

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.02.2018

Pronounced on : 09.04.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.144 of 2018

K.Gopika

... Petitioner

Vs.

1.The Sub-Inspector of Police,
O/o. The Inspector of Police,
Chennai Pattinam Police,
W-35, All women Police Station,
Tambaram, Chennai - 600 045.

2.S.Srinivasa Raja

3.S.Jeyalakshmi

4.V.Muthu

5.Varadharajan

... Respondents

PRAYER: Criminal Revision is filed under Sections 397 and 401 of Cr.P.C., to call for the records pertaining to C.M.P.No.30 of 2018 on the file of the learned Judicial Magistrate, Tambaram and set aside the order dated 04.01.2018 by allowing this revision.

For Petitioner : P.K.Ganesh

For Respondents: Mr.R.Suriyaprakash (for R1)
Government Advocate (Crl.Side)

Mr.AR.L.Sundaresan, Senior Counsel
for G.V.Sridharan (for R2 to R5)

O R D E R

This Criminal Revision Petition filed against the order dated 04.01.2018 passed in C.M.P.No.30 of 2018 on the file of the Judicial Magistrate, Tambaram.

2.The Petitioner is wife and the Respondents 2 to 5 are the husband and inlaws. The Petitioner has married the 2nd Respondent on 12.01.2010 at Srivilliputhur and the marriage was subsequently registered on 12.11.2010. From the inception of the marriage, she was constantly inflicted to dowry harassment for bringing less amount of dowry.

3. Therefore, on 07.07.2017 the petitioner lodged a police complaint before the W35, All Women Police Station, Tambaram, the 1st respondent police herein vide CSR No.455/W35AWPS/17 against the Respondents 2 to 5 and on 31.07.2017 sent a representation to the Hon'ble Chief Minister Grievance Cell and Police higher officials including the 1st respondent. The 1st Respondent did not take any prudent steps to either register or enquire the respondents. Therefore, a petition in CrI.O.P.No.16906 of 2017 was filed by her to register FIR. Immediately the Respondents moved Anticipatory bail petition in CrI.O.P.No.19756 of 2017 and the same was dismissed. Even after the order, the 1st Respondent did not register FIR. So, a contempt notice was sent by the petitioner's counsel. Thereafter, an F.I.R. in Crime No.33 of 2017 under Section 498 (A) IPC was registered. But within 9 days of registering the FIR, it was closed as mistake of fact. Hence, the petitioner filed a protest petition in CMP.No.30 of 2018 before the lower Court which was disposed on 04.01.2018 with directions to the 1st Respondent to file report along with the Social Welfare Committee Report.

4. According to the Petitioner, she was constantly inflicted to various kinds of domestic harassment for want of dowry. Hence a complaint was preferred and later on the directions of the order, FIR in Crime No.33 of 2017 was filed under Section 498(a) IPC. It is the specific case of the petitioner is that after registering the FIR, the 1st Respondent police has not conducted any enquiry on her complaint but without the knowledge of the Petitioner, forwarded the complaint to the District Social Welfare officer, Kancheepuram. The Social Welfare Officer without calling the petitioner for enquiry had under the undue influence of the Respondents given a report dated 13.10.2017 stating no case of dowry and thereby unilaterally favoured the Respondents to escape from criminal prosecution.

5. The learned counsel for the petitioner further contented that another District Protection Officer had by an earlier report dated 21.09.2017 enquired the matter and had concluded the report clearly stating that instances of domestic violence is seen to have committed upon the Petitioner. Further, the 161 statements were obtained in such a way to favour the Respondents.

6. It is the specific case of the Petitioner that the order of the learned Judge is directing the matter back to the 1st Respondent to file along with the report of Social Welfare Committee report is bad in law as there is no such social welfare committed being set up till date.

7. Aggrieved by the said order dated 04.01.2018 passed in CMP.No.30 of 2018 on the file of the Judicial Magistrate, Tambaram, the above revision has been filed.

8. The 2nd Respondent filed their counter stating that the petitioner is unnecessarily mingling the report dated 05.10.2017 in Na.Ka.No.1226/A5/2017 given by the Domestic Welfare Officer, Kancheepuram which is an report given in the DV case lodged by the Petitioner and therefore the same has no relevance in the present case initiated separately for dowry harassment.

9. Mr. AR.L.Sundaresan, learned Senior Counsel appearing for the Respondents 2 to 5 would elaborately contented that the marriage between the Petitioner and the 2nd Respondent was solemnized on 12.01.2010. That the petitioner was adamant and never cooperated with the 2nd Respondent in every aspect of the marriage life. She has voluntarily deserted the respondents and is happily and comfortably living with her parents. It has been further contended by the Senior Counsel that a false complaint merely to harass the Respondents was given by the Petitioner. The statement made in the complaint would indicate only the incidents of domestic violence and not anything about the dowry harassment.

10. I have heard Mr.P.K.Ganesh, learned counsel for the petitioner and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the 1st respondent, Mr.AR.L.Sundaresan, learned Senior Counsel for Mr.G.V.Sridharan, learned counsel for the respondents 2 to 5 and perused the entire records.

11. It is seen that the complaint was given as early as on 07.07.2017 but there is no action from the police. So the Petitioner has filed CrI.O.P.No.16906 of 2017 before this Hon'ble Court to register FIR. Despite the order of the Court, non registering of FIR by the 1st Respondent in this case arose a reasonable doubt on the part of the Petitioner in raising allegations of collusion with the respondents. However, after contempt notice issued by the counsel for petitioner, the 1st Respondent police registered FIR in crime .No.33 of 2017 under section 498 (A) IPC.

12. In this connection, the 1st Respondent Police had filed their typed set of papers enclosing a report dated 13.10.2017 filed by the protection officer stating no prima facie to take

up the dowry case. On scrutiny of the said report, it is clearly seen that the petitioner has alleged that there were continue demands for money and jewels from the hands of the Respondents however, the report was closed in favour of the Respondents. Mere perusal of the report does not contain any statements being recorded from the any witness. Further, the 1st Respondent police failed to produce any piece of documents showing the receipt of acknowledge by the Petitioner for attending the enquiry.

13.Per contra, the report dated 05.10.2017 given by the District Protection officer although is seen to be in respect of the domestic violence incidence as alleged by the senior counsel, but the same is the chain of sequence and the alleged incidents of dowry harassment in part of the domestic violence and the same cannot be distinguished but should be seen wholly and not part by part. Therefore in my considered view no differentiation as domestic violence case and dowry case can be given.

14.This Court interestingly note that the District Social Welfare Officer, Kancheepuram has been called before this Court and she filed documents to support the 1st Respondent which altogether creates a suspicious circumstances in nature of closing the FIR as Mistake of Fact.

15.Be it as it may, the report of the Social welfare officer as such is only the opinion of the officer which is not conclusive or binding on any Court. In the present case, the nature and magnitude of allegations made in the complaint given by the petitioner are serious in nature. The two different Reports by the social officers one in favour of the petitioner and another in favour of the Respondents finds contradictory to each other. Further the act of the 1st Respondent police in closing the FIR within 9 days in a hurried manner as rightly pointed out from the learned counsel for the petitioner gives apparent doubt about their through investigation in this case.

16.By the order under challenge, the learned Judicial Magistrate, Tambaram, accepted the protest petition. The order reads thus:

"Hence the final report filed by the police is returned with the direction to the investigation officer that he final report should be filed along with social welfare committee."

17.In this context, it has been argued by the learned counsel for Petitioner, that social welfare committee is not been constituted yet in the district and that the order is not proper.

18.The Court considered the complaint and serious nature of allegations made thereon. This Court is of the view that prima facie case is made out against the Respondents 2 to 5 for the commission of offence not only under section 498-A IPC but also under Sections 406, 294(b) and 323 IPC.

19.Hence, I am of the view that having found the various infirmities and established prima facie case for dowry harassment, by the petitioner it is just and proper to direct the 1st Respondent to reopen the case in Crime No.33 of 2017 for the offences under Sections 406, 294(b), 323 and 498-A IPC and conduct a thorough fair investigation in accordance with law.

20.In the result,

(a) this Criminal Revision Case is allowed and the order dated 04.01.2018 passed in C.M.P.No.30 of 2018 on the file of the Judicial Magistrate, Tambaram, is hereby set aside;

(b) the 1st Respondent is directed to reopen the F.I.R. in Crime No.33 of 2017 under Sections 406, 294(b), 323 and 498-A IPC and conduct a thorough and fair investigation in accordance with law;

(c) the investigation should be completed within a period of three months and the final report be filed before the Court concerned thereafter. No costs.

Sd/-
सत्यमेव जयते

Assistant Registrar(CCC)

//True Copy//

WEB COPY
Sub Assistant Registrar

VS

To:

1. The Judicial Magistrate, Tambaram.

2. The Sub Inspector of Police,
O/o. The Inspector of Police,
Chennai, Pattinam Police,
W-35, All women Police Station,
Tambaram, Chennai - 600 045.

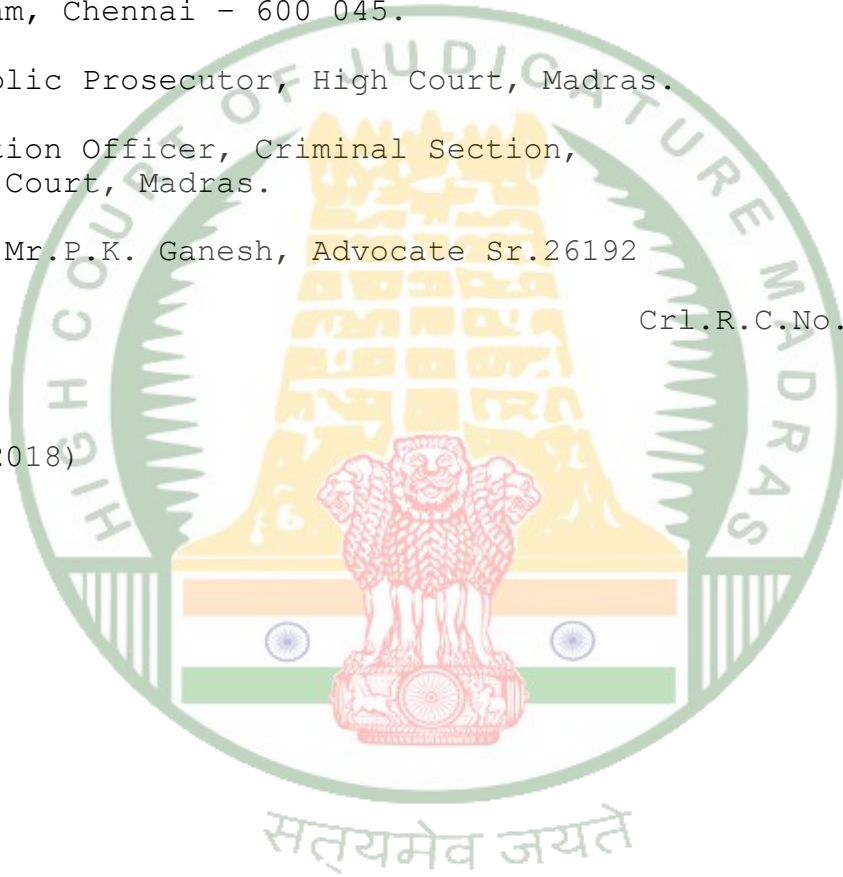
3. The Public Prosecutor, High Court, Madras.

4. The Section Officer, Criminal Section,
High Court, Madras.

+ 1 cc to Mr.P.K. Ganesh, Advocate Sr.26192

Crl.R.C.No.144 of 2018

AK(CO)
EU(18/04/2018)



WEB COPY