

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.15994 of 2010
and
M.P.Nos.1 and 2 of 2010

1.D.Gowthaman Babu
2.C.Dasarathan
3.Logammal

... Petitioners

vs.

1. State by:
The Sub-Inspector of Police,
W-16, All Women Police,
Pulianthope Police Station,
Chennai - 12.

2. M.R.Dhivya
(Impleaded the 2nd respondent as per the
order of this Court dated 19.10.2010
in MP.No.3 of 2010)

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.No.1121 of 2010 on the file of the learned Chief Metropolitan Magistrate at Egmore, Chennai and quash the same.

For Petitioners : Mr.K.P.Chandrasekaran

For Respondents : Mr.P.Muthukumar (for R1)
Government Advocate (Cr1.Side)

Mr.C.Prabakaran (for R2)

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JUDGMENT

The petitioners have come up with this Criminal Original Petition to quash the final report laid against them in C.C.No.1121 of 2010 before Chief Metropolitan Magistrate at Egmore, Chennai.

2.The sum and substance of the petitioners' case is that the 1st petitioner is the son of petitioners 2 and 3 herein. The marriage of the 1st petitioner was solemnized with the 2nd respondent herein namely M.R.Dhivya on 03.06.2001 as per Hindu Rites and Customs at Peravallur, Chennai. The 1st petitioner's wife Dhivya is none other than the 1st petitioner's aunt's daughter. Out of their marital life, they were gifted with a female child. However misfortunately the child died in a week from birth. Thereafter they had a son. The 2nd respondent Dhivya who went to her parental home for 2nd delivery has not turned up to petitioner's house after delivery.

3.The 2nd respondent was very adamant to isolate from the family of the petitioners by way of living in a separate house. But the said proposal was refused by 1st petitioner as his parents the 2nd and 3rd petitioners are aged persons as such they cannot be left lonely. Thereupon the 2nd respondent deserted the 1st petitioner and she is living separately for the past 7 years. She also filed a divorce petition before the Principal Judge, Family Court at Chennai in O.P.No.1291 of 2005 for dissolution of marriage. Whereas the 1st petitioner herein filed O.P.No.1517 of 2015 for Restitution of Conjugal Rights and both O.Ps are pending.

4.While so, the 2nd respondent gave a complaint against the petitioners and 3 others alleging that they have demanded dowry and thereby committed the offence of cruelty. According to the 2nd respondent/ defacto complainant the 1st petitioner married the 4th accused in the above crime number during the subsistence of his marriage with 2nd respondent. Therefore, all the accused have committed the offence under Sections 498(A), 494, 506(ii) IPC and Section 4 and 6 of D.P. Act r/w 34 of IPC, whereby a complaint was lodged by the 2nd respondent and the same came to be registered in Crime No.7 of 2009 for the above said offences. The 1st respondent police laid the corresponding charge sheet on the file of the 5th Metropolitan Magistrate Court, Egmore, Chennai and the same was taken on file C.C.No.1121 of 2010.

5.It is the contention of the petitioners that charge sheet filed by the 1st respondent police against the petitioners under Section 494 IPC is not at all maintainable and the 1st respondent police have no power or authority to register a case under Section 494 of IPC. That apart to attract Section 494 IPC the certain ingredients must be available in the complaint. For

better appreciation of the same, Section 494 of IPC is extracted hereunder:

"Marrying again during lifetime of husband or wife.—Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

(Exception) - This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge."

6. Per contra, the respondents herein strenuously contended that in so far as the allegation of dowry demand and cruelty are concerned, it is a matter for trial and all the allegations could be proved only at the time of trial and the same cannot be quashed at the threshold itself. The 2nd respondent/de-facto complainant has made a specific allegation that there was a dowry demand and she was cruelly treated by the 1st petitioner in intoxicated mood. All the above said averments have to be gone into only after adducing oral evidence.

7. I heard Mr.K.P.Chandrasekaran, learned counsel for the petitioner and Mr.P.Muthukumar, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.C.Prabakaran, learned counsel for the 2nd respondent and perused the entire records.

8. In so far as Section 494 IPC is concerned, the provision is very clear that no case could be registered by the police and that the parties alleging bigamy will have to file a private complaint under Section 200 Cr.P.C. Therefore, this Court finds that the registering of the F.I.R. against the petitioners herein by the 1st respondent police and subsequent charge sheet

laid for the offence under Section 494 IPC is not maintainable and therefore, the charge under Section 494 IPC against the petitioners herein is quashed hereby.

9.The records before this Court disclose that the 1st petitioner and 2nd respondent are living separately for the past 7 years prior to filing the subject complaint. Further, the 2nd respondent also had filed a divorce petition against the 1st petitioner. Being as such the circumstance, this Court finds that since the 1st petitioner and 2nd respondent are living separately for a quiet long time, offences under Section 498(A) is not attributable towards the petitioners. In fact at the first instance on receipt of complaint, the matter has to be referred to the District Social Welfare Officer for enquiry and the 1st respondent police should have obtained report from the District Social Welfare Officer.

10.Admittedly in the case on hand, the 1st respondent police failed to refer the matter to the concerned District Social Welfare Officer and get a report as to whether any dowry harassment is made by the petitioners. In the absence of the adherence to such Mandatory procedures, offences of Section 4 and 6 of Dowry Prohibition Act cannot be imputed.

11.At this juncture this Court finds that though the alleged occurrence is said to have taken place long back and that the 2nd respondent having initiated divorce proceeding against the 1st petitioner after unexplainable delay has lodged the above complaint. Therefore this Court is of firm view that it cannot form a basis for criminal prosecution as against the petitioners 2 and 3. That apart the allegations against them are very blurred and manifestly attended with malafide intention for wreaking vengeance. The allegations made against the 2nd and 3rd petitioner are so absurd and inherently improbable on basis of which it is not possible to proceed with criminal prosecution against the 1st and 2nd petitioner.

12.Before parting with the case, this Court likes to hold that the case on hand too is a classical example of abuse of process of law and misuse of a protection measure envisaged for a real victim wife.

13.In the result, this criminal original petition is allowed and the proceedings in C.C.No.1121 of 2010 before the learned Chief Metropolitan Magistrate at Egmore, Chennai is

hereby quashed in so far as the 2nd and 3rd petitioners are concerned. As against the 1st petitioner offence under section 494 and Section 4 and 6 of Dowry Prohibition Act alone are quashed and the other charges against the 1st petitioner are not quashed and the same has to be decided only after trial. It is made clear that this Court has not expressed any opinion on the merits of the case. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.89

+1cc to Mr.K.P.Chandrasekaran, Advocate, S.R.No.479

Crl.O.P No.15994 of 2010
and
M.P.Nos.1 and 2 of 2010

CS/19/01/18

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