

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.03.2018

DATE OF VERDICT : 26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

CRL.O.P.NO.26945 OF 2016

AND

CRL.M.P.NO.13562 OF 2016

& CRL.M.P.NO.2807 OF 2017

1.L.J.Vengatesh
2.S.Jawaharlal
3.J.Lakshmi

... Petitioners

Vs.

1.State rep. by
The Inspector of Police,
W-5, All Women Police Station,
Vepery, Chennai-600 007.

2.Jamuna Kalyani Sridharan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of F.I.R. in Crime No.9 of 2016 on the file of the first respondent and to quash the same.

For Petitioners : Mr.M.Velmurugan

For Respondent-1 : Mrs.P.Kritika Kamal,
GA (Crl.Side)

For Respondent-2 : Mr.R.Marudhachalamurthy

O R D E R

While the first petitioner is the husband of the Swapna Sridharan, the petitioners 2 & 3 are the father-in-law and mother-in-law respectively.

2.The brief facts of the case is as follows:

The first petitioner got married to Swapna Sridharan, who is the daughter of the second respondent herein on 29.06.2015. From July 2015 to October 2015, all of them lived jointly. There was an estranged relationship between the first petitioner and the Swapna Sridharan from November 2015 onwards and on 25.06.2016, the first petitioner had filed HMOP.No.4480 of 2016 before the learned III Additional Family Court, Chennai seeking for dissolution of his marriage. Subsequently, on 30.06.2016, the first petitioner's wife had filed a complaint before the Social Welfare Officer and Domestic Violence case in DVC No.34 of 2016 before the learned IX Metropolitan Magistrate, Saidapet on 12.07.2016 against these petitioners. On 12.11.2016, a police complaint was also registered in Cr.No.9 of 2016 before the first respondent police. The said FIR is under challenge in the present petition.

3.Heard Mr.Velmurugan, learned counsel for the petitioners and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the first respondent as well as Mr.R.Marudhachalamurthy, learned counsel for the second respondent.

4.The second respondent herein is the mother-in-law of the first petitioner. The petitioners have alleged to have committed the offences under Sections 498(A), 294(b), 323, 406, 506(i) IPC. According to the averments in the complaint, the petitioners herein had treated her daughter with cruelty and had caused life threats to her and the first petitioner had deserted her daughter.

5.The learned counsel for the petitioners submitted that the offences for which the petitioners have been charged have not been made out from the averments made in the complaint. It is the case that after the petitioner had filed the divorce petition on 25.05.2016, his mother-in-law had preferred the present complaint on 12.11.2016 as a counter blast to the divorce proceedings. The first petitioner's wife had also initiated Domestic Violence case in D.V.C.No.34 of 2016 before the learned IX Metropolitan Magistrate, Saidapet, Chennai in retaliation. Since the offences have not been made out and that the complaint has been falsely made with an intention of wreck vengeance for the divorce proceedings initiated, the FIR is liable to be quashed.

6.The learned counsel for the second respondent submitted that all the averments in the complaint have been clearly made out and that all the petitioners herein had treated the second respondent's daughter with utmost cruelty. According to the

learned counsel, the petitioners 1 and 2 had manually assaulted the infant child by banging its head on an iron gate and have also caused life threats. In view of the cruelty meted out to the second respondent's daughter, the petitioners herein are liable to be punished.

7.The learned Government Advocate submitted that the case has been registered on the basis of the averments made in the complaint and that the case is under investigation. Until and unless the investigation is completed, it would be premature to quash the investigation on the basis of the averments in the complaint.

8.I have given careful considerations to the submissions made by the respective counsels.

9.The major offence for which the petitioners have been charged was under Section 498(A) IPC. The object of introducing Section 498(A) was to punish the husband and his relatives, who harass her wife or relatives subjecting to any unlawful demands of dowry. Apparently, there is no whisper about the demand of any dowry or valuable security in the complaint. Admittedly, the first petitioner and his wife were living together only for about four months. Most of the allegations in the complaint pertains to certain averments that took place prior to the marriage. The incidents after the marriage are very vague in nature and does not carry any details of the alleged cruelty. Even if the allegations are taken in face value, the same will not amount to cruelty as defined under Section 498(A) IPC. The complaint does not suggests or indicate that the conduct of the petitioners were of such a nature and which would drive the second respondent's daughter to commit suicide or danger to her life. Also that the complaint does not indicate that there was a demand for dowry. As such, there is nothing in the complaint that there were acts of cruelty on the part of the petitioners herein. In the light of the trivial issues alleged in the complaint and also taking into account, the petitioners and the second respondent's daughter lived together for a very brief period of about four months, it can only be concluded that the complaint has been filed with an oblique motive. Insofar as the offence under Section 406 IPC is concerned, the complaint lacks ingredients to make out the offence of criminal breach of trust as there is no averment to the effect that there was an entertainment of property or domain over the property and the property has been dishonestly acquired and converted to the petitioners' use. In the absence of the same, the offence under Section 406 IPC is also not made out.

10.Insofar as the offence under Section 294(b) is concerned, there is no averment to the effect that the petitioners had used

obscene language to the annoyance of others. On an overall reading of the complaint and in the background of the above observations, the offence under Section 498(A), 406, 294(b) IPC have not been made out, the vague averments to constitute the other offences 323 and 506(i) is also doubtful. While that being so, it would not be appropriate to make the petitioners to undergo the ordeal of criminal investigation.

11. The Hon'ble Supreme Court in a judgment in *Preeti Gupta v. State of Jharkhand* reported in 2010 (7) SCC 667 had remarked upon the complaints being made on trivial issues and with an oblique motive. It would be pertinent to rely upon the observations made therein, which is hereunder:

30. 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.

31. 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."

32.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 concern.

33.The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fiber, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34.Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations.

35.The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate

relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful.

37. Before parting with this case, we would like to observe that a serious relook of the entire provision is warranted by the legislation. It is also a matter of common knowledge that exaggerated versions of the incident are reflected in a large number of complaints. The tendency of over implication is also reflected in a very large number of cases. The criminal trials lead to immense sufferings for all concerned. Even ultimate acquittal in the trial may also not be able to wipe out the deep scars of suffering of ignominy. Unfortunately a large number of these complaints have not only flooded the courts but also have led to enormous social unrest affecting peace, harmony and happiness of the society. It is high time that the legislature must take into consideration the pragmatic realities and make suitable changes in the existing law. It is imperative for the legislature to take into

consideration the informed public opinion and the pragmatic realities in consideration and make necessary changes in the relevant provisions of law.

12. In a judgment of the Hon'ble Apex Court in CrI.Appeal.No.1265 of 2017 [Rajesh Sharma and others V. State of U.P. & Another], the Hon'ble Apex Court had remarked upon the abuse of misuse of Section 498(A). By relying upon various judgments, various directions were issued to regulate the misuse of this provision.

13. The learned counsel appearing for the second respondent relied upon the judgments of the Hon'ble Apex Court in CrI.A.1242 of 2017 [Pratibha V. Rameshwari Devi and others] submitted that the powers under Section 482 has to be exercised in the rarest of rare case and that this Court is required only to look into the allegations made in the complaint and conclude whether a prima facie case has been made out by the complainant in the FIR or not and as such submitted that the investigation should be allowed to continue.

14. It is no doubt true that this Court exercising its powers under Section 482 Cr.P.C., would not generally interfere with the investigation but in the rarest of rare case. In the instant case, the averments in the complaint had constituted the offences for which the petitioners have been accused of. While that being so, this Court would be justified in interfering with the investigation based on complaint on trivial facts and baseless allegations which does not refer to any specific details or dates.

15. Before parting with the case, I am constrained to observe that in the recent times, there has been numerous matrimonial disputes wherein the parties complained of the involvement of the in-laws as a major issue for their separation. The marriages are sacred ceremony intended to make a young couple to start a peaceful and lovable relationship. After the marriage, the responsibilities of their respective parents diminishes to the extent that all major decisions and issues needs to be addressed between themselves and that the parents should consciously refrained from influencing their matrimonial life during times which may lead to ill will among them. No doubt, as the elders of the family, they deserve due respect and love from the couple as well. But when it comes to a stage of frustration where their involvement affects the matrimonial life of the young couple itself, it would be appropriate that they should restrict their interference and encourage the young couple to sort out their indifferences themselves. In case,

they are in a position to take a decision on any indifferences which can be acceptable to both the young couple, the same could be encouraged. The Hon'ble Supreme Court in a judgment in G.V.Rao V. L.H.V.Prasad and others reported in 2000 (3) SCC 693, it made the following observations which could be usefully extracted in this context:

12. There has been an outburst of matrimonial disputes in recent times. The marriage is a sacred ceremony, the main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in commission of heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many other reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate their disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their "cases" in different courts.

16. In the light of the above observations, I am of the view that the petitioners are entitled to succeed. Accordingly, the investigation in Cr.No.9 of 2016 on the file of the first respondent stands quashed and the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Inspector of Police,
W-5, All Women Police Station,
Vepery, Chennai-600 007.

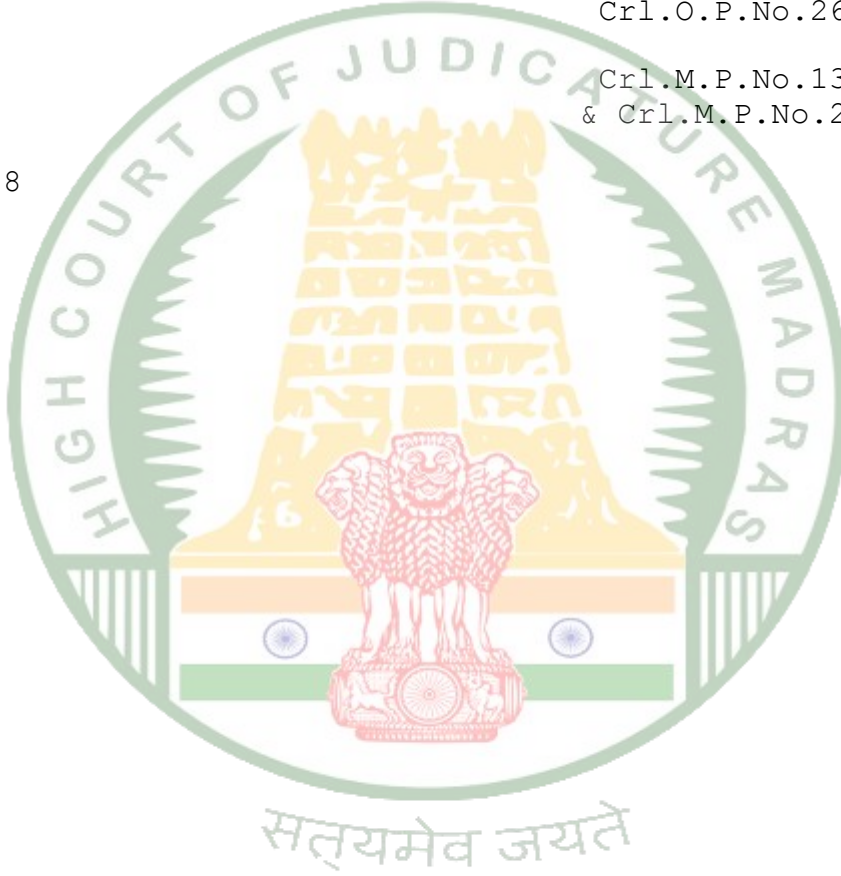
2. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.M.Velmurugan, Advocate, S.R.No.40148

+lcc to Mr.R.Marudhachalamurthy, Advocate, S.R.No.40746

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