

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.27578 of 2009
and
M.P.Nos.2 and 3 of 2009**

1.Balasubramanian
2.Murugesan
3.Valarmathi

... Petitioners

vs.

1.State Rep. By
The Inspector of Police,
All Women Police Station,
Thiruvarur.
(Crime No.1 of 2006)

2.Amaravathi
(Impleaded the 2nd respondent as per the
order of this Court dated 17.02.2017
in M.P.No.1 of 2010 in Crl.OP.No.27578/2009)

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to C.C.No.53 of 2007, on the file of Judicial Magistrate, Thiruvarur and quash the same.

For Petitioners : Mr.P.Sivaraman

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl.Side)

Mr.S.Muthukrishnan (for R2)

JUDGMENT

The petitioner has filed this Criminal Original Petition to call for the records relating to C.C.No.53 of 2007 on the file of Judicial Magistrate, Thiruvarur and quash the same.

2.The pleadings before this Court, as also, the charge sheet appended there reveal that the marriage between 1st petitioner Balasubramaniam and the 2nd respondent Amaravathi took place at Thiruvarur, Malligai Mahal, on 24.06.2005. After the marriage, all the petitioners along with the complainant/2nd respondent lived together as joint family at Thiruvarur. The funds for the marriage, were stated to have been contributed, only by the parents of the 2nd respondent. According to the 2nd respondent, her parents were given 22 sovereign of gold, apart from cash. Immediately after 2 days of marriage, the petitioners harassed the 2nd respondent demanding dowry and they have taken away her jewels. Further, between 14.09.2005 and 28.09.2005 the 2nd petitioner misbehaved with the complainant and all the petitioners demanded a sum of Rs.6,00,000/- from the complainant and locked her in a room and threatened to set fire to her. Subsequently, the petitioners driven out the complainant from the matrimonial house, hence the 2nd respondent lodged a complaint against the petitioners on 15.03.2006 and the same

was registered in Crime No:1 / 2006 by the 1st respondent police.

3.The 1st respondent police after completion of the investigation filed charge sheet for the offence under Sections 498(A), 506(1) of I.P.C and Section 4 of the Dowry Prohibition Act, 1961 before the learned Judicial Magistrate, Thiruvavur, on 30.10.06 and the same was taken on file in C.C.No.53 of 2007. The petitioners have come up with the present quash petition to quash the above said charges laid against them.

4.I heard Mr.P.Sivaraman, learned counsel appearing for the petitioners and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and Mr.S.Muthukrishnan, learned counsel appearing for the 2nd respondent and the materials available on record are perused.

5.According to the learned counsel for the petitioners, 1st petitioner is the husband of the complainant, 2nd petitioner is brother of 1st petitioner, 3rd petitioner is the wife of 2nd petitioner and 4th petitioner is mother of the 1 and 2 petitioner and mother -in-law of the 2nd respondent/complainant. It is the contention of the learned counsel for

the petitioners that the entire prosecution case has been brought out in

the charge is not maintainable in the eye of law and there is no such offence is made out against the petitioners. That apart there is a long delay in lodging a complaint by the 2nd respondent. In the F.I.R the 2nd respondent alleged that there was dowry harassment between 14.09.05 and 28.08.05. But there is no complaint given by the 2nd respondent immediately after the above said alleged date of occurrence.

6.It was also pointed out by the learned counsel for the petitioners that subsequent to the complaint the 2nd respondent has given a deed of undertaking in a 20 rupees stamp paper to her husband, wherein it is stated that after registration of F.I.R. against the petitioners, compromise was reached between the 2nd respondent and 1st petitioner and they lived as husband wife in a same roof and leading happy matrimonial life. Therefore, it is stated in the undertaking deed that she has withdrawn the above said criminal case given by her against the petitioners.

7.It is also the contention of the learned counsel for the petitioners that subsequent to the above said undertaking deed, the 2nd respondent filed divorce petition against the 1st petitioner herein in H.M.O.P.No.181 of 2010 before the Principle Sub-Court, Trichirurapalli. Thereafter, the marriage between the 1st petitioner and the 2nd respondent was dissolved

by an order and decree dated 21.09.2010. Therefore, the learned counsel for the petitioners contended that now there is no husband and wife relationship between the 1st petitioner and the 2nd respondent. Hence Section 498-A of IPC would not attract and therefore the charges laid against the petitioners under Section 498-A of IPC is liable to be quashed.

8.Per contra, the learned counsel for the 2nd respondent would submit that the offence of dowry harassment committed by the petitioners was prior to the date of filing of the divorce petition and for that the petitioners are liable to be punished and the same cannot be quashed merely because there is no husband and wife relationship between the 1st petitioner and the 2nd respondent. The learned counsel for the 2nd respondent draw the attention of this Court to the FIR and charge sheet filed in Crime No.1 of 2006 and argued that there were serious allegations in the complaint filed by the 2nd respondent. Hence the charges laid against the petitioners cannot be quashed at this stage.

9.This Court has perused the contents of the F.I.R. and also the charge sheet. Though the allegations leveled against the petitioners would constitute offence of dowry harassment, but this Court taking into consideration of the subsequent development between the parties, find

that no purpose will be served in keeping the matter pending if the trial of the C.C.No.53 of 2007 is allowed to proceed further.

10.At this juncture, it is pertinent to note that the 2nd respondent, wife after lodging the above said criminal complaint against her husband and in-laws, the petitioners herein executed a written undertaking deed stating that she and her husband are living as husband and wife and leading a peaceful life and therefore she decided to withdraw the complaint given by her against the petitioners herein. To that effect she has executed the above said undertaking deed on 15.05.2008. But thereafter, the 2nd respondent herein filed divorce petition against her husband, the 1st petitioner in H.M.O.P.No.181 of 2010 and obtained an order of ex-parte decree divorce dated 21.09.2010. From the above, this Court could easily come to the conclusion that as on date there is no husband-wife relationship is in existence.

11.From the reading of Section 498-A of IPC, it is clear that if a person "being the husband" or "the relative of the husband" of a woman subjects her to cruelty, he can be held guilty of offence under the Section. The word husband would ordinarily mean "in his capacity as the husband" or "on his being the husband". Now coming to the case on hand, as discussed above, there is no husband and wife relation exist after

21.09.2010 between the 2nd respondent and the 1st petitioner. Therefore this Court deems it fit to quash the charge sheet against the petitioners.

12.The continuation of criminal proceedings against the petitioners would not proper in the above said facts and circumstances of the case. A perusal of undertaking deed dated 21.09.2010 executed by the 2nd respondent disclose that the complainant/2nd respondent does not want to prosecute the case. Therefore even if the above Calendar Case is proceeded further, the chances of ultimate conviction are almost nil. Hence, to secure ends of justice, the above C.C. is liable to be quashed. Taking into consideration of the above said facts and circumstances of the case, this Court is of the view that the Calendar Case in C.C.No.53 of 2007 against the petitioners is liable to be quashed and accordingly it is quashed and the Criminal Original Petition is allowed.

सत्यमेव जयते

28.04.2017

Note:Issue order copy on 30.08.2017

Internet : Yes

Index : Yes

vs

To

The Judicial Magistrate,
Thiruvavur.

M.V.MURALIDARAN,J.

VS



**Pre-Delivery judgment made in
Crl.O.P No.27578 of 2009
and
M.P.Nos.2 and 3 of 2009**

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