

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.11035 of 2013
and M.P.Nos.1 & 2 of 2013

1.Mrs.Usha
2.Mr.Radhakrishnan
3.Mrs.Latha
4.Mrs.D.Ramanujam ... Petitioners

Vs.

1. The State
Represented by the
Inspector of Police,
W-28, All Women Police Station,
Ambattur, Chennai.
2. Mrs.Sushmitha Devarajan ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.42 of 2013 on the file of Judicial Magistrate I, Poonamallee and to quash the same.

For Petitioners: Mr.S.Thiruvengadam

For Respondents: Mr.T.Shanmuga Rajeswaran

Government Advocate (Crl. Side) for R1

No Appearance for R2

ORDER

The prayer sought for in the present petition is to call for the records in C.C.No.42 of 2013 on the file of Judicial Magistrate I, Poonamallee and to quash the same.

2. While the petitioners 1 and 2 are the sister in law and her husband of the defacto complainant, petitioners 3 and 4 are the mother in law and father in law of the defacto complainant. The complaint has been filed against the petitioners herein for the offences under Sections 498 (A), 406, 506(ii) IPC r/w. under Section 4 of D.P.Act of 1961, Section 66 of IT Act, 2000 and Section 4 of TNPHW Act, 1998.

3.Heard, Mr.S.Thiruvengadam, the learned counsel for the petitioners and Mr.T.Shanmuga Rajeswaran, Government Advocate (Crl. Side) for the first respondent herein.

4. It is submitted by the learned counsel for the petitioners that the marriage of the defacto complainant took place on 10.06.2005 and immediately after marriage, she had accompanied the husband and established the matrimonial house in the U.S.A on 18.06.2005. Thereafter, she had some dispute with her husband, accordingly she had returned back in the year 2008 and gave a complaint on 27.05.2008, in which, charges came to be framed on 27.05.2008. The present Original Petition is challenging the said charge sheet.

5. It is also submitted by the learned counsel for the petitioners that an order of divorce was already granted by the Court of California in USA and overall reading of the complaint as well as the statement under Section 161 Cr.P.C., it is seen that the main grievance of the defacto complainant is as against her husband. Insofar as the petitioners herein are concerned, I am unable to comprehend as to how these offences can be made out as against these petitioners, who are in- laws.

6. Apart from the fact that the petitioners are the in laws, it is also seen that the defacto complainant had never resided with these petitioners at any point of time. Even the brief period of one week after the marriage was spent by the defacto complainant in her parent's house. It is the case of the defacto complainant that she was residing with these petitioners when they visited to USA and caused the harassment. It would be pertinent to note that after the complaint was made by the defacto complainant, her husband had applied for divorce in Court of California in USA and her marriage came to be dissolved accordingly.

7. In the mean time, the defacto complainant had filed a petition in H.M.O.P.No.1735 of 2008 before the III Additional Family Court, Chennai, seeking for divorce and after the counter affidavit was filed therein, the defacto complainant had filed a memo on 23.11.2011, withdrawing the Original Petition. By this time, the impugned charge sheet came to be laid and the proceedings were filed.

8. None appears for the second respondent herein. On a perusal of the events, it is seen that the second respondent/defacto complainant herein is not interested in prosecuting the matter, in view of the fact that the marriage has been dissolved even prior to the filing of charge sheet and after the charge sheet was taken on file, the defacto complainant chosen to withdraw the divorce proceedings initiated by her.

9. As stated earlier, the petitioners herein are only the in laws of the defacto complainant and had never lived in the matrimonial house of the defacto complainant. The averments made as against these petitioners are very vague and do not attract the offences under Section 498 IPC.

10. The learned counsel for the petitioners by relying on the counter affidavit, filed in the divorce proceedings, stated that, it was the husband of the defacto complainant who had transferred huge sums of money to the defacto complainant and as such the allegation of dowry demand is false. The said counter affidavit is produced by this Court which reiterate these statements made by the learned counsel for the petitioners.

11. Incidentally, the defacto complainant had chosen to withdraw the divorce proceedings after the counter affidavit came to be filed. The conduct of the defacto complainant would only establish that she has no intention to pursue her grievance against her husband and in laws, since she had accepted the divorce granted.

12. Nevertheless, it would not be out of place to mention here that all the in laws have been implicated in the criminal complaint without any basis, which is an abuse of process of law. As rightly pointed out by the learned counsel for the petitioners, the Hon'ble Supreme Court in the case of Preeti Gupta & Anr. Vs. State of Jharkhand & Anr. in Crl. A.No.1512 of 2010 reported in AIR 2010 SCC 3363 observed the misuse of Section 498 A IPC in the following words:

25. A three-Judge Bench (of which one of us, Bhandari, J. was the author of the judgment) of this Court in Inder Mohan Goswami and Another v. State of Uttaranchal & Others (2007) 12 SCC 1 comprehensively examined the legal position. The court came to a definite conclusion and the relevant observations of the court are reproduced in para 24 of the said judgment as under:-

"Inherent powers under section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute."

26. We have very carefully considered the averments of the complaint and the statements of all the witnesses recorded at the time of the filing of the complaint. There are no specific allegations against the appellants in the complaint and none of the witnesses have alleged any role of both the appellants.

27. Admittedly, appellant no.1 is a permanent resident of Navasari, Surat, Gujarat and has been living with her husband for more than seven years. Similarly, appellant no.2 is a permanent resident of Goregaon, Maharashtra. They have never visited the place where the alleged incident had taken place. They had never lived with respondent no.2 and her husband. Their implication in the complaint is meant to harass and humiliate the husband's relatives. This seems to be the only basis to file this complaint against the appellants. Permitting the complainant to pursue this complaint would be an abuse of the process of law.

28. It is a matter of common knowledge that unfortunately matrimonial litigation is rapidly increasing in our country. All the courts in our country including this court are flooded with matrimonial cases. This clearly demonstrates discontent and unrest in the family life of a large number of people of the society.

29. The courts are receiving a large number of cases emanating from section 498-A of the Indian Penal Code which reads as under:-

"498-A. Husband or relative of husband of a woman subjecting her to cruelty.--Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. Explanation.--For the purposes of this section, 'cruelty' means:-

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

30. It is a matter of common experience that most of these complaints under section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment are also a matter of serious

13. It is needless to mention here, that this Court has also been receiving various petitions to quash the offences under Section 498 A. As observed by the Hon'ble Supreme Court, most of the cases are abuse in process of law, wherein vague allegations have been made as against the in-laws, when really the grievance of the wife seems to be as against her husband. In the instant case, it can only be concluded that by implicating the in - laws for the said offences, the defacto complainant has abused the process of law.

14. In the absence of any offence having been made out as against these petitioners, it would not be appropriate to permit the petitioner to undergo the ordeal of the trial.

15. In the result, the Criminal Original Petition stands allowed. The learned Judicial Magistrate-I, Poonamallee in connection with C.C.No.42 of 2013 is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/--

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate I, Poonamallee

2.-do-thro The Chief Judicial Magistrate, Poonamallee

3. The Inspector of Police,
W-28, All Women Police Station,
Ambattur, Chennai.

4.The Public Prosecutor,
High Court, Madras. सत्यमेव जयते

sm:28.2.2018

Cr1.O.P.No.11035 of 2013

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