

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2018

Pronounced on : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.621 & 1951 of 2011

and

M.P.Nos.1, 1, 2 & 2 of 2011

Crl.O.P.No.621 of 2011

1.M.Saravanan,
S/o. Late Muniappan.

2.Annapoornam,
W/o. Late Muniappan. ... Petitioners/Accused Nos.1 & 3

Vs.

Mrs.Kalpana,
W/o.Saravanan. ... 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.9745 of 2010 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

Crl.O.P.No.1951 of 2011

A.Manonmani,
D/o.Athappan. ... Petitioner/Accused No.2

Vs.

Mrs. Kalpana,
W/o.Saravanan. ... 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.9745 of 2010 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioners : Mr.K.S.Kumar (Crl.O.P.No.621 of 2011)

For Petitioner : Mr.K.S.Kumar for
Mr.C.Samson (Crl.O.P.No.1951 of 2011)

For Respondent : No appearance (Name printed)
in both Crl.O.P.Nos.

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C O M M O N O R D E R

These Criminal Original Petitions are filed to call for the records in C.C.No.9745 of 2010 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

2.The petitioners in Crl.O.P.No.621 of 2011 are A1 and A3 and the petitioner in Crl.O.P.No.1951 of 2011 is A2 in C.C.No.9745 of 2010 pending on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai as per the private complaint filed by the respondent/complainant for the offences under Sections 494 r/w 34 of the Indian Penal Code.

3.The petitioners in Crl.O.P.No.621 of 2011 are the husband and mother-in-law of the complainant. The petitioner in Crl.O.P.No.1951 of 2011 is said to be the second wife of the complainant's husband.

4.For the sake of convenience the petitioners herein and respondent are referred to as "accused" and "complainant" as in the complaint. Since both the quash petitions are arising out of the same C.C.No.9745 of 2010. Hence, the common order is being rendered for both the Criminal Original Petitions.

5.The case of the accused is that the marriage between the complainant and the first accused had taken place on 15.07.2002 at Thiruchengodu, Namakkal District. At the time of the marriage, the parents of the complainant gifted 75 sovereigns of gold jewels, a car and further a sum of Rs.1,00,000/- was given towards the marriage expenses. The first accused/husband demanded more money from the parents of the complainant. On 29.03.2003, a female child, namely, Kiran Sara was born. Further, a house was purchased at Chennai in the joint name of the complainant and the first accused on 05.09.2005.

6.The learned counsel for the petitioners further submits that the marriage right from the beginning was not peaceful and various ups and downs were there and the first accused was chased out of the matrimonial house with the child and he could not lead a happy married life. Hence, he had filed a Divorce Petition in H.M.O.P.No.104 of 2007 pending on the file of the II Additional Family Court, Chennai. During the pendency of the Divorce proceedings, the complainant had come and live with the first accused for a short period, as per the conciliation proceedings done by the Court. Even thereafter, the first accused and the complainant could not live peacefully. Accordingly, the complainant had come out of the matrimonial house. Thereafter, she had lodged a complaint before the All Women Police Station, Thiruchengodu against the petitioner and the two others for the offences under Sections 147, 148, 498(A), 494, 406 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act.

7.On the complaint of the complainant, Thiruchengodu Police had arrested the first accused and he was in confinement for more than 15 days. Thereafter, investigation was completed by the Thiruchengodu Police and they had filed a charge sheet against the petitioner and two others before the Judicial Magistrate Court, Thiruchengodu. In the meanwhile, the complainant had filed a private complaint against A1 to A3 i.e. her husband, her mother-in-law and the alleged second wife of her husband for the offence under Section 494 r/w 34 of the Indian Penal Code.

8.The allegation in the complaint is that after the marriage due to the demand of the first accused a huge sum of money nearly around Rs.15,00,000/- (Rupees fifteen lakhs only) were paid by way of cheque and a house was purchased jointly in the name of the first accused and the complainant. The complainant though mentions about lodging a police complaint in the private complaint, but she conveniently is silent about against whom the complaint has been filed before the IX Metropolitan Magistrate Court, Saidapet, Chennai.

9.Further, the learned counsel for the petitioners submitted that it is alleged on 12.08.2008, there was a marriage between the first accused and the third accused, which was conducted by the second accused at Kundrathur Murugan Temple. The complainant's family friends, who had witnessed the same had informed the complainant and thereafter, the complainant on discreet enquiry came to know that the second accused had given birth to a male child at Chennai. On checking the websites of the Corporation of Chennai, the complainant was able to trace out the birth certificate of the male child born to the first

accused and the second accused, on 15.09.2009 at Barani Hospital, No.27 Arcot Road, Saligramam, Chennai. The same was registered on 22.09.2009. Hence, the complainant had preferred a complaint under Section 494 r/w 34 of the Indian Penal Code.

10. Notice was ordered to the respondent. The respondent failed to appear. Private Notice was ordered to the complainant, which was returned with an endorsement "Left". Thereafter, substitute service of paper publication was ordered and paper publication was effected, Affidavit of service for the same has been filed. The name of the complainant was also printed in the cause list. But, no representation on the side of the respondent/complainant or through counsel. Hence, this Court on the contention of the petitioners and the materials placed before it proceeds to dispose of the case on merits.

11. The complainant had filed the private complaint against A1 to A3, which is pending trial in C.C.No.9745 of 2010 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai for the offence under Section 494 r/w 34 of the Indian Penal Code. The accused are the petitioners, who had filed the above quash petition. In the said private complaint, there is a mention about the marriage between the first accused and the second accused and about the child birth and also about the complaint preferred against the accused and other family members before the All Women Police Station, Thiruchengodu in Crime No.5 of 2009 for the offences under Section 147, 148, 498(A), 494, 406 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, on 21.06.2009. It is pertinent to note that five accused in the First Information Report, namely, M.Saravanan, M.Annapoornam, M.Kumaran, K.Priyadharshini and A. Manonmani are all named accused.

12. The petitioners/accused in the above case are shown as Accused Nos.1, 2 and 5 in the Police complaint for the alleged second marriage between A1 and A5, which is the gravamen of the private complaint.

13. On a perusal of the copy of the charge sheet, which has been filed before this Court, it is seen that the charge sheet has been filed for the offences under Sections 498(A), 494, 406, 352, 506(i) r/w 109 of the Indian Penal Code against A1 to A4 and under Sections 494, 352 and 506(i) against A5.

14. It could be seen that the complainant has preferred a complaint to the Inspector of Police, All Women Police Station, Thiruchengodu on 21.06.2009, who had registered a case in Crime No.5 of 2009 against five persons under Sections 147, 148, 498

(A), 494, 406 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. On completion of investigation, the Inspector of Police had filed a charge sheet against five accused. In the meanwhile, the complainant, namely, Kalpana has filed a private complaint against three of the accused i.e. her husband, the second wife of her husband and her mother-in-law before the IX Metropolitan Magistrate Court, Saidapet, Chennai for the offences under Sections 494 r/w 34 of the Indian Penal Code, which has been taken on file by the learned IX Metropolitan Magistrate, Saidapet, Chennai as C.C.No.9745 of 2010.

15.Thus, the complainant has filed a case against the accused before the All Women Police Station, Thiruchengodu. She has also filed a private complaint before the IX Metropolitan Magistrate Court, Saidapet, Chennai against three of the persons, who are accused in Crime No.5 of 2009, on similar allegations.

16.The learned counsel for the petitioners produced the order copy of the Divorce Proceedings between Saravanan and Kalpana, namely, the first accused and the complainant, wherein the marriage between them was dissolved on the ground of cruelty and desertion and divorce was granted by order dated 14.12.2011.

17.Further, he submitted that the case for the same offences in two Courts is not permissible in law and the learned IX Metropolitan Magistrate, Saidapet, Chennai ought not to have taken on file the case filed by the complainant, without verifying the facts and the averments in Crime No.5 of 2009 and the particulars of the accused. More so, when there is a specific mention about the case as seen from the copy of the complaint, a mere perusal of the FIR in Crime No.5 of 2009 would reveal that the allegations made in the private complaint and the police complaint are identical.

18.In view of the above, two cases cannot proceed for the same cause of action and further, it is submitted that the private complaint has been filed in the IX Metropolitan Magistrate Court, Saidapet, Chennai against the accused just to cause harassment and brook vengeance, and the criminal proceeding is manifestly attended with mala fide, and it is maliciously instituted with an ulterior motive for wrecking vengeance with a view to spite personal grudge. Hence, the learned counsel appearing for the accused prayed for quashing the case in C.C.No.9745 of 2010 pending on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai.

19.Further, from the above, it is clear that the complainant had lodged the complaint on 21.06.2009 before the All Women Police Station, Thiruchengodu in Crime No.5 of 2009 against the five accused. The three named accused in Crime No.5 of 2009 have been shown as accused in the case before the IX Metropolitan Magistrate Court, Saidapet, Chennai for the same set of offence, which was filed on 05.08.2010 nearly after a year. In view of the above, further keeping the case in C.C.No.9745 of 2010 pending will amount to abuse of Process of Law.

20.In view of the above, the case in C.C.No.9745 of 2010 pending on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai is quashed.

21.In the result, the Criminal Original Petitions are allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The IX Metropolitan Magistrate,
Saidapet, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.S.KUMAR, Advocate, S.R.No. 51068

ORDER IN

Crl.O.P.Nos.621 & 1951 of 2011

CNR (CO)
TR(13/08/2018)

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