

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.23349 of 2018

Suganthi

.. Petitioner

Vs

1.The Inspector of Police,
All Women Police Station,
Kallakurichi.

2.Ramalingam

3.Lakshmi

4.Gurunathan

5.Saritha

6.Muniyapillai

7.Selvakumari

8.Sakthivel

9.Manjula

.. Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to direct the learned Judicial Magistrate, Kallakurichi to include the respondents 2 to 9 as accused in C.C.No.70 of 2014 and proceed with the above case.

For Petitioners : Ms.N.Premalatha
for Mr.R.Nalliyappan

For Respondent : Mrs.M.Prabhavathi, APP

O R D E R

This petition has been filed to direct the learned Judicial Magistrate, Kallakurichi to include the respondents 2 to 9 as accused in C.C.No.70 of 2014.

2.Heard the learned counsel for the petitioner; the learned Government Advocate and perused the materials placed on record.

3.On the complaint lodged by Suganthi, the respondent Police registered a case in Crime No.23 of 2012 on 14.06.2012 under Section 498(A), 294(b), 323 and 494 IPC r/w Section 4 of Dowry Prohibition Act against 10 accused. It may be relevant to state that Chinnadurai (A1) is the husband of Suganthi. After completing the investigation, the Police have filed a Final Report against Chinnadurai (A1) and Ramya (A2) before the Judicial Magistrate, Kallakurichi only for the offence under Section 494 IPC. The Magistrate took cognizance of the offence and issued process to Chinnadurai and Ramya. The

Magistrate framed a charge on 20.08.2013 under Section 494 IPC against Chinnadurai and Ramya and when they were questioned, they pleaded not guilty. Thereafter, summons was issued to Suganthi for giving evidence. Suganthi appeared before the trial Court and she was examined in-chief on 30.06.2015. In her evidence before the trial Court, Suganthi gave evidence as against all the persons named in the FIR. Thereafter, Suganthi is now before this Court with the above prayer.

4.It is the contention of Suganthi that the Police should have filed a Charge Sheet against all the persons named in the FIR, but whereas, the Police have not included in the Charge Sheet 8 persons named in the FIR and the Police have also not included the offence under Section 498(A), 294(b), 323 IPC and Section 4 of Dowry Prohibition Act.

5.This Court gave its anxious consideration to the rival submissions.

6.As stated above, in the complaint given by Suganthi, she had implicated 10 persons including Chinnadurai and Ramya. FIR was registered for the offences under Section 498(A), 294 (b), 323 and 494 IPC r/w Section 4 of Dowry Prohibition Act. However, in the Final Report, the Police have deleted 8 persons and have filed the Final Report only against Chinnadurai and Ramya, that too for the offences under Section 494 IPC. The learned Magistrate has taken cognizance of the offence under Section 494 IPC and issued process to Chinnadurai and Ramya. On their appearance, he has also framed a charge only for the offence under Section 494 IPC against them on 20.08.2013.

7.In the opinion of this Court, this is per se illegal inasmuch as vide Section 198 Cr.P.C., no Court can take cognizance of an offence under Section 494 IPC on a Police report and that, cognizance can be taken only on a complaint by the aggrieved. Of course, for an offence under Section 494 IPC, if it forms part of the same transaction of an offence under Section 498A IPC, a Police report can be filed as held by the Supreme Court in Ushaben Vs Kishorbhai Chunilal Talpadar and Others [2012(3) MLJ (Cr1.) 573]. In this case, the facts are otherwise. Apart from that, when the Police deleted 8 persons named in the FIR while filing the Final Report, the Magistrate should have issued notice to Suganthi and should have given her an opportunity to file a protest application as held by the Supreme Court in Bhagwant Singh vs. Commissioner of Police and another (1985) 2 SCC 537. In this case, the Magistrate failed to adopt this procedure also. Therefore, the entire prosecution in C.C.No.70 of 2014 stands vitiated and therefore, the same is quashed. To be more specific, the order of taking cognizance by the Magistrate on the Police report for the offence under Section 494 IPC is also quashed and the matter is remanded to the Judicial Magistrate, Kallakurichi with liberty to Suganthi to file a protest petition within one month from the date of receipt of

a copy of this order.

8. On filing of the protest application by Suganthi, the same shall be dealt with in accordance with the law laid down by this Court in C.Ve.Shanmugam Vs DSP, Tindivanam Sub Division and Others [2010(2) MLJ (CrL.) 833]. The evidence of Suganthi (PW1) and Manickam (PW2) recorded by the trial Court in C.C.No.70 of 2014 cannot be treated as substantive evidence in the subsequent trial, if any and at the most, it can be treated as previous statements of Suganthi and Manickam, which can be used either to corroborate or contradict them. Suganthi shall appear before the Judicial Magistrate, Kallakurichi within one month from the date of receipt of a copy of this order and file a protest application, if so advised.

With the above observation and direction, this petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Judicial Magistrate,
Kallakurichi.

2. The Inspector of Police,
All Women Police Station,
Kallakurichi.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate SR.NO.68990

BR(CO)

sm:26.10.2018

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