

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.09.2018

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH

CrI.O.P.No.21655 of 2018

and

CrI.M.P.Nos.11849 & 11850 of 2018

1.Ramarajan

2.Dhayalan

....Petitioners
Vs

1.The State Represented by
The Inspector of Police,
Mailam Police Station,
Vikravandi Taluk,
Villupuram District.

2.KavithaRespondents

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records pertains to C.C.No.11 of 2018, on the file of the learned Judicial Magistrate-II, Tindivanam and to quash the same as illegal.

For Petitioners: Mr.A.Gouthaman

For Respondents

For R1 : Ms.M.Prabhavathi

Additional Public Prosecutor

O R D E R

The prayer sought for in this petition is to call for the entire records pertaining to C.C.No.11 of 2018, on the file of the learned Judicial Magistrate-II, Tindivanam and to quash the same as illegal.

2. The case of the prosecution is that the betrothal of Ramarajan (A1) and Kavitha was held on 12.04.2017. At the time of betrothal, the bride's party agreed to give 30 sovereign of gold, cash of Rs.1 lakh and household articles. Betrothal was conducted in Suseela marriage hall on 12.04.2017 in a grand manner. The marriage was fixed on 01.06.2017, at Mailam Murugan Temple. While so, on 06.06.2017, Kavitha consumed rat poison and was admitted to the hospital. While she was at the hospital under treatment, information was sent to the Police and her

statement was recorded on 08.06.2017. Based on her statement, the respondent police registered a case in Crime No.387 of 2017 on 08.06.2017 under Section 309 IPC as against Kavitha for attempting to commit suicide.

3. However, during the course of investigation, it came to light that Ramarajan (A1) and his family members started demanding 40 sovereign of gold and Rs.9 lakhs as dowry and therefore out of frustration, Kavitha attempted to end her life by consuming rat poison. The police filed an alteration report altering the offence from one under Section 309 IPC to offences under Sections 420, 354A, 506(i) IPC, Section 4 of Dowry Prohibition Act and under Section 4 of Tamil Nadu Prohibition of Woman Harassment Act and arrested Ramarajan(A1) and his brother Dhayalan.

4. After completing the investigation, the Police have filed a charge sheet in C.C.No.11 of 2018 before the learned Judicial Magistrate No.II, Tindivanam against Ramarajan (A1), Dhayalan (A2) and Pitchai Gounder (A3) for the offences under Sections 420, 354A, 506(i) IPC, Section 4 of Dowry Prohibition Act and under Section 4 of Tamil Nadu Prohibition of Woman Harassment Act, for quashing which, the petitioners/accused 1&2 are before this Court.

5. Heard Mr.A.Gouthaman, learned counsel for the petitioners/accused and Ms.M.Prabhavathi, learned Additional Public Prosecutor for the first respondent.

6. The learned counsel appearing for the petitioners/accused submitted that Ramarajan (A1) loved the de facto complainant and on his insistence only, the marriage proposals were mooted and therefore, to say that he had demanded more dowry appears unacceptable. The learned counsel further contended that in the FIR, there are no allegations against Dhayalan (A2) and Pitchai Gounder (A3) and the de facto complainant has exaggerated their role subsequently in the statement recorded under Section 161 Cr.P.C. to the police.

7. The learned counsel further contended that under second proviso of Section 161(3) Cr.P.C., the statement of a victim should be recorded only by a woman police officer, whereas, in this case, the statement has been recorded by a male police officer. Therefore, the entire proceedings are vitiated. The learned counsel further contended that the first accused had filed a petition in CrI.O.P.No.22796 of 2017 for quashing of the

FIR and the matter was referred to Mediation Centre. The de facto complainant viz., Kavitha did not appear before the Mediation Centre, whereas, Ramarajan (A1) went to the Mediation Centre with Thali, in order to show that he is ready and willing to perform his part of the contract.

8. Per contra, the learned Additional Public Prosecutor appearing for the first respondent rejected the contention.

9. Coming to the contention raised by the learned counsel for the petitioners with regard to Section 161(3) Cr.P.C., statement, it is true that the second proviso of Section 161 Cr.P.C. states that the statement of a victim of an offence under Section 354 A IPC should be recorded by a women police officer. This is only an enabling proviso in order to ensure that the victim of the crime is able to freely give her statement to the police without embarrassment. This doesn't mean that just because the statement had been recorded by a male police officer, the entire prosecution will stand vitiated.

10. It is true that in the First Information Report, there are no allegations as against Dhayalan (A2) and Pitchai Gounder (A3). As stated above, the FIR in this case was registered based on the statement given by Kavitha, while she was in the hospital bed, after she had consumed rat poison to end her life. It is a trite law that the FIR is not an encyclopedia of the prosecution case. That is why the FIR was initially registered under Section 309 IPC against Kavitha, but, during further investigation, it came to light that the accused hiked their demand for dowry and they even cancelled the wedding on 01.06.2017. It may be relevant to state that Kavitha consumed poison on 06.06.2017, after five days, on the date of which her marriage was initially scheduled. Under such circumstances, the statement of Kavitha under Section 161 Cr.P.C. cannot be termed as improvement.

11. This Court under Section 482 Cr.P.C., cannot decide about the evidentiary value of the statement of Kavitha and it is for the trial Court to appreciate her evidence, when she deposes. For the present, the statement of Kavitha and her mother show that after the betrothal, all the accused started demanding more dowry and they also went to the extent of cancelling the marriage that was to be held on 01.06.2017. The marriage was cancelled on that day and therefore out of frustration, Kavitha decided to end her life.

12. In such view of the matter, it cannot be stated there are no materials for the trial Court to frame charges as against the petitioners. Hence, this petition is dismissed with liberty

to the petitioners to raise all the points before the trial Court after the charges are framed, during trial. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS IX)

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Sub Assistant Registrar

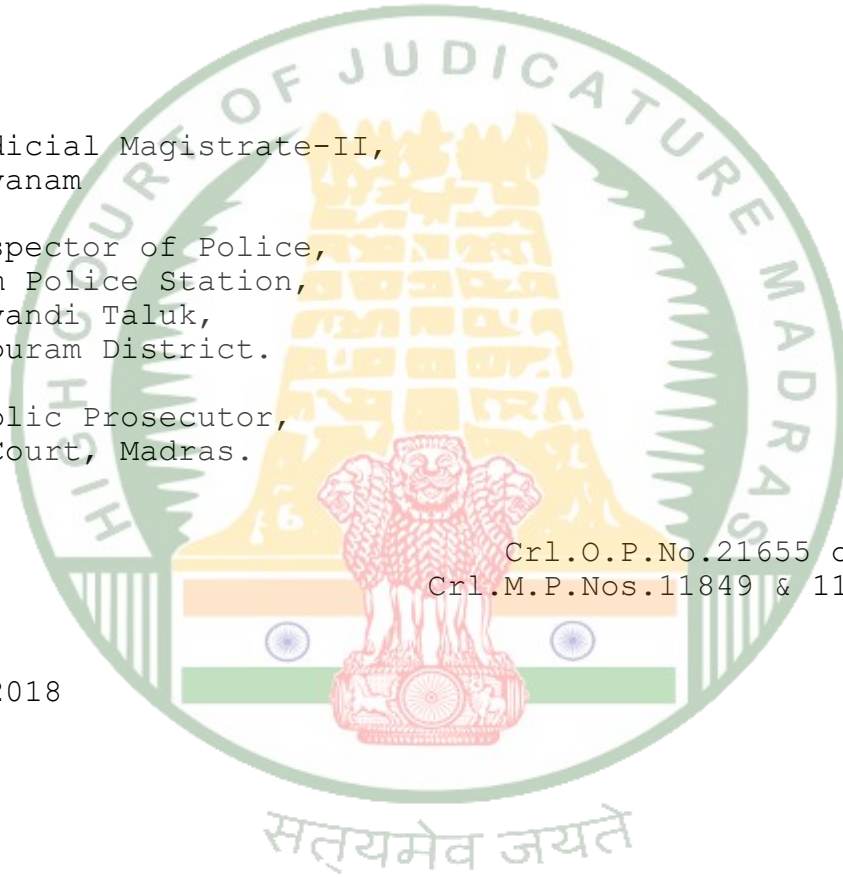
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To

1. The Judicial Magistrate-II,
Tindivanam
2. The Inspector of Police,
Mailam Police Station,
Vikravandi Taluk,
Villupuram District.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.21655 of 2018 and
Crl.M.P.Nos.11849 & 11850 of 2018

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