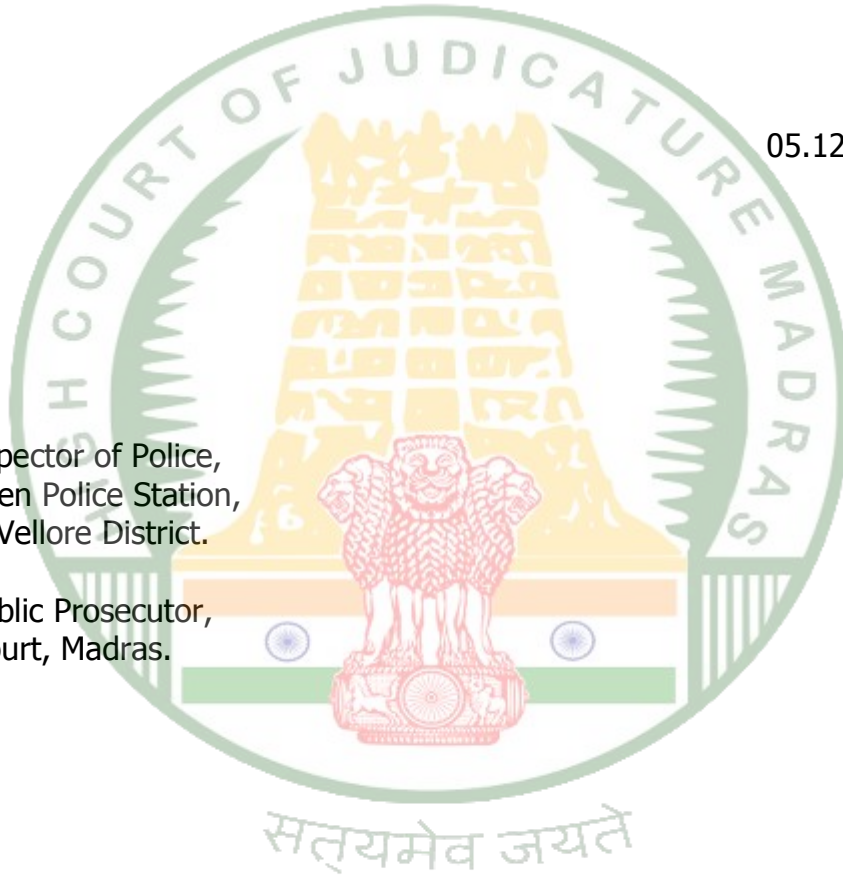
25. Accordingly, this Criminal Original Petition is partly-allowed only to a limited extent as against petitioners 2 to 4 and stands dismissed as against first petitioner. Consequently, connected Miscellaneous Petition is closed.

05.12.2017

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To

- 1.The Inspector of Police,
All Women Police Station,
Katpadi,Vellore District.
2. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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