

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2018
Pronounced on : 01.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2051 of 2011
and
M.P.Nos.1 & 2 of 2011

1.Sheik Munaf,
S/o.Late Md.Sirajudeen.

2.Mukbool,
S/o.Late Md.Sirajudeen.

3.Gowhar Khanam,
W/o.Late Md.Sirajudeen.

.... Petitioners/Accused
Nos.1 to 3

Vs.

1.Mrs.M.K.Humera Begum,
D/o.Mohammed Khasim Ali.

2.The State represented by
the Inspector of Police,
W-6, All Women Police Station,
Ayanavaram,
Chennai-23
[in Crime No.4 of 2009].

सत्यमेव जयते ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.1322 of 2010 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

For P1 : No appearance
[no instruction memo filed]

For P2 : MrsH.Yasmeen Ali

For P3 : Died [Death Certificate filed]

For R1 : Not ready in notice

For R2 : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.1322 of 2010 pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and to quash the same.

2.The petitioners herein, who are accused Nos.1 to 3 in C.C.No.1322 of 2010 pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 498-A, 406, 506(ii) of the Indian Penal Code and Section 4 of Tamil Nadu (Prevention of Harassment) Women Act. The case came to be registered on the complaint given by the 1st respondent namely M.K.Humera Begum to the 2nd respondent on 21-04-2009, who had registered a case in Crime No.4 of 2009 under Sections 498-A of the Indian Penal Code and Section 4 of D.P. Act and 4 of Tamil Nadu (Prevention of Harassment) Women Act. On completion of investigation had filed a charge sheet against the petitioners, against which the petitioners have filed the above quash petition.

3.Despite several notices to the 1st respondent and name being printed in the cause list, the respondent had failed to appear in the above case. The 2nd respondent State has represented by the learned Government Advocate [Criminal Side].

4.The learned counsel for the second petitioner had submitted a memo along with the Death Certificate of the 3rd petitioner Gowhar Khanam, who had passed away on 02-05-2014. Further, as per the memo, the learned counsel for the petitioner had withdrawn the appearance as against the 1st petitioner in sum and substance the quash petition is now being pursued by the 2nd petitioner/A.2 alone.

5.The learned counsel for the second petitioner submitted that the 1st petitioner is the husband, 2nd petitioner is the brother-in-law, 3rd petitioner is the mother-in-law of the 1st respondent/defacto complainant.

6.The case of the prosecution is that the petitioners have caused harassment to the 1st respondent, by demanding dowry of Rs.10,000/- and to hand over the salary of Rs.4,000/- and 25 sovereigns of gold jewels. On 02-10-2008, the 1st respondent's husband, her elder brother-in-law and her mother-

in-law had joined together and had poured kerosene over her and try to set fire. The 1st respondent had escaped from them and had locked herself in a room. Thereafter, her husband seems to have pacified her and sent her to job.

7. On 07-10-2008, when the 1st respondent had returned after her work by 6.00 p.m. she saw the house being locked and she was sitting outside till 11.00 p.m., thereafter, informed her parents, who had come and taken her. Thereafter, on 08-10-2008, the 1st respondent had gone to K7 Ayanavaram Police Station to lodge a Police Complaint, who had directed her to approach G5 All Women Police Station.

8. During the enquiry, the husband of the 1st respondent stated that on 06-10-2008 itself he had pronounced Talak upon 1st respondent before the Chief Khazi as per the Muslim law. While the enquiry was again on 17-10-2008, the 1st respondent had lodged a complaint before the Commissioner of Police, which was forwarded to the W6 All Women Police Station, Avadi, who had registered a case in Crime No.1 of 2009 for the offences under Sections 498-A of the Indian Penal Code r/w Section 4 of DP Act and Section 4 of Tamil Nadu (Prevention of Harassment) Women Act. In the meanwhile, the 1st respondent preferred a complaint before the Tamil Nadu State Commission for Women in Case No.4473 of 2009 and enquiry was conducted on 20-02-2010, the 1st respondent agreed to resolve the claim of maintenance amount and agreed to take back her belongings and articles within 15 days and accordingly, all of her articles and utensils were taken back by the 1st respondent on 25-09-2009.

9. The case registered in Crime No.1 of 2009 by the G5 All Women Police Station was transferred to W6 All Women Police Station, Ayanavaram, who had registered a case in Crime No.4 of 2009 and on completion of investigation, had filed a final report against the petitioners/accused Nos.1 to 3, which has been taken on file as C.C.No.1322 of 2010.

10. The learned Government Advocate [Criminal Side] representing the second respondent submits that on registration of the case witnesses were examined and after proper investigation, the Police had filed the final report, there is no illegality or infirmity in the final report further submits that the Lower Court on going through the final report after setting satisfied had taken the final report on file and had assigned the number. Hence, strongly opposed the quash petition.

11.The learned counsel for the second petitioner contended that the witnesses cited in the final report are all father, mother, brother and family friends of the defacto complainant/1st respondent, who are all interested witnesses giving a parrot version against the truth. Since these witnesses are interested and motivated witnesses, they cannot be relied upon.

12.The learned counsel for the second petitioner further submitted that the allegations made against the petitioners are general of sweeping allegations and there is no specific overt act against the petitioner/A.2. The learned counsel further submitted that the alleged demand of dowry and the harassment as could be seen from the final report is not against this petitioner/A.2.

13.The learned counsel for the second petitioner submitted that on going through the entire statement in the final report, it is seen that LW.1 Humera Begum, LW.2 Mohamed Khasif Ali, LW.3 Mohamed Suhail Ali are the three witnesses, who have implicated this accused that on 02-10-2008, this petitioner along with A1 and A3 namely, husband and Mother-in-law of the defacto complainant had poured kerosene and attempted to set fire on her. Other than this averment, there is no other overt act against the petitioner/A.2.

14.The learned counsel for the second petitioner further contended that with regard to this overt act except for Defacto-complainant the other two persons namely LW.2 her father, LW.3 her mother, don't even mention the date on which the alleged occurrence had taken place and their statements are general and sweeping in nature. She further submitted that the second petitioner was not residing in the house where the defacto complainant, her husband/A1 and her mother-in-law/A3 were residing. The second petitioner had purchased a house during 2006 and from thereon, he is residing separately at Door No.7/129, New No.88, Block No.7, 54th Street, SIDCO Nagar, Villivakkam along with his wife and son. His son S.M.Aneez was born on 31-5-2006. The child is a special child with "Down Syndrome with sensory integrative dysfunction disorder". Hence, his son was under constant care and medication.

15.The learned counsel for the second petitioner further submits that due to the peculiar disorder of his child he has been attending his child medically taking him to various hospitals and treatment. Further on 02-10-2008, he had taken his son S.M.Aneez, who was of 2 years old then to the Railway Hospital for treatment. In proof of the same, he has filed the medical report of the Railway Department, which is of sterile quality and other medical documents. Further, it could be seen

that the address of the petitioner is found in all these documents are at 54th street, SIDCO Nagar, Villivakkam, Chennai.

16.Thus, on perusal of the documents, it could be seen that the petitioner on 02-10-2008 could not have been present in the house of defacto complainant. Further the petitioner was attending to his special child of 2 years old then at Railway Hospital, Perambur. Hence, in all possibilities the second petitioner could not have been present on 02-10-2008 during the alleged cruelty is said to be meted to the defacto complainant. The petitioner placed reliance of the Hon'ble Apex Court judgment in C.A.No.1265 of 2017 dated 27-07-2017 in the case of RAJESH SHARMA AND OTHERS VS. STATE OF U.P. AND ANOTHER wherein the Apex Court had given certain guidelines in the case of registering and investigation of cases under Section 498(A) of the Indian Penal Code. Further observed that most of the complaints are filed in heat of moment, its implications and consequences are not visualized and hence, uncalled harassment are caused based on the report and study conducted by the Parliamentary Committee, Law Commission, etc.

17.Thus on the submissions and perusal of the final report and the typed set of papers, this Court finds that the case against the second petitioner/A.2 has been maliciously instituted for wrecking vengeance. The allegations are inherently improbable and there is no sufficient ground for proceeding against the accused.

18.In view of the above and on coming to the conclusion, that there is no case against the second petitioner/Accused No.2. The proceedings against the second petitioner/Accused No.2 in C.C.No.1322 of 2010 pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai alone is quashed.

19.In the result, this Criminal Original Petition stands allowed in part. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai.

2.The Inspector of Police,
W-6, All Women Police Station,
Ayanavaram,
Chennai-23
[in Crime No.4 of 2009].

3.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.H.Yasmeen Ali, Advocate, S.R.No.52785

Cr1.O.P.No.2051 of 2011

SV(CO)
GSP(21/08/2018)



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