

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.11.2018

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.No.9155 of 2011

1.M.Saravanan

2.Annapoornam

3.S.Kumaran

4.Priyadarshini

5.Manonmani ... Petitioners/ accused

Vs.

1.The Inspector of Police,
All Women Police Station,
Thiruchengode Police Station,
Namakkal District.

2.Kalpana ... Respondents

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.540 of 2010 on the file of the learned Judicial Magistrate No.I, Thiruchengode and quash the same.

For Petitioners: Mr.A.J.Mohamed Kasim

For Respondent : Mr.T.Shanmugarajeswaran,
No.1 Government Advocate (crl side)

For Respondent :Mr.C.D.Johnson
No.2

ORDER

This petition has been filed by the accused in C.C.No.540 of 2010 on the file of the Judicial Magistrate No.I, Tiruchengode to quash the proceedings pending against them in C.C.No.540 of 2010.

2.The case in C.C.No.540 of 2010 was filed at the instance of the second respondent / de facto complainant on 21.06.2009

that the first petitioner is her husband and their marriage was solemnised on 15.07.2002 at Tiruchengode, Namakkal District and out of their wedlock a female child was born on 29.03.2003. The second petitioner is the mother of the first petitioner, third petitioner is the brother of the first petitioner, fourth petitioner is the wife of the third petitioner and fifth petitioner is said to be the second wife of the first petitioner.

3. According to the second respondent/ de facto complainant, at the time of her marriage with the first petitioner on 15.07.2002, her parents on the demand made by the accused, gave 75 sovereigns of gold and cash of Rs.1,00,000/- as dowry. For arranging a separate family, the accused have demanded a sum of Rs.2,00,000/- and on the compulsion of the accused, the complainant's father paid a sum of Rs.42,690/- on 20.07.2002, Rs.42,260/- on 29.07.2002, Rs.15,800/- on 30.07.2002, through cheques, in favour of the accused No.1 and the accused No.1 has insisted for further money and therefore a sum of Rs.25,000/- were paid by way of cheque, in favour of the accused No.3 on 05.09.2002 and another sum of Rs.10,000/- on 07.11.2002. The first accused said to have received more than Rs.15,00,000/- as dowry and the first accused had demanded for a house and therefore, the parents of the complainant gave a sum of Rs.60,000/- as on 25.07.2005 by way of cheque from the name the complainant's father's company namely, TDS Builders. On the direction of the accused No.1, he also paid a sum of Rs.25,000/- on 05.09.2005 and another sum of Rs.4,50,000/-.

4. Despite the same the accused have driven the de facto complainant out of the matrimonial home and the efforts taken by her parents to unite them ended in vain. The first accused has also issued notice for divorce through his Advocate and also filed a divorce petition. Pending divorce petition, on 14.06.2008 in the Court the first accused has convinced her and taken her back for the matrimonial life. But, in the meantime, he married the fifth respondent as second wife.

5. When the complainant has enquired about the second marriage, the accused has suppressed the same. While so, on 16.09.2008, the complainant's father met with an accident and the complainant went to her parents house to take care of her father. But, the accused No.1 has insisted, if she wants to come back again, she must come with rupees 50 lakh. On 11.06.2009, the complainant, her parents and her relatives went to the accused house to have a talk for a compromise, but the accused No.1 and 2 have demanded rupees 50 lakh for reunion and also abused, assaulted and threatened her. Therefore, she lodged a complaint before the respondent Police and the respondent Police, after completion of investigation filed a final report

against accused 1 to 4 for the offence under Section 498(A), 494, 406, 352, 506(i) r/w 109 IPC and as against accused 5, for the offence under Section 494, 352 and 506(i) IPC. As against the final report filed by the first respondent, the petitioners preferred this criminal original petition.

6.The learned Counsel for the petitioner would submit that even according to the de facto complainant, the first petitioner and the de facto complainant lived only for a short time. The de facto complainant left the matrimonial home on her own volition on 24.10.2008 and lodged this complaint before the Tiruchengode All Women Police Station on 21.06.2009. She also filed a complaint before the IX Metropolitan Magistrate, Saidapet as against the petitioners 1, 5, 2 for the offence under Section 494 IPC and the learned Counsel has also taken cognizance of the complaint for the offence under Section 494 r/w 34 IPC on 07.09.2010 in C.C.No.9745 of 2010 and the same is pending against the petitioners 1,2 and 3, while so, this final report filed against the petitioners 1,3 and 5 for the offence under Section 494 IPC definitely would amount to double jeopardy and which cannot be permitted under law.

7.Apart from these proceedings, the de facto complainant has also filed a petition for maintenance as against the first accused before the Judicial Magistrate Court, Bavani in M.C.No.12 of 2009 on 25.09.2009 and the same is also pending. In the said petition, she has also admitted that she has also left the matrimonial home as early as on 18.09.2008, while so, this occurrence said to have taken place on 25.09.2009 is only a concocted one, and this case is foisted as against these petitioners to harass them.

8.Per contra, the learned Government Advocate (Crl Side) would submit that the occurrence has taken place on 25.09.2009 and it is a continuous offence and some of the amounts were also received by the accused No.1 by way of cheque from the father of the complainant and more over, the witnesses have stated about the demand of dowry as well as there are material evidence to the effect the petitioner has also married fifth petitioner and all the grounds raised by these petitioners can be raised only during the trial.

9.This Court paid its anxious consideration to the rival submissions and also perused the records.

10.The marriage between the first petitioner and the second respondent / de fact complainant was solemnised on 15.07.2002 at Thiruchengode and the first petitioner was working as a Software Engineer at Chennai and therefore, they were residing at Ekattuthangal, Chennai in a rented house. Out of

misunderstanding, the first petitioner and the de facto complainant have separated in the year 2008. According to the first petitioner even in the month of September 2005, she left the matrimonial home and also lodged the complainant before the All Women Police Station, Saint Thomas Mount, Chennai and therefore, the petitioners 1 - 3 have filed an application for anticipatory bail in CrIOP.No.2239 of 2006 and anticipatory bail application was granted based on the representation of the All Women Police Station, Saint Thomas Mount, Chennai, as there was no truth in the complaint, it was closed. In fact, even on 03.10.2005, the de facto complainant has issued a legal notice demanding divorce from the first petitioner, for which, the first petitioner had also sent a reply, rebutting her allegations and divorce petition was also filed by the first petitioner on 07.01.2008 before the Family Court, Chennai, in HMOP No.4 of 2008.

11.Subsequent to the filing of the divorce petition, the de facto complainant has also filed a petition for maintenance before the Judicial Magistrate, Bavani in M.C.No.12 of 2009 in the year 2009 and another complaint as against the petitioners 1, 2, 5 was filed before the IX Metropolitan Magistrate, Saidapet in CC.No.9745 of 2010 for the offence under Section 494 IPC. This final report is filed as against these petitioners based on the occurrence said to have taken place in the house of the first petitioner on 11.06.2009. For the incident said to have taken place on 11.06.2009, when the second respondent de facto complainant went to the accused house along with her parents and relatives for compromise talk and the accused said to have demanded money and also abused, assaulted her. For the incident said to have taken place on 11.06.2009, the complaint was lodged on 21.06.2009 and the same was registered in Crime No.5 of 2009 on the file of the All Women Police Station, Tiruchengode Police Station and a final report was also filed before the Judicial Magistrate No-I, Tiruchengode. Though all the petitioners are residing at Chennai, it is stated that on 10.06.2009 all the petitioners have come to their house at Tiruchengode for a relative marriage and on knowing that the de facto complainant and her relatives went and met them in their house and at the time the occurrence has taken place.

12.The final report has been filed as against the petitioners 1 to 4 for the offence under Section 498(A), 494, 406, 352, 506(i) r/w 109 IPC and as against accused No.5 for the offence under Sections 494, 352, 506(i) IPC. Insofar as the offence under Section 494 IPC is concerned, the de facto complainant has filed a separate complaint as against accused Nos.1,2 and 5 before the IX Metropolitan Magistrate at Saidapet and the same was also taken on file in C.C.No.9745 of 2010 and

therefore, this final report for the offence under Section 494 IPC as against all the petitioners cannot be sustained and therefore, this final report for the offence under Section 494 IPC as against the petitioners are quashed.

13. Insofar as the offence under Section 506(i) IPC is concerned, the occurrence has taken place on 11.06.2009, where the accused said to have criminally intimidated the petitioners. There is no specific averment that which petitioner has criminally intimidated the de facto complainant. It is stated that all the accused have criminally intimidated the de facto complainant. Further this intimidation was made on 11.06.2009, for which, the complaint was lodged only on 21.06.2009 after ten days. If the complainant has really felt the intimidation made by the petitioners, then she would have lodged the complaint immediately. But, in this case, the complaint was lodged after ten days from the date of occurrence and the offence under Section 506(i) IPC, cannot be sustained. Accordingly, the charge under Section 506(i) IPC is also quashed. Though there are averments and counter with regard to the period in which both the petitioner and the de facto complainant were residing at Chennai, whether there was any demand of dowry, is a matter for trial to be decided only before the trial Court. However, there is no specific averment as against the accused No.4 except the averment that she also along with other accused said to have assaulted the de facto complainant on the date of occurrence and therefore, the charges against the fourth petitioner is also quashed and accordingly, the trial Court shall proceed with the accused No.1 to 3 insofar as the charges under Section 498(A), 406 and 352 IPC and decide the case based on the available evidence without being influenced by any of the observations made in this case.

14. Accordingly, this criminal original petition is partly allowed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

dsk
To

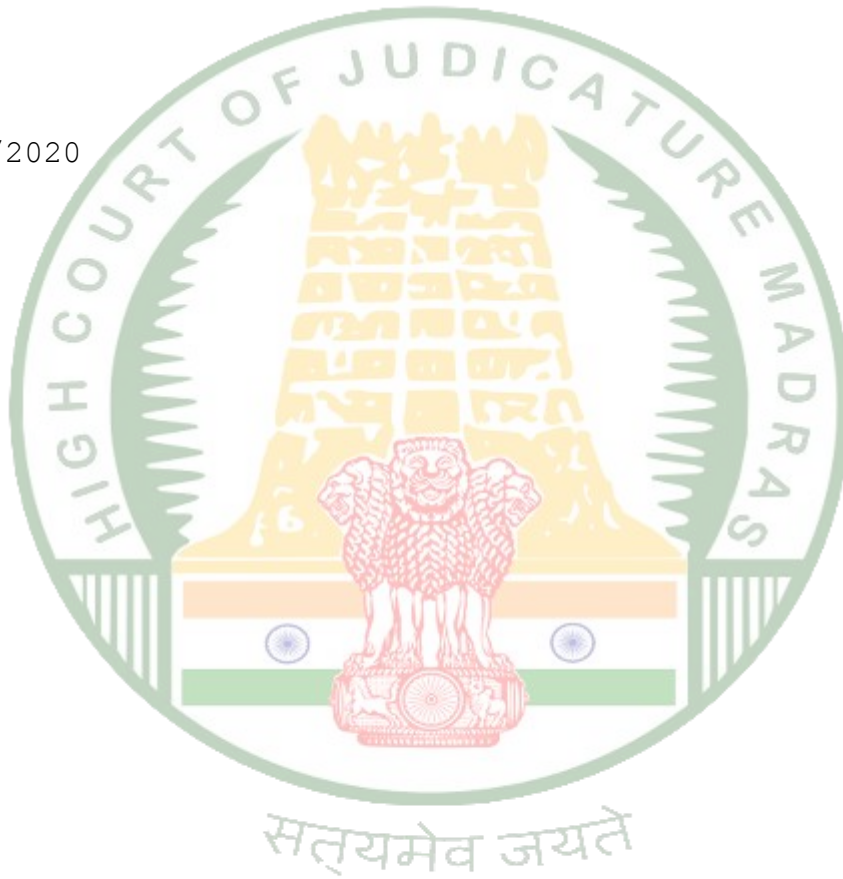
1. The Judicial Magistrate No.I,
Thiruchengode.

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

+lcc to M/s.R.Vivekananthan, Advocate Sr.81566

Cr1.O.P.No.9155 of 2011

vsn II[co]
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