



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.07.2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD) .No.603 of 2015

and

M.P(MD)No.1 of 2015

1.Prabakaran @ Muthukumaran
2.G.Amrotia
3.Rajayogam

... Revision Petitioners/
Accused No.1,2 and 4

-Vs-

The State, through
The Inspector of Police,
Usilampatti Town Police Station
(In Crime No.261 of 2012)

....Respondent/Complainant

Prayer : Criminal Revision Case filed under Section 397 r/w 401 and 482 of the Code of Criminal Procedure, praying this Court to call for the records and to set aside the order passed in Crl.M.P.No.637 of 2014 in S.C.No.334 of 2013, dated 6.11.2015, on the file of learned District and Sessions Judge, Mahila Court, Madurai.

For Petitioners : M/s.N.Anantha Padmanabhan

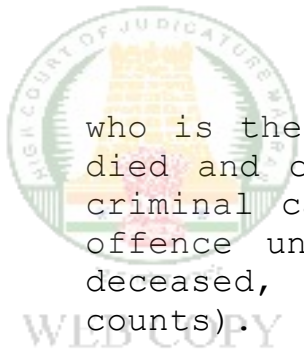
For Respondent : Mr.C.Mayilvahana Rajendran
Addl.Public Prosecutor

O R D E R

Dismissing the Petition filed under Section 227 of Cr.P.C., to discharge the Petitioners herein from their charges, the present revision has been filed.

2.The case of the prosecution is as follows:

The deceased in this case one Ashok Kumar(first deceased) and Sumithra(second deceased) are husband and wife. The first Petitioner/A1 is the brother of the first deceased Ashok Kumar, the second Petitioner/A2 is the wife of the first Petitioner and third Petitioner/A4 is the mother-in-law of the first petitioner, and there was yet another accused by name, George Virumandi/A3,



who is the father of A2, father-in-law of A1, pending trial, he died and charges levelled against him stands abated. Earlier, a criminal case has been registered by the respondent-Police for an offence under Section 309 IPC., subsequent to the death of the deceased, the offence was altered into under Section 306 IPC(2 counts).

3. According to the prosecution, both the deceased and the Petitioners 1 and 2 are living together in a joint family, and Petitioners 1 and 2 were harassing the second deceased demanding dowry, hence the second deceased had given a complaint against the Petitioners, based on the complaint, a criminal case was registered in Crime No.23 of 2011, for the offence under Sections 420, 406, 294(b), 506(ii) IPC r/w Section 3 and 4 of Tamil Nadu Prevention of Woman Harassment Act, on the file of All Women Police Station, Usilampatti. Even thereafter, both the Petitioners 1 and 2 have harassed the second deceased. On the date of occurrence, the first and second petitioner have called the first deceased over phone and told him that the second deceased is living in adultery and advised him not to live with her. The second deceased over-heard the above conversation through a speaker in the phone. When she questioned the first deceased and the first deceased compromised her. In the above circumstances, being insulted by the words of the first and second Petitioner, she poured kerosene and set fire on her. The first deceased, who was standing nearby tried to save her, and he also suffered severe burn injuries. They were admitted in the Government Hospital, Usilampatti on 10.04.2012, then they were referred to Government General Hospital, Madurai, where learned Judicial Magistrate No.VII, Madurai had recorded their dying declarations. In the dying declaration, the second deceased has stated that the first Petitioner herein has taken 70 sovereigns of gold jewels belonging to the second deceased, and also sold the joint family property and he has taken the entire money and has not repaid the joint family loan. Apart from that, they have harassed the second deceased and threatened her over phone, being insulted by the Petitioners herein, she committed suicide. The first deceased also given dying declaration stating that it is an accidental fire, while the second deceased was cooking in the kitchen, she got fire in the saree, when he is trying to save her, he also got suffered severe burn injuries. Subsequently both of them succumbed to the injuries. Thereafter, the offence was altered into under Section 120(b) and 306(2 counts) IPC, after investigation, the respondent Police filed a final report against all the accused. Pending trial, third accused died. The Petitioners herein, who are arrayed as A1, A2 and A4 have filed an application before the Court below to discharge them from the above charges. The trial Court dismissed the same. Challenging the



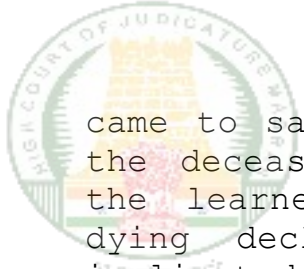
4. Heard the submissions of Mr.N.Ananthapadmanabhan, learned counsel for the Petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent/Police and perused the records carefully.

5. The learned counsel appearing for the Petitioners submitted that from the materials available on record, absolutely no material available to bring an offence under Section 306 of IPC, from the dying declarations and statement of the witnesses, the ingredients of Section 306 IPC is not made out. Apart from that, so far as the death of the first deceased is concerned, it is admitted that when he was trying to save the second deceased, he suffered severe injuries, thereafter he succumbed to injuries. At any rate, the Petitioners are not the cause for the death of the first deceased. Hence the charges are not maintainable against them for two counts under Section 306 IPC. The learned counsel for the Petitioners would further submit that even assuming there are some materials available as against A1 and A2, absolutely there is no material as against A4, who is only mother-in-law of A1 and is living separately, she has nothing to do with the crime and she has been falsely implicated in this case. Even in the earlier complaint given by the second deceased, the third Petitioner/A4 was not shown as an accused.

6. Per contra, the learned Additional Public Prosecutor would submit that after the occurrence, the learned Judicial Magistrate No.VII, Madurai recorded the dying declaration of the second deceased/wife, wherein, she has clearly stated that because of the instigation of petitioners 1 and 2, she had committed suicide. Apart from that, so far as the first deceased is concerned, his death was caused while he was trying to save the second deceased. Hence the Petitioners are liable to be proceeded with for the offence under Section 306 IPC(2 counts). The Court below after considering the materials available on record carefully come to the conclusion that there are prima facie case is made out against the Petitioners to proceed with and dismissed their application to discharge from the charges, there is no illegality in the order passed by the Court below.

7. I have considered the rival submissions made on either side and perused the materials available on record.

8. It is seen from the records, FIR has been registered based on the statement given by the second deceased, in that Statement, the second deceased made allegation against the petitioners 1 and 2 stating that on the date of occurrence, both the first and second petitioners have called the first deceased over phone and told him that the second deceased is living in ~~secluded place~~ and she had over-heard the same through speaker phone. Being insulted by the same, she has decided to commit suicide and poured kerosene and set fire on her. While so, the first deceased



came to save her and he has also suffered severe injuries. When the deceased were admitted in the Government Hospital, Madurai, the learned Judicial Magistrate No.VII, Madurai recorded the dying declaration of second deceased, wherein also she has implicated both the first and second petitioners, stating that only because of their harassment, she has decided to commit suicide. During investigation, the respondent police also recorded the statement of the father of the second deceased, wherein, also he has implicated both the first and second petitioners, stating that only because of their harassment, second deceased has committed suicide. From the above, it could be seen that it is only because of the instigation of the first and second Petitioner, she has committed suicide and materials are available on record to make out a prima facie case as against the first and second Petitioners. So far as the third petitioner/A4 is concerned, I have carefully gone through the complaint, dying declaration, and the statement recorded under Section 161(3)Cr.P.C and no material is available on record to make out a case against her, hence the third petitioner/A4 is entitled for discharge.

9.The next contention of the learned counsel for the Petitioners regarding the death of the first deceased was that only when the first deceased trying to save the second deceased, he suffered severe injuries and then he succumbed to the injuries. Hence the Petitioners cannot be found guilty for his death and they cannot be charged for the offence under Section 306 IPC. But this contention cannot be considered at this stage as the actual cause of his death can only find out during the course of the trial. Hence the contention of the Petitioners cannot be countenanced.

10.From the perusal of entire material available on record, it could be seen that there are prima facie materials available to proceed against the first and second Petitioners, and accordingly, the Criminal Revision Case is liable to be dismissed as against the first and second petitioners and accordingly, the Criminal Revision Case stands dismissed as against the first and second Petitioner. Since no material is available as against the third petitioner/A4, she is discharged from the charge levelled against her. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To

<https://hcservices.mca.gov.in/> and Sessions Judge,
Mahila Court,
Madurai.



2. The Inspector of Police,
Usilampatti Town Police Station,
Usilampatti.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.N.Anantha Padmanabhan, Advocate Sr.No.66309

VSN

VB/SKN/SAR1/24.08.2017/5P/5C

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