

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2018
Pronounced on : 04.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.16967 of 2010
and
M.P.No.1 of 2010

1.Muthumariammal,
W/o.Late Mariappan

2.Seenivasan,
S/o.Mariappan

3.Vasanthi,
W/o.Seenivasan ... Petitioners/Accused Nos.5 to 7

Vs.

1.The State by Inspector of Police,
All Women Police Station,
Coimbatore West,
Crime No.10 of 2009,
Coimbatore District. ... 1st Respondent/Complainant

2.Parvathi @ Suvitha,
W/o. Balakrishnan ... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No.196 of 2009 on the file of the Judicial Magistrate Court No.1, Coimbatore, quash the same by allowing this Criminal Original Petition.

For Petitioners: Mr.P.Kaviri Nadan

For R1 : Mr.Hari Hara Arun Soma Sankar
Government Advocate

For R2 : Unserved

O R D E R

This Criminal Original Petition is filed to call for the records relating to the case in C.C.No.196 of 2009 on the file of the Judicial Magistrate Court No.1, Coimbatore, quash the same by allowing this Criminal Original Petition.

2.The petitioners who are accused A5 to A7 in C.C.No.196 of 2009 which is pending trial on the file of Judicial Magistrate No.I, Coimbatore for the offences under Section 498-A, 506(ii) of the Indian Penal Code and Section 4 and 6 (b) of Dowry Prohibition Act and under Section 406 of the Indian Penal Code have filed the above quash petition.

3.The case is that the informant Parvathy @ Suvitha had preferred a complaint to the Commissioner of Police, Coimbatore City on 11-04-2009, which was forwarded to the 1st respondent, who had registered a case in Crime No.10 of 2009 and had filed a final report before the trial court on 06-08-2009, arraying totally seven accused namely 1st accused is the husband, 2nd accused is the Mother-in-law, 3rd accused is the brother-in-law, 4th accused is the wife of the 3rd accused, 5th accused is the Sister of the 2nd accused, 6th accused is the son of the 5th accused and 7th accused is the wife of the 6th accused. The informant/defacto complainant has been arrayed as 2nd respondent in the above quash petition.

4.Notice was ordered to the 2nd respondent on 20-02-2017, pursuant to which, notice dated 22-02-2017 has been taken, the same has been returned as "intimation given" - "unclaimed". Despite the name of the 2nd respondent being printed in the cause list, she had failed to appear before this Hon'ble Court.

5.The 1st respondent/complainant submits that the marriage between the 1st accused and the defacto complainant was held on 24-01-2003 at Sridevi Kalyana Mahal in Tirunelveli and as per their custom. During marriage, a sum of Rs.1,50,000/- and 60 sovereigns of gold jewels as demanded by A1 family, the same was given by the defacto complainant's parents as dowry and accepted by A1 family. After the marriage, the defacto complainant started matrimonial life with A1 at Door No.880, Big bazaar Street, Coimbatore along with A1 to A4 as joint family.

6.It is further averred that during the period 24-01-2003 to 16-04-2009 on various occasions A1 to A7 had caused cruelty to

the informant demanding dowry. Further averment is that the 1st accused used to come often in inebriated condition and used to beat the defacto complainant, scolded and ill treated her by kicking over her abdomen, while she was pregnant and demanded a cash of Rs.2,00,000/- (Rupees Two lakhs only) for his business and also demanded 20 sovereigns as dowry in addition to the dowry he had received during marriage. That A2 to A6 had conjointly ill treated her by using abusive language and she was insulted and teased by A2 to A7 for the above said dowry with a view to coerce for getting the said dowry.

7.Further, it is averred that during the period of pregnancy A2 had not provided her the basic needs of food and the defacto complainant was made to starve. On 20-06-2009, while the defacto complainant had approached her husband along with her infant child, he refused to talk with her. Subsequently A2 to A7 joined together and they had abused her suspecting the paternity of the child. Hence, she had given a complaint to the Commissioner of Police, Coimbatore City. Thus, A1 to A7 have committed the above offence, for which charge sheet has been filed by the 1st respondent which is now pending trial on the file of Judicial Magistrate Court No.I, Coimbatore.

8.The 1st respondent reiterated the same and had submitted that the charge sheet in the above case had been filed after conducting investigating in a fair, free impartial manner in accordance with law. Further, the respondent had complied all mandatory provisions during investigation. It is further contended that the above quash petition filed by A1 to A7 is only in order to escape from the clutches of law and also to drag on the further proceedings of the case in the trial court.

9.The learned counsel for the petitioners submitted that the 1st petitioner, who is A5 Muthumariammal had since died on 13-08-2016, which was confirmed by the 1st respondent. Hence, the case as against 1st petitioner/A5 is not pressed, since nothing survives against her. The other petitioners namely A6 and A7 are admittedly residing in a different address namely at 751 big bazaar Street, Coimbatore. It is the admitted case of the defacto complainant is that she was residing along with A1 to A4 at 880 Big bazaar Street, Coimbatore.

10.The learned counsel for the petitioners further contended that the 1st accused husband of the complainant had some matrimonial dispute with the defacto complainant, for which he had filed HMOP No.501 of 2008, which is pending before the family court Coimbatore for divorce on the ground of cruelty.

The 2nd accused mother-in-law of the defacto complainant had filed a Civil Suit in O.S.No.619 of 2009 before the District Munsif Court, Coimbatore to restrain the defacto complainant, her men and family members in any manner interfering with the A2's peaceful possession and enjoyment of the suit property.

11.The 2nd respondent defacto complainant has also filed a complaint against the accused 1 to 6 in M.C.No.2 of 2009 before the Judicial Magistrate No.IV Tirunelveli, for Domestic Violence Act. The thrust of the arguments of the petitioner is that the defacto complainant as a counter blast and with intention to grab the property of the accused family as a pressure tactics and to take vengeance against the petitioners have filed the above case. There has been delay of 6 years in preferring the complaint except for a bald allegation. There is no specific averments or overt act attributable against the petitioners.

12.Considering the rival submissions and on perusal of the final report and the documents filed along with the quash petition, it is observed as follows:

The 1st petitioner Muthumariammal who is A.5 in C.C.No.196 of 2009 pending on the file of Judicial Magistrate Court No.I Coimbatore has since died on 13-08-2016 and the Death Certificate issued by the Coimbatore City Municipal Corporation bearing No.1428584 dated 02-09-2016 has been filed and hence no case subsists against her. On perusal of the charge sheet it is seen that the 1st respondent had cited 12 witnesses of which LW1 is the Defacto complainant, LW2, 3 and 4 are the Father, mother and brother of the defacto complainant, LW5, 6, 7, 8 are the other witnesses, who all speak about the alleged dowry harassment against the accused. The other witnesses are LW9 and 10, who signed the Observation Mahazar witness and rough sketch. LW11 is the Sub-Inspector of Police, who had received the complaint and registered the FIR. LW12 is the Investigating Officer, who had completed the investigation and had filed the final report.

13.Further, it is seen that with regard to 3rd petitioner Vasanthi, A7 no witnesses have spoken any overt act against her. As also, as could be seen from the complaint which is a detailed well thought and preferred complaint there is no mention of the 3rd petitioner except for an insertion at the fag end of the complaint in hand written manner. The other part of the complaint is typed one. Likewise, it is an admitted case that the 3rd petitioner has been residing in a different address and at no point of time she had been in a joint family wherein the

defacto complainant lived during which period the alleged demand of dowry is said to have been made with regard to the allegation of questioning the paternity of the child, there is no whisper about the 3rd petitioner making such allegations. As also could be seen from the Dowry Prohibition case filed in M.C.No.2 of 2009, which has been filed on 07-06-2009 after the lodging of the complaint in the above case on 04-06-2009. The 3rd petitioner has not been arrayed as respondent.

14.Thus, looking at the entire statement of the witnesses and the other documents, it is clear that the allegations made and the evidence collected does not disclose commission of any offence and hence case against the 3rd petitioner/A7 alone is quashed. With regard to 2nd petitioner/A6, there are some averments. Hence, the contention of the 2nd petitioner/A6 are not sustainable and hence, the petition with regard to A6 is dismissed.

15.It is seen that the case is of the year 2009, and due to the pendency of the above Quash petition from 2009, the above case is kept pending without any progress for the past eight years. Hence, the trial court is directed to complete the trial by giving top priority, at the earliest.

16.In view of the above direction, the quash petition is partly allowed. Consequently, the connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Coimbatore.

2.The Inspector of Police,
All Women Police Station,
Coimbatore West,
Crime No.10 of 2009,
Coimbatore District.

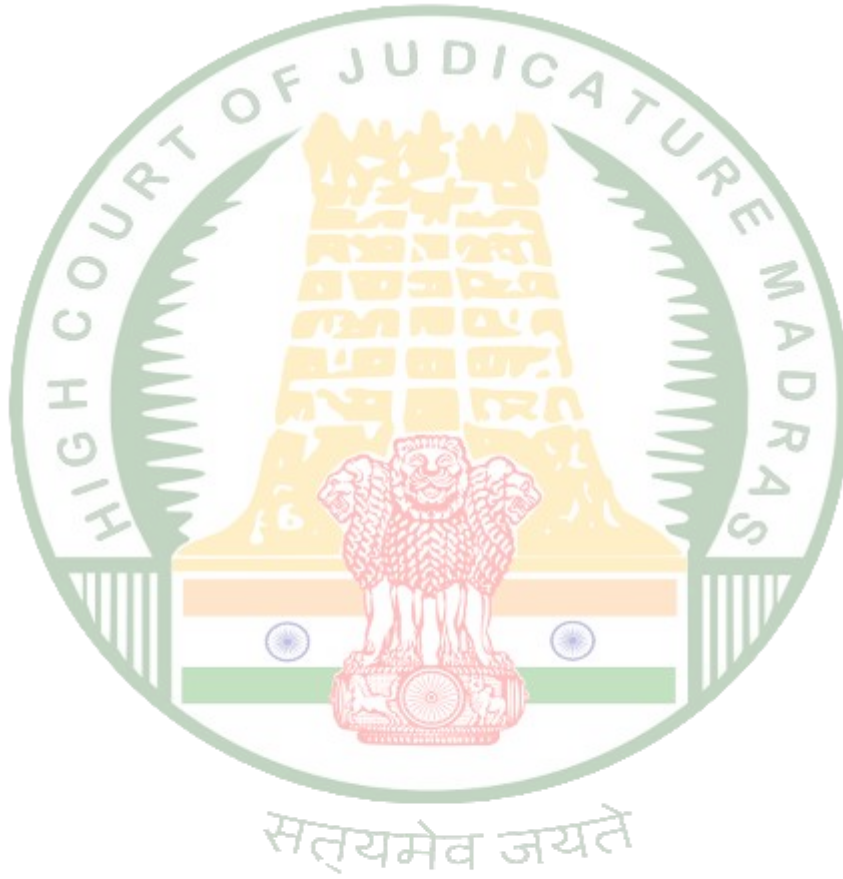
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3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.N. Manokar, Advocate sr 43346.

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SS (CO)
SP(18/07/2018)



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