

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DELIVERED ON : 27.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.42 of 2018
and
Crl.M.P.Nos.263 and 264 of 2018

1.N.Senthil

2.Mehagala @ Mani Megalai .. Petitioners

Vs

State Represented by
The Deputy Superintendent of Police,
Deevattipatti Police Station,
Salem District.
Crime No.473 of 2013. ... Respondent

Prayer: Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the order dated 28.11.2017 in Crl.M.P.No.1288 of 2017 in dismissal of discharge petition filed under Section 227 of Cr.P.C. before the learned Sessions Judge, Mahila Court, Salem in S.C.No.77 of 2017 and to set aside the same.

For Petitioners: Mr.R.Thamaraiselvan

For Respondent : Mr.R.Suriyaprakash
Government Advocate (Crl.Side)

JUDGMENT

This criminal revision is filed by the petitioners /accused A4 and A5 against the dismissal of the discharge petition filed under section 227 of Cr.P.C. in Crl.M.P.No.1288 of 2017 dated 28.11.2017 on the file of the Learned Sessions Judge Mahila Court Salem in S.C.No.77 of 2017.

Brief case of the Prosecution:

2.The De-facto complainant namely Seenivasan, a resident of Vetriaikaran Kottai at Dhasasamuthram in Poosaripatti village is the father of Uma Maheswari (since deceased). While Uma

Maheeswari was studying MCA, her marriage engagement with petitioner/accused Sakthivel (A1) was performed on 07.02.2013 at Lakshmi Prakash Hotel, Salem. The Petitioner/accused no.1 Sakthivel, A3 and A4 are the sons of A2. The petitioner/accused A5 is the wife of A3. The accused are living in a joint family at Vennampatti in Dharmapuri District. At the time of engagement itself the accused had demanded 50 sovereign jewels and a motor cycle as dowry. But the parents of Uma Maheeswari had agreed to give 20 sovereigns jewels and Sreedhana properties and a motor cycle for accused A1, when he come back to India as he was working as a Software Engineer in New Zealand. So the Sakthivel (A1) married Uma Maheeswari (since deceased) on 15.04.2013 at Sengunthar Thirumana Mandapam, Dharmapuri. At the time of marriage, the parents of Uma Maheeswari put 20 sovereigns jewellery and gave Rs.35,000/- in cash for purchasing the Sreedhana properties 15 days after the marriage. On 17.08.2013, the accused Sakthivel (A1) took Uma Maheeswari to New Zealand. After 5 days, the A1 called the parents of Uma Maheeswari and demanded Rs.50,000/- for expenses. Seenivasan also sent Rs.45,000/- to A1. The A1 started committing torture in the instigation of A2 by demanding 50 sovereign jewels and motor cycle from Uma Maheeswari by compelling her parents to meet the demand. On 28.09.2013, A1 and A4 came along with Uma Maheeswari and demanded 50 sovereign jewels and motor cycle and left Uma Maheeswari with her parents. Uma Maheeswari was mentally tortured to meet their demand of 50 sovereign jewels and motor cycle. Again on 29.09.2013 the accused Sakthivel (A1) and A4 brought Uma Maheeswari and left her in her house. So Seenivasan went along with Uma Maheeswari and his relatives to the house of the accused at Vennampatti on the same day. All the accused A1 to A5 abused Uma Maheeswari and her relatives in obscene words and scolded her that she should not enter their house without meeting out their demand and sent them back. So the said Uma Maheeswari was forced to decide to end her life and committed suicide by hanging at the house of her parents on 01.10.2013 at about 5.30 PM.

3.Thus during the period between 18.08.2013 and 30.09.2013, the accused Sakthivel (A1) being the husband of Uma Maheeswari and the accused A2 to A5 the relatives of accused Sakthivel committed cruelty by giving mental torture to Uma Maheeswari and thereby the accused A1 to A5 has committed an offence punishable under Section 498(A) of IPC.

4.In the course of the same transaction, on 28.09.2013 at the house of the accused at Vennampatti, Dharmapuri, since the accused A1 to A5 did not allow Uma Maheeswari to enter the matrimonial house and demanded 50 sovereigns jewels and motor

cycle from the suicide by hanging at the house of her parents at Vetrilaikaran Kottai, Dhasasamuthram in Poosaripatti village on 01.10.2013 at about 5.30 p.m. using Nylon rope and died due to asphyxia. Since the death of Uma Maheswsari was caused otherwise than under normal circumstances within 7 years of her marriage and soon before her death she was subjected to cruelty in connection with demand of dowry of 50 sovereign jewels and a motor cycle, the accused Sakthivel A1, A2 to A5 had committed dowry death and thereby the accused Sakthivel A1, A 2 to A 5 had committed an offence punishable under Section 304(B) and Section 4 of Dowry Prohibition Act. Knowing that A4 and A5 were falsely implicated in this case, A1 Sakthivel committed suicide.

Breif case of the revision petitioner:

5.The revision petitioners/accused A4 and A5, filed this criminal revision in dismissal of their discharge petition filed under section 227 of Cr.P.C.

6.On 29.09.2013 the deceased Uma Maheswari, wife of Sakthivel, preferred complaint before the All Women Police Station, Dharmapuri and a case was registered in Cr.No.35 of 2013 under Sections 498(A), 406, 294(b), 323 and 506(i) of IPC against the husband Sakthivel (A1), Vasantha (A2) and Shanmugam (A3) and final report was filed before the learned Judicial Magistrate No.I, Dharmapuri and taken on file in C.C.No.37 of 2014.

7.The revision petitioners are the residents of R.K.Nagar, Bangalore and living separately. They are no way connected with the other accused and the averments alleged in the final report against them are false. Since, Uma Maheswari committed suicide, his father Seenivasan wantonly included the name of the revision petitioners. Absolutely there is no evidence against the revision petitioners except the relatives of the deceased Uma Maheswari.

8.The first complaint given by the deceased Uma Maheswari discloses the allegations only against A1 to A3. Later the father of the deceased was examined by the respondent police and having well discussion and after thought, this revision petitioners were included in the final report.

Rival submissions:

9.The learned counsel for the revision petitioners submits that the trial Court failed to note that the deceased Uma Maheswari in her complaint dated 29.09.2013 before the All Women Police Station, Dharmapurai has not stated the petitioners about their demand of dowry .

10.The learned counsel for the revision petitioners submits that the trial Court failed to appreciate the statements made by the list witnesses annexed in the final report which disclose the prosecution case against A1 to A3 and not against the petitioners.

11.The learned counsel for the revision petitioners submits that the trial Court failed to compare the complaint given by the deceased Uma Maheswari and the 161 of Cr.P.C. statement recorded by the respondent police.

12.The learned counsel for the revision petitioners submits that the trial Court failed to appreciate the enquiry report made by the R.D.O. which shows that the deceased died only due to the dowry demand and harassment made by A1.

13.The learned counsel for the respondent assails view taken by the trial Court and argued for dismissal of the revision petition.

14.I have heard Mr.R.Thamaraiselvan, learned counsel for the petitioners and Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondent and perused the entire materials available on record.

15.The well-settled principles governing the standard of test, proof and judgment to be applied at the stage of charge in a trial before a Court of Session, may extensively be reproduced as under :-

"At the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not

exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under S. 227 (State of Bihar vs. Ramesh Singh AIR 1977 SC 2018). However, in exercising powers under Section 227 of the Code of Criminal Procedure, the Judge has to shift and weigh the evidence for the limited purpose for finding out whether or not a prima facie case against the accused has been made out, where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (Union of India v. Prafulla Kumar Samal and another reported in (1979) 3 SCC 4).

As explained in Sree Atyachar Virodhi Parishad vs. Dilip Nathumal Chordia, (1989) 1 SCC 715, the decisions in Ramesh Singh's case and Prafulla Kumar's case do not lay down different principles. Moreover, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The Court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the Court has to consider is whether the evidentiary material on record if generally

accepted, would reasonably connect the accused with the crime. Further, at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. (State of Maharashtra vs. Som Nath Thapa reported in AIR 1996 SC 1744)

Amongst the decisions relating to the offence of abetment of suicide, the one in State of West Bengal vs. Orilal Jaiswal reported in AIR 1994 SC 1418 sounds a note of caution that the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hyper-sensitive to ordinary petulance, discord and difference in domestic life, quite common to the society to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

16. Taking into consideration these guiding principles, this Court as the revisional Court, would also refrain from entering into merits of the incriminating evidence proposed to be adduced for proving the guilt of the revision petitioners, confine itself to the appreciation of material collected during investigation with a view to ascertaining as to whether any prima facie case is made out.

17. At the outset, it has to be pointed out that as pointed out by the learned Sessions Judge, there are allegations as against the revision petitioners herein in the statements of the witnesses recorded under Section 161 of Cr.P.C., during the course of investigation in the complaint preferred by the father of the deceased Uma Maheshwari. The deceased herself preferred complaint against the demand of dowry and cruelty attributed by A1 to A3 when she was driven out of the matrimonial home. Even before this incident, the deceased was facing demand of dowry in her matrimonial home and she has not whispered any allegations against the petitioners herein and also in the first complaint preferred against the matrimonial home.

18.The first complaint preferred by the deceased Uma Maheswari was registered by the respondent police in Cr.No.35 of 2013 under Sections 498(A), 406, 294(b), 323 and 506(1) of I.P.C. dated 29.09.2013.

19.The second complaint preferred by the father of the deceased Uma Maheswari was registered in Cr.No.473 of 2013 on the file of the Deevattipatti Police Station, under Section 174 of Cr.P.C. and the F.I.R. was altered under Section 304(B) of IPC and final report was filed against A1 to A4 under Sections 498(A) and 304(B) of IPC and section 4 of dowry prohibition Act.

20.In both the final reports, the three star witnesses are the father, mother and sister of the deceased Uma Maheswari. In the first case against A1 to A3, all the three persons were examined and no specific allegations deposed against the revision petitioners.

21.On a careful reading of the final report filed in C.C.No.37 of 2014 on the complaint made by the deceased Uma Maheswari, final report filed in S.C.No.77 of 2017 on the complaint preferred by the Seenivasan father of the deceased Uma Maheswari and depositions of PWS-1 to 4 in C.C.No.37 of 2014 discloses serious material contradictions affecting the substratum of the case. No independent witness have been examined by the Prosecution to substantiate the demand of dowry and the abatement of suicide "soon before her death" against the revision petitioners.

22.The Hon'ble Supreme Court in Kans Raj vs. State of Punjab reported in AIR 2000 SC 2153 has deprecated the tendency of the parents of the deceased for roping in all in-laws in the matters of dowry death in their over enthusiasm and anxiety to seek conviction for maximum people.

23.As pointed out already, the material on record is not sufficient to prima facie establish complicity of revision petitioners in the alleged offences of cruelty and consequent abetment of suicide.

24.Applying the aforesaid propositions of law, this Criminal Revision Case filed by the petitioners/ accused A4 and A5 is allowed and the order passed by the Learned Sessions Judge, Mahila Court, Salem in Crl.M.P.No.1288 of 2017 in S.C.No.77 of 2017 dated 28.11.2017 is set aside. The petitioners/accused Nos.A4 and A5 are discharged from all the charges. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

vs

To

1) The Sessions Judge,
Mahila Court, Salem.

2) The Public Prosecutor,
High Court, Madras.

Copy to: The Section Officer,
Criminal Section,
High Court, Madras.

+2 ccs to Mr.R.Thamaraiselvan, Advocate, SR No.81128

Crl.R.C.No.42 of 2018
and

Crl.M.P.Nos.263 and 264 of 2018

SSV(co)
ssm(28/12/18)

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