

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.06.2018

Pronounced on : 19.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.24008 & 5744 of 2010

and

M.P.No.1 of 2010

Crl.O.P.No.24008 of 2010

S.Santhakumari,
D/o.Solomon.

... Petitioner/Defacto
Complainant

Vs.

State,
Represented by
the Inspector of Police,
All Women Police Station,
Arakkonam, Vellore District. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to direct the respondent to take necessary steps to add Sections - 493, 498-A of the Indian Penal Code read with Section 4 (1) (i) of Dowry Prohibition Act in C.C.No.207 of 2009, on the file of the Judicial Magistrate Court, Arakkonam pending disposal of the above Crl.O.P.No.

For Petitioner : Mr.B.Sathish Babu for
Mr.S.J.Jagadev

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

Crl.O.P.No.5744 of 2010

Selvaraj,
S/o.Gopal

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
All Women Police Station,
Arakkonam, Vellore District,
[Crime No.19 of 2008]. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with C.C.No.207 of 2009 on the file of the Judicial Magistrate Court, Arakkonam and quash the same.

For Petitioner : Mr.T.Munirathinam Naidu

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

For Intervenor : Mr.B.Sathish Babu for
Mr.S.J.Jagadev

C O M M O N O R D E R

The petitioner in Crl.O.P.No.24008 of 2010 is the defacto complainant, who had preferred a complaint against one G.Selvaraj, on 23.12.2008 to the respondent/Inspector of Police, All Women Police Station, Arakkonam, based on which a case was registered in Crime NO.19/2008 for the offences under Sections 417, 420, 506 (i) of the Indian Penal Code. On completion of investigation, the respondent had filed a charge sheet against the said G.Selvaraj under Sections 417, 420 and 506 (i) of the Indian Penal Code, which was taken on the file of the Judicial Magistrate Court, Arakonam as C.C.No.207 of 2009, which is pending trial. Aggrieved against the final report, the petitioner contention is that on the facts of the case the respondent, ought to have filed a case for the offences under Sections 493, 498(A) r/w Section 4 (1) (i) of Dowry Prohibition Act, but had failed to include the same and hence the above petition.

2.The petitioner in Crl.O.P.No.5744 of 2010 is the accused in C.C.No.207 of 2009, which is pending trial on the file of the Judicial Magistrate Court, Arakonam for the offences under Sections 417, 420 and 506 (i) of the Indian Penal Code.

3.The contention of the learned counsel appearing for the petitioner in Crl.O.P.No.5744 of 2010 is that there is no specific overt act against the petitioner. Further, when the petitioner is said to have promised to marry the defacto complainant S.Santhakumari, the marriage between S.Santhakumari and one R.Paul Gajendran was subsisting and they had children. Therefore, the question of marrying or promising to marry the defacto complainant does not arise. Further, it could be seen that the defacto complainant is aged about 43 years and as per the contention of the defacto complainant that on her own will and consent she lived with the petitioner under one roof and hence, there is no question of cheating or breach of trust as made by defacto complainant and the other witnesses in the case are all interested witnesses, who are brother, sister and sister's husband of the defacto complainant. The learned counsel further contended that the complaint was lodged with a motive to extract money from the petitioner, since the petitioner happened to become a permanent teacher in a CSI School and hence, prayed for quashing the case against him.

4.The Contention of the learned counsel for the petitioner in Crl.O.P.No.24008 of 2010 is that the petitioner and one G.Selvaraj from the year 2002 to March 2008 were living as husband and wife and the said G.Selvaraj on getting appointed as permanent teacher in a CSI school made a demand of Rs.1 lakh cash and 50 sovereigns of gold and an Indica Car as a pre-condition to marry her. Further, the learned counsel contended that the said G.Selvaraj was aware of the fact that the petitioner was a married woman and despite this he had promised the petitioner that he would live with her as husband and wife and in pursuant to the promise they had physical relationship and the said Selvaraj had suddenly changed the colour, once he got permanent employment in a CSI School as a teacher.

5.The petitioner herself is a teacher in a Government school near Sholingur. She admits that she had a marriage in 1998 and due to difference of opinion between her husband R.Paul Gajendran, she had got separated from him and in the meantime, developed relationship with the said Selvaraj, who was working in Goodlet Convent, a CSI School. Initially, they moved as friends and slowly the relationship blossomed and he was aware of the first marriage of the petitioner and from the year 2002 to 2008 March they were living as husband and wife. All her earnings were handed over to the said Selvaraj and the petitioner had paid money to secure permanent employment for the said Selvaraj and both the family members were aware of their relationship. Once the said Selvaraj secured permanent employment as School teacher, he demanded money, gold and a Indica car as dowry. When the petitioner refused and insisted for marriage she was threatened by the said Selvaraj, if she persists for the marriage, the said Selvaraj would inform her brother Yesu @ Ezhil of Chennai, who would do away with her. Further, the said Selvaraj was attempting to marry some other girl. The other witnesses are S.Paul Asir, the elder sister of Petitioner, LW.3 D.Asirvatham, who is brother-in-law of LW.1 and LW.4. LW.4 is other sister of LW.1. All the witnesses are family members of the petitioner giving a parrot version.

6.The learned counsel appearing for the petitioner in Crl.O.P.No.5744 of 2010 contended that the complaint given by the defacto complainant Shanthakumari is a motivated one. The marriage between the defacto-complainant Shanthakumari and her husband R.Paul Gajendran was in subsistence from 1998 till 17-12-2007. The contention of the said Shanthakumari is that she and Selvaraj had lived as husband and wife from 2002 to March 2008 is false and legally not sustainable. Further, the other allegation of demand of dowry as a pre-condition for marriage are all concocted story without any substance and truth. The learned counsel for the petitioner produced the Divorce order dated 17-12-2007 of Shanthakumari in IDOP No.6 of 2006 passed by the learned Principal District Judge at Tiruvallur.

7.The contention of the learned counsel for the petitioner in Crl.O.P.No.24008 of 2010 is that the petitioner/defacto complainant S.Santhakumari and her marriage with R.Paul Gajendran were in subsistence and the Divorce of her first marriage with said R.Paul Gajendran was granted only on 17-12-2007. Hence, the contention of the petitioner/defacto complainant that the accused G.Selvaraj were living with her from the year 2002 to March 2008 as husband and wife is false. It is also not out of place to mention that the petitioner/defacto complainant admits about her earlier marriage and she is of 43 years as on 2009 and the accused is much younger to her and the other witnesses states that the accused had stayed with the defacto complainant at her residence and he had left the house of the defacto complainant demanding dowry for taking her as wife. The defacto complainant is a matured lady of around 43 years of age and she admits her relationship with the accused and she had allowed the accused to stay along with her in her residence and now the allegation made against the accused seems to be highly unrealistic and unbelievable. The defacto complainant's relationship with the accused during the time the defacto complainant's marriage with her first husband was in subsistence and in such circumstances, the act seems to be of consensual nature.

8.In this factual aspect the contention of the learned counsel for the petitioner in Crl.O.P.No.24008 of 2010 is that to include the offences under Sections 493, 498(A) and Section 4(1)(i) of Dowry Prohibition Act cannot be countenanced and the petition of the petitioner Shanthakumari is liable to be dismissed.

9.On coming to the above conclusion the corollary is to allow contention of the petitioner in Crl.O.P.No.5744 of 2010. Further, as rightly contended by the learned counsel for the petitioner, it could be seen that Crl.O.P.No.24008 of 2010 has been filed during September 2010, as a counter blast to Crl.O.P.No.5744 of 2010, which was filed during March 2010. Further, in view of the judgment in IDOP No.6 of 2006 dated 17-12-2007, it is proved that the defacto complainant S.Santhakumari marriage with R.Paul Gajendran was in subsistence till 17-12-2007 and she is of matured age around 43 years and she is an educated teacher and she had as per her own admission allowed the accused to stay along with her.

10.In view of the above, this Court finds that the charges against the petitioner in Crl.O.P.No.5744 of 2010 are groundless and the Criminal Proceedings initiated by the defacto complainant is manifestly attended with mala fide, where the proceeding has been maliciously instituted with an ulterior motive to wreck vengeance for the private and personal grudge of the defacto complainant.

11.The learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court of India reported in CDJ 2016 SC 009 in the case of THILAKRAJ VS. STATE OF HIMACHALPRADESH, wherein the Apex court have categorically held that at the time of alleged occurrence the defacto complainant was of matured lady age of around 40 years and it is her admitted case that she was in relationship on the false pretext of marrying her is a concocted one in view of her earlier marriage, which was in subsistence and the act seems to be of consensual in nature having allowed the accused to reside with her now cannot make accusation against the accused for the misdeeds, which is of her own making.

12.Hence in view of the above, the ingredients of the offences are not made and consequently, the petition filed by the petitioner G.Selvaraj in Crl.O.P.No.5744 of 2010 seeking quashing of C.C.No.207 of 2009 pending on the file of the Judicial Magistrate Court, Arakonam is allowed. Consequently, the direction petition filed in Crl.O.P.No.24008 of 2010 by S.Santhakumari, defacto complainant in C.C.No.207 of 2009 is dismissed.

13.In the result, Crl.O.P.No.5744 of 2010 is allowed and Crl.O.P.No.24008 of 2010 is dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court,
Arakkonam.

2.The Inspector of Police,
All Women Police Station,
Arakkonam, Vellore District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Sasikumar, Advocate SR.No.48570

sm:25.7.2018

Crl.O.P.Nos.24008 & 5744 of 2010