

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.03.2018

Pronounced on : 16.04.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRL.R.C.No.506 of 2015
and
M.P.No.1 of 2015**

Bharath Padmanabhan

.. Petitioner

Vs.

1.State by:

Inspector of Police,
All Women Police Station,
Krishnagiri Town, Krishnagiri District.
(Crime No.4 of 2014)

2.K.Velusamy

.. Respondents

(R2 is impleaded as suo motu as per the
order of this Court dated 25.07.2017 made
in Crl.R.C.No.506/2015)

Prayer: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to call for records and set aside the order passed by the learned Judicial Magistrate No.II, Krishnagiri in Crl.M.P.No.7504 of 2014 dated 07.03.2015 in C.C.No.170 of 2014.

For Petitioner : Mr.P.Kumaresan

For Respondents : Mr.R.Suriyaprakash (for R1)
Government Advocate (Crl.Side)
Mr.T.C.Sajith Babu (for R2)
for M/s.Prince Associates

ORDER

The instant Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., as against the order passed in CrI.M.P.No.7504 of 2014 in C.C.No.170 of 2015 dated 07.03.2015, on the file of the learned Judicial Magistrate No.II, Krishnagiri.

2.The revision petitioner was arrayed as 3rd accused in the aforesaid calendar case and as against him charge sheet was filed under Section 4 of the Dowry Prohibition Act and Section 4 of Tamil Nadu Protection of Women Harassment Act. Based on the charge-sheet filed by the 1st respondent/ Complainant, cognizance was taken against the petitioner for the aforesaid offence along with his parents who are arrayed as A1 and A2. In fact though charge sheet was filed against the 4th accused, sister of the revision petitioner, but she was discharged from the charges by the order of this Court in CrI.R.C.No.367 of 2015 dated 20.03.2017.

3.The case of the Revision Petitioner is that the 2nd Respondent/Defacto-Complainant lodged a complaint before the 1st

Respondent on 06.04.2014 and the same was registered as F.I.R. in Crime No.4 of 2014 under Section 4 of Dowry Prohibition Act, Section 4 of Tamil Nadu Protection of Women Harassment Act and Section 355 of IPC. He further submits that in the course of the investigation, the 1st Respondent examined 5 witnesses and recorded their statement under Section 163 of Cr.P.C. After completion of investigation final report was filed as against 4 persons in which the Revision Petitioner was arrayed as 3rd accused. Moreover, he also submits that the gist of the allegation as against the petitioner is that followed by seeing the matrimonial advertisement published on 11.08.2013, a negotiation was taken place to solemnize marriage between the daughter of the 2nd respondent and the revision petitioner herein.

4. Accordingly on 12.12.2013 the betrothal ceremony was held at Krishnagiri and on that day itself, it was mutually decided to solemnize the marriage on 13.06.2014. Subsequent to the betrothal, the accused demand 100 Sovereigns of gold jewels and other valuables including immovable properties. The pre-marital negotiation ended in failure due to the illegal demand of dowry by the accused and the marriage was unable to solemnize but the same was stopped. However, the learned counsel for the Revision petitioner would submit that the revision

petitioner has not committed any offence as alleged but on malafide, he and his family members were charged for the offences stated above. It is the contention of the learned counsel for the revision petitioner that it is the admitted fact that the betrothal was celebrated between the revision petitioner and the daughter of the 2nd respondent, subsequently a rift was developed between the family members of the revision petitioner and the 2nd respondent which forced all the persons concerned not to culminate the betrothal into marriage. He has also pointed out that prior to lodging the instant F.I.R. on 26.03.2014, the 2nd respondent lodged a complaint before the 1st respondent on 27.03.2014 and CSR.No.85 of 2014 was issued by the 1st respondent. In the earlier complaint the 2nd respondent made allegations that the revision petitioner demanded dowry articles with his daughter and he listed out the articles demanded by the revision petitioner with the daughter of 2nd Respondent. At this juncture, the learned counsel for the revision petitioner brought to the notice of this Court about the statement of the daughter of 2nd respondent recorded under Section 161(3) Cr.P.C. The perusal of the said statement does not find place any of the allegations about the alleged demand of the revision petitioner as listed out in the complaint

of the 2nd Respondent.

5. It is also brought to the notice of this Court about the previous enquiry conducted by the 1st Respondent based on the 1st complaint lodged by the 2nd Respondent. The perusal of the letters written by both the father of the revision petitioner and the 2nd Respondent addressed to the 1st Respondent would show that those letters do not speak about the differences crept alleged based on the dowry demand. So, this Court is able to find that the dispute between the parties has been settled already. At the same time, the perusal of the letter written by 2nd Respondent dated 13.03.2004 addressed to the 1st Respondent disclosed that the 2nd Respondent was very particular in claiming compensation for the cancellation of the marriage proposal of his daughter. As such the father of revision petitioner also had written a letter that he also decided to resort legal assistance for the claim of compensation for the cancellation of the marriage proposal of his son. So, it could easily be ascertained that the launching of the instant prosecution is for the reason to get the claim of compensation for the stoppage of the marriage proposal of the revision petitioner with

daughter of 2nd Respondent. So, according to the learned counsel for the revision petitioner that the suppression of previous enquiry and the result of the same by the 2nd Respondent was with the sole object to get money from the father of the revision petitioner. Hence, he prays that the charge sheet as against the revision petitioner is liable to be set-aside and in the interest of justice, the revision petitioner is to be discharged from the charges.

6. Per contra, the learned Government Advocate (Criminal Side) for the 1st respondent would contend that the reasons assigned in the discharge petition filed by the revision petitioner before the learned trial Court is based on legal backing, rationale and the same needs no interference. He further points out that the demand of dowry, even prior to the marriage would also attract the offence punishable under Section 4 of the Dowry Prohibition Act. Further, the learned trial Court is not liable to analyze the documents furnished by the accused at the stage of framing of charges. The settled legal position is that cognizance must be taken based on material and documents furnished along with the final report by the Investigation Officer. So, there is no merit to consider the grievance of the revision petitioner.

7. In addition to the submissions of the learned Government Advocate (Criminal Side), the learned counsel for the 2nd Respondent would vehemently contend that none of the grounds raised by the revision petitioner is entitled for the consideration by invoking the power of this Hon'ble Court by its revision power. Apart from that he also submitted that the lodging of the 1st Complaint and its closure would never curtail the right of affected persons to lodge another complaint to get justice. He has ventilated the grievance and mental agony of the 2nd Respondent and also requested this Court to visualize the mental agony of the daughter of the 2nd Respondent. Apart from that he also justifies that but for the reason of demand of dowry by the revision petitioner and his family members; hardly there is any other reason to stop the marriage. So, the revision petitioner and his family members also are responsible persons and the revision petition has no iota of merit which deserves rejection with cost.

8. I heard Mr.P.Kumaresan, learned counsel for the petitioner, Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.T.C.Sajith Babu for M/s.Prince Associates, learned counsel for the 2nd respondent and perused the materials

available on records.

9.The foremost objection of the Government Advocate (Criminal Side) would be that there is no necessity upon the learned Judicial Magistrate even to have a perusal of the records submitted by the accused of the time of framing of charges.

10.It is relevant to point out that the revision petitioner filed an application for discharge under Section 239 of Cr.P.C. which is extracted hereunder for better appreciation of the case:

"239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

11.Here Section 239 of Cr.P.C. would stipulate that the framing of charge is not an empty formalities but must be based on considering

the police report and the documents sent under Section 173 of Cr.P.C. and the learned Judicial Magistrate ought to have come an irritable opinion that there is ground for presuming that the accused has committed an offence. So, framing of charge under Section 240 of Cr.P.C. would be based on the documents and the police report as contemplated under Section 173 of Cr.P.C. When, Section 173 of Cr.P.C. is testified Section 173(2)(1)(b) stipulates the nature of information received by the Investigation Officer. So, it is the duty of the Investigation Officer to collect all the information and to produce the same before the learned Judicial Magistrate in order to take cognizance of the offence. However, the learned Judicial Magistrate is empowered to discharge the accused only when he considers charge against the accused to be groundless. The consideration of the learned Judicial Magistrate is depending upon police report and the documents sent with it under Section 173 of Cr.P.C. So, the above discussion would make it clear that when the learned Judicial Magistrate is empowered to give opportunity to the prosecution and the accused of being heard, the same will not be an empty formality, but the same should be based on the submissions of the prosecution and the accused. At the same time the submission would definitely include oral and documentary submissions. So, in the interest of justice, the charge

framing authority is liable to exercise his power as contemplated under Section 239 of Cr.P.C. to peruse the documents furnished by the accused for the just decision of the case.

12. So, the contention of the learned Government Advocate (Criminal Side) that the documents furnished along with an application under Section 239 of Cr.P.C., need not be perused is liable to be negated. Apart from that the case on hand would show that prior to the complaint dated 06.04.2014, earlier on 27.03.2014 itself the complaint given by the 2nd Respondent culminated into enquiry. In the said enquiry conducted by the 1st Respondent the matter was settled amicably between the parties, except the mutual claim of compensation for the cancellation of the marriage. So, it is imperative on the part of the Investigation Officer to be fair and unbiased in the task of collection of evidence, such exercise is prescribed under Section 173(2)(1)(b) of Cr.P.C.

13. At the same time, in the instant case neither the Investigation Officer nor the 2nd Respondent are willing to bring the fact of the 1st complaint and the settlement arrived at after the

enquiry, the attitude of 1st and 2nd Respondents in this regard cannot be appropriate. At the same time, it could create doubt over the case of the prosecution definitely, the state machinery especially the police shall not be utilized for the unnecessarily prosecution. In this case absolutely no materials are available about the lodging of the 1st complaint by the 2nd Respondent and the settlement arranged at thereon, none of the prosecution witnesses have come forward with true version of the case.

14. The next point for consideration is that the demand of dowry is supported by any evidence. As far as the power of revision by this Court is prescribed under Section 401 of Cr.P.C. The power conferred upon is also include the exercise of any power conferred on a Court of appeal also. So, this Court is entitled to appreciate the genuineness of all the materials available on records.

15. Apart from that Section 2(1) of Dowry Prohibition Act defined that dowry means any property or valuable security give (or) agreed to give either directly (or) indirectly by one party to a marriage to the other party to the marriage. At the same time, Section 4 of the Dowry Prohibition Act would prescribe that any person demands any dowry he

shall be punishable with imprisonment. At this juncture the perusal of the entire materials would not show any demand of dowry and the statement of the witnesses in this regard has not inspired confidence in the mind of this Court and no reliance can be placed upon the same. Though the demand of dowry even prior (or) at the time of (or) after marriage would make out offence, but the same must support by reliable and cogent material. In my considered opinion the suppression of the material facts of lodging of previous complaint and the enquiry contemplated thereon by the 1st Respondent would definitely have a bearing in the subsequent lodging of complaint. The parties are expected to approach the Court of law with clean hands. Once it is found that one of the parties approached the Court by suppressing the material facts, then it is for the Court to decide that the suppression would amounting to disentitle the party from claiming further relief. The case on hand exactly falls under the definition of suppression of material facts, then, he would face the consequences. At the same time, when the Court is exercised its power, under Section 401 of Cr.P.C., to peruse all the materials available on record and to appreciate the same by considering the credibility of available evidence.

16.In fine, the contention raised by the revision petitioner is having legal force and the same is to be considered in the interest of justice and further the result of the previous complaint and enquiry is defiantly have a bearing upon the subsequent lodging of the present complaint and therefore, this Court is constrained to allow the Criminal Revision Petition filed by the revision petitioner.

17.In the result, this Criminal Revision Case is allowed and the order passed in Crl.M.P.No.7504 of 2014 dated 07.03.2015 in C.C.No.170 of 2014, on the file of the learned Judicial Magistrate No.II, Krishnagiri, is set aside. The petitioner, who is A3 in C.C.No.170 of 2014 pending on the file of the learned Judicial Magistrate No.II, Krishnagiri, is discharged. No costs. Consequently, connected miscellaneous petition is closed.

16.04.2018

vs

Internet:Yes

Index:Yes

To

The Judicial Magistrate No.II,
Krishnagiri.

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M.V.MURALIDARAN, J.

VS



**Pre-Delivery order made in
CRL.R.C.No.506 of 2015
and
M.P.No.1 of 2015**

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16.04.2018