

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2018

Pronounced on : 24.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.5641 & 5642 of 2010

and

M.P.No.1 of 2010

Crl.O.P.No.5641 of 2010

1.T.G.Nagarajan,  
S/o.Late T.S.Gopalakrishnan.

2.T.G.Venkatesan,  
S/o.Late T.S.Gopalakrishnan. .... Petitioner/Accused  
Nos.2 & 4

Vs.

The State represented by  
the Inspector of Police,  
All Women Police Station,  
Avadi, Chennai,  
[Crime No.4 of 1995]. .... Respondent/Complainant

PRAYER: Criminal Original Petitions are filed under  
Sections 483 and 482 of the Code of Criminal Procedure,  
to set aside the orders dated 26.02.2010 made in the  
C.C.No.105 of 1996 on the file of the Judicial Magistrate  
Court No.I, Poonamallee, in Crime No.4 of 1995 on the  
file of the respondent Police, All Women Police Station,  
Avadi, Chennai.

Crl.O.P.No.5642 of 2010

1.T.G.Balasubramaniam,  
S/o.Late T.S.Gopalakrishnan.

2.T.G.Srinivasan,  
S/o.Late T.S.Gopalakrishnan.... Petitioners/Accused  
Nos.1 & 3

Vs.

The State represented by  
the Inspector of Police,

All Women Police Station,  
Avadi, Chennai,  
[Crime No.4 of 1995].

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Sections 483 and 482 of the Code of Criminal Procedure, to direct the learned Judicial Magistrate No.I, Poonamallee to furnish the copies of the Judgment of conviction and sentence passed against them on 26.02.2010 made in C.C.No.105 of 1996 on the file of the Judicial Magistrate Court No.I, Poonamallee, in Crime No.4 of 1995 on the file of the respondent Police, All Women Police Station, Avadi, Chennai.

For Petitioners: Mr.P.Tamizh Kumaran,

For Respondent : Ms.V.Saratha Devi  
Government Advocate [Crl. Side]

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#### C O M M O N O R D E R

The petitioners in Criminal Original Petition No.5641 of 2010 are accused Nos.2 and 4. The petitioners in Criminal Original Petition No.5642 of 2010 are accused Nos.1 and 3. The petitioners were charged and tried by the Judicial Magistrate Court No.I, Poonamallee for the offence under Section 4 of Dowry Prohibition Act.

2.For the sake of convenience the petitioners and the respondent herein are referred to as "accused" and "complainant". Since, both the Criminal Original Petitions arise out of the same issue in C.C.No.105 of 1996 on the file of the Judicial Magistrate Court No.I, Poonamallee. Hence, common order is being rendered for both the Criminal Original Petitions.

3.The case of the prosecution is that the defacto complainant one Thulasiraman had lodged a complaint before the Valasaravakkam Police Station stating that the marriage of his sister namely Vijayalakshmi was finalised with one Venkatesan (A4) and the betrothal was performed on 12.12.1994. At the time of betrothal, the defacto complainant has given a gold chain and a cash of Rs.5,000/- (Rupees Five thousand only) for dress and Rs.10,000/- (Rupees Ten thousand only) as dowry and the date of marriage was fixed on 12.03.1995. After completion of betrothal, the accused persons namely Balasubramaniam (A1), Nagarajan (A2), Srinivasan (A3),

who are the brothers of A4 demanded further cash of Rs.15,000/- (Rupees Fifteen thousand only) and a Scooter as dowry which was not acceded by the defacto complainant. Hence, the marriage was stopped and cancelled.

4. Aggrieved against the same the defacto complainant had preferred a complaint to the Valasaravakkam Police Station, who had registered a case in Crime No.347 of 1995, under Section 4 of the Dowry Prohibition Act and 406 of the Indian Penal Code. The same was later transferred to Avadi All Women Police Station, on 29.03.1995, which was registered as Crime No.4 of 1995 under Section 4 of the Dowry Prohibition Act and 406 of the Indian Penal Code on 12.04.1995. On completion of investigation, charge sheet came to be filed on 13.11.1995 against all the four accused. The same was taken on file as C.C.No.105 of 1996.

5. The prosecution in the Lower Court had examined witnesses PW1 to PW9 and marked Ex.P1 to Ex.P5 and the defence had marked two witnesses.

6. The contention of the accused is that before the defence arguments could be completed the Judgment was pronounced and further the contention is that the copy of the Judgment was not furnished to any of the accused, despite the accused had paid the fine amount on 26.02.2010. The accused had filed the certified copy of the docket entry, petition and orders under Section 317 of the Code of Criminal Procedure, recall petitions under Section 70 (2) of the Code of Criminal Procedure, receipt for payment of fine amount and petition and orders under section 389 (3) of the Code of Criminal Procedure in CrI.M.P.No.1228 of 2010.

7. On perusal of these documents, it is seen that the case has been prolonged for one reason or other, either the accused seeking adjournments or the witnesses are not produced then and there. Even there have been instance of witness warrant being issued for their appearance. It is found that there have been a prolonged trial for which either side have contributed.

8. From the docket entry, it could be seen that on 04.02.2010 all the accused were present and requested time for advancing their arguments and the case was posted to 18.02.2010. On 18.02.2010, A1 and A3 were present. A2 and A4 were absent and the petition filed for their absence was allowed. Arguments have been advanced on both sides and the case was posted for Judgment on 23.02.2010. On 23.02.2010, three of the

accused i.e. A1, A3 and A4 have been present. On 23.02.2010, Judgment could not be pronounced and the case was posted to 26.02.2010. On 26.02.2010, A1 and A3 were present. A2 and A4 could not be present and the petition under Section 317 of the Code of Criminal Procedure was filed, since for the reason that A2 was suffering from virus fever and A4 was with heart problem.

9.The Lower Court had dismissed the petition filed under Section 317 of the Code of Criminal Procedure. Issued Non Bailable Warrant against A2 and A4 and pronounced the Judgment. Convicting all the accused A1 to A4 under Section 4 of the Dowry Prohibition Act and sentenced them to undergo one year Rigorous Imprisonment and to pay a fine of Rs.2,000/- each in default to undergo two months Simple Imprisonment. The accused A2 and A4 had filed a petition under Section 70(2) of the Code of Criminal Procedure to recall the Non Bailable Warrant issued against them. The Lower Court had dismissed the recall petition on the ground that the accused A2 and A4 had not appeared at the time of Judgment wantonly and hence, the reasons given by the accused are not acceptable and had dismissed the petition.

10.Further, the contention of the accused is that all the accused A1 to A4 had filed a petition under Section 389 (3) of the Code of Criminal Procedure in CrI.M.P.No.1228 of 2010. In the petition the accused had mentioned about the fine amount being paid by all the accused and made a specific plea that "The copy of the Judgment has not yet been issued to the accused and they are preferring an appeal against the Judgment before the Appellate Court and have few chances of success". The learned counsel for the accused further submitted that the Lower Court had dismissed the Suspension of sentence as regards A2 and A4 and with regard to A1 and A3 suspended the sentence till 12.03.2010, on executing a bond of Rs.5,000/- with one surety for the likesum. In furtherance to the order the accused A1 and A3 had produced sureties and executed the bond and got their sentence suspended.

11.The contention of the accused is that on 26.02.2010, when the case was taken up for hearing at about 12.30 p.m. two of the accused could not be presented and for their absence a petition under Section 317 of the Code of Criminal Procedure was filed and the arguments was heard and at about 1.30 p.m. when the counsel for the accused informed that they are ready for continuing the arguments to their shock and surprise the

Lower Court had dismissed the petition filed under Section 317 of the Code of Criminal Procedure and issued Non Bailable Warrant against the accused A2 and A4 and pronounced the Judgment, convicting the other accused A1 and A3 and thereafter, adjourned for lunch. At about 2.45 p.m. A2 and A4 filed the petition under Section 70 (2) to recall the Non Bailable Warrant was dismissed by the Lower Court. Thereafter, the suspension of sentence petition was filed by the accused and this petition with regard to A2 and A4 was dismissed and with regard to A1 and A3 was allowed.

12.The contention of the accused is that the Lower Court failed to pose any question to the accused under Sections 248 (ii) and 353 of the Code of Criminal Procedure, which are mandatory even to the accused who were present. Thus, the opportunity was denied.

13.The learned counsel for the accused relied upon the Judgment of this Court in the case of G.Malliga, Selvaraj and Others Vs. The State reported in 2007 (1) MLJ (Cri) 86 and the relevant paragraph is extracted as under:

"15.A perusal of Section 248 Cr.P.C., would show that under Sub-section (1) of Section 248, if the Magistrate finds that the accused is not guilty, he shall record an order of acquittal. It does not say that no opportunity should be given to the accused to put forth his arguments.....Thus a perusal of the docket order and the orders passed by the learned Special Judge would show that the learned Special Judge has passed hasty orders."

14.The grievances of the accused is that the accused were not questioned before they were convicted and thus, the fundamental right has been violated. Further, the Judgment copy was not made ready and furnished to them on the date of the Judgment on 26.02.2010, even to the accused who were present, despite the suspension of sentence allowed, fine amount being paid and sureties executed, thus, the Lower Court had acted in a haste. The Lower Court to satisfy the pressures of the complainant, who hailed from the same place of the Presiding Officer then had committed this illegality. Hence, prayed that the Judgment of the Lower Court dated 26.02.2010 is perverse and ought to be set aside.

15.The learned counsel for the accused in support of his contention had relied upon the Judgment of the High

Court of Delhi reported in 1999 (51) DRJ in the case of Kavitha Vs. State and others and the Judgment of the High Court of Calcutta reported in 2011 SCC online cal 704 in the case of Nonigopal Mondal Vs. State of West Bengal.

16. Since the averments of the accused is of serious in nature. The Lower Court records were summoned and perused. On perusal of the records, it is found that the accused filed a petition under Section 389 (3) of the Code of Criminal Procedure seeking suspension of sentence and had made a specific averment that the copy of the Judgment has not been furnished and also from the Orders in Crl.M.P.No.1228 of 2010 regarding the suspense of sentence, it is found that the Lower Court had not adverted to the same.

17. On perusal of the entire records, it is found that nowhere there is acknowledgement to show that the accused, who were present namely A1 and A3 and the copy of the Judgment of the Lower Court was furnished on delivering the Judgment of conviction against them. It is pertinent to note that though the Judgment is available in the Lower Court reveals which runs to 26 pages. Page Nos.1 to 10 seems to be typed on a different date; page No.11 not available and page Nos.12 to 26 seems to have been typed in a different typewriter. Further, the date of Judgment has found in the first sheet shows that the Judgment was delivered on 18.02.2010, but the Judgment was delivered on 26.02.2010. Thus, there have been confusion, infirmity, haste and perverseness in the manner and the finding of the Judgment, which causes great doubt about the manner and time in which the Judgment was made ready, due to which the accused would have been greatly prejudiced.

18. Fortifying the same, from the prosecution Status report and communication, it is seen from 11.03.2010, the prosecution has made an application for the certified copy of the Judgment. In view of the accused filing a petition on 09.03.2010 before the High Court and which was listed on 10.03.2010. In that letter, it is seen that even the Complainant/Police were not certain about the date of which the Judgment was rendered, the date has been corrected from 24.02.2010 to 27.02.2010. Further, till date the prosecution/complainant is yet to receive the copy of the Judgment dated 26.02.2010.

19. From the above, this Court has no hesitation to quash and set aside the Judgment dated 26.02.2010. This Court under Section 483 of the Code of Criminal Procedure has got a duty cast upon to exercise continuous

superintendence over courts of Judicial Magistrates to do. Thus, on the supervisory or visitorial jurisdiction of the High Court under Section 483 of the Code of Criminal Procedure which is of paramount importance to examine correctness, legality or propriety of any finding sentence or order, recorded or passed as also regularity of the proceedings of all inferior Criminal Courts. Thus, on a conjoint reading of Sections 482 and 483 of the Code of Criminal Procedure, this Court is of an opinion that if the glaring illegality or injustice stares the Court in the face. The Court must exercise the inherent powers to annul that illegality or injustice.

20. From the case as narrated above it becomes necessary for this Court to exercise the Power under Sections 482 and 483 of the Code of Criminal Procedure to annul the said manifest illegality. The act of the Lower Court in rendering such a Judgment in C.C.No.105 of 1996 dated 26.02.2010 as it is overlooking miscarriage of justice. Therefore, it becomes necessary under Section 482 of the Code of Criminal Procedure read with 483 of the Code of Criminal Procedure to annul the said manifest illegality.

21. In the result, these Criminal Original Petitions are allowed by setting aside the Order dated 26.02.2010 made in C.C.No.105 of 1996 on the file of the Judicial Magistrate Court No.I, Poonamallee and the matter is remitted back to the Trial Court with a direction to the Trial Court to conduct the case afresh from the stage of hearing the arguments on either side, by giving sufficient opportunity to either side, thereafter, independently assessing the evidences and materials available is directed to render a detailed Judgment. Since the matter is pending from the year 2010, the Trial Court is directed to complete the above exercise within a period of three months from the date of receipt of the copy of this order and report compliance. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS iv)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate Court No.I,  
Poonamallee.

2.do thro the Chief Judicial Magistrate ,Tiruvallore.

3.The Inspector of Police,  
All Women Police Station,  
Avadi, Chennai,  
[Crime No.4 of 1995].

4.The Public Prosecutor,  
High Court, Madras.

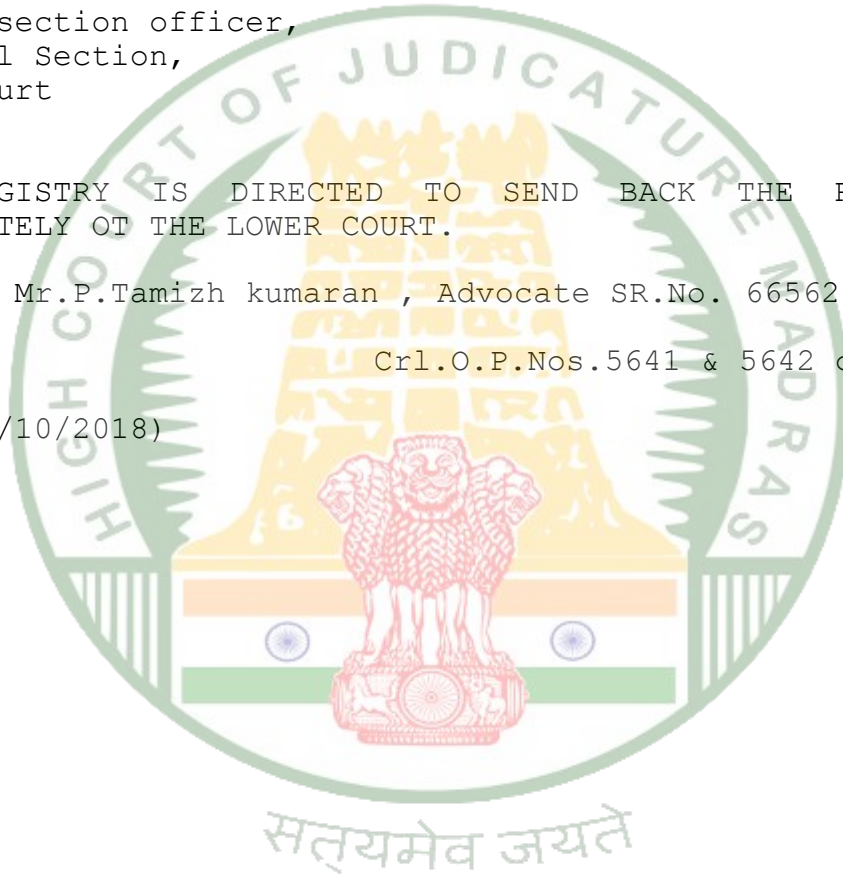
5. The section officer,  
Criminal Section,  
High court  
Madras

NOTE:REGISTRY IS DIRECTED TO SEND BACK THE RECORDS  
IMMEDIATELY OT THE LOWER COURT.

+2cc to Mr.P.Tamizh kumaran , Advocate SR.No. 66562,66563

Crl.O.P.Nos.5641 & 5642 of 2010

ASK(24/10/2018)



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