

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1382 of 2018

Mr.S.Rajendran ... Petitioner/Defacto Complainant

Vs.

1.Gnanam

2.Chokkalingam

3.Kavitha ... Respondents 1 to 3/Petitioners/Accused

4.The State rep by Inspector of Police,
Katpadi Police Station (Women Wing),
Vellore District.
... 4th Respondent/Respondent/Complainant

PRAYER : The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order passed in Crl.M.P.No.4513 of 2015 in C.C.No.86 of 2015 on the file of the Judicial Magistrate, Katpadi, Vellore dated 10.11.2016 and direct the Court below to proceed with the trial.

For Petitioner : Mr.M.A.R.Pragash

For Respondent : Mr.G.Harihara Arun Somashankar
for R4

For Respondent
RR 1 to 3 : No Appearance

O R D E R

The present revision case has been filed against the order passed in Crl.M.P.No.4513 of 2015 in C.C.No.86 of 2015 on the file of the Judicial Magistrate, Katpadi, Vellore dated 10.11.2016, discharging the respondents 1 to 3 herein from the offence charged under Sections 406 and 498 (A) of I.P.C.

2. The facts which gave rise to filing of the present criminal revision case are stated hereunder :

(i) The petitioner herein is a complainant and on the basis of the complaint, a case was registered under Sections 498(A), 497, 406 of I.P.C. and also under Section 4 of Dowry Prohibition Act. A final report was filed under Sections 498(A) and 406 of I.P.C. Five witnesses were cited on behalf of the prosecution and out of five witnesses, only L.W.2 kavitha was an eye witness and other witnesses were not eye witnesses to the alleged incident. L.W.2 Kavitha is the wife of the accused No.1 Sudhakar and the accused no.1 died during the pendency of the trial. The other accused viz., respondents 1 to 3 are mother, father and the sister.

(ii) L.W.2 stayed in the matrimonial house for only eight days. There was no consummation of marriage. However, due to incompatibility between the first accused and L.W.2, the complainant's daughter viz., L.W.2 started accusing the first accused and her in-laws viz., R1 to R3 herein for dowry harassment and also cruelty. Since L.W.2 stayed in the matrimonial house only for few days and there was no scope for any dowry harassment or cruelty, a discharge petition was filed on behalf of the respondents 1 to 3 herein and the ingredients of the Section under which they were charged, were not available at all.

(iii) The learned Judicial Magistrate, after adverting to all the materials and evidence that were made available before the Trial Court, has passed an order of discharging the respondents 1 to 3 herein. A detailed reasoning has been adopted by the learned Judicial Magistrate as found in paragraph Nos.12 to 16, which reads as follows:-

"12. However, unfortunately, during pendency of this petition, the 1st petitioner died on 14.03.2016 due to heart attack. His death certificate was produced and his death is recorded. Under these circumstances, whatever, the allegations made against the 1st petitioner, all are in vain as the charge against the first petitioner is abated due to his death. Now it has to be seen that whether there is sufficient allegations for making out a case against petitioners 2 to 4.

13. This Court carefully perused the voluminous statements of all the witnesses. Most of the allegations are against the deceased 1st petitioner. Though the L.W.2 has made certain sporadic allegations against the petitioners 2 to 4, they are

nothing but bickering between incompatible family members. Yes, those incidents would hurt the feelings of a newly married woman, especially, when she was not treated well by her husband. Certainly, those incidents are not grave enough to attract the degree of cruelty specified under second limb of Section 498 (A) of I.P.C. In Manju Ram Kalita Vs. State of Assam; reported in (2009) 13 SCC 330, Hon'ble Supreme Court, after considering various other case laws, has observed in paragraph No.22 as follows:-

22. "Cruelty" for the purpose of Section 498-A I.P.C. is to be established in the context of S.498-A I.P.C. as it may be a different from other statutory provisions. It is to be determined/inferred by considering the conduct of the man, weighing the gravity or seriousness of his acts and to find out as to whether it is likely to drive the woman to commit suicide etc. It is to be established that the woman has been subjected to cruelty continuously/persistently or at least in close proximity of time of lodging the complaint. Petty quarrels cannot be termed as 'cruelty' to attract the provisions of Section 498-A I.P.C. causing mental torture to the extent that it becomes unbearable may be termed as cruelty.

The second petitioner is 82 years and the third petitioner is aged 67 years and it is stated that she is a sick person. It is absolutely unwarranted to ask the 2nd and 3rd petitioners to face the trial on these insufficient allegations. The main allegations are only against the 1st petitioner, who died during pendency of this petition. The allegations made in the complaint and statement of witnesses as against the petitioners 2 to 4 are not grave enough to attract the elements of definition of cruelty as provided under Section 498-A of I.P.C. There is no prima facie case for presuming commission of offence under Section 498-A of I.P.C. by the petitioners 2 to 4, so as to frame the said charge against them.

14. Now, let us move into the question of framing charge under Section 406 of I.P.C. In the final report, it is stated that the petitioners have not returned the jewels of the petitioners. However, the particulars of the jewels, its weight and value have not been given. On perusing the statement of

witnesses, especially that of the L.W.2, it has been stated that the 1st petitioner asked the L.W.2 to hand over the jewels to his mother as per family tradition. However, she has not stated that she had indeed handed over the jewels to the 3rd petitioner. For making out a case under Section 406 of I.P.C., the question of entrustment of property is essential. In this case, there are no allegations of entrustment of jewels. Even if it is assumed that the L.W.2 had handed over the jewels to the 3rd petitioner, the offence under Section 406 would complete only after the demand for return of jewel and subsequent refusal by the petitioners. It is not at all stated when the demand was made and when it was refused. As stated earlier, particulars of jewels have not been mentioned. It is not mentioned to whom the entrustment or dominion over the jewels were given. The particulars regarding date of demand and refusal are not at given. There is no ingredients for making out an offence under Section 406 of I.P.C. Consequently, there is no basis for this Court to frame charge against the petitioners 2 to 4 under that provision.

15. For the reasons stated above, there is no basis or sufficient materials to presume commission of offences under Section 406 and 498-A of I.P.C. The petitioners 2 to 4 need not undergo the ordeal of trial, especially, the 2nd and 3rd petitioners are being a very aged persons. Therefore, the petitioners 2 to 4 are entitled to be discharged from this case.

16. In result, this petition is allowed. The petitioners 2 to 4 are discharged from the case under Section 239 of Cr.P.C as there is no basis and sufficient materials to frame charge against them under Sections 406 and 498-A of I.P.C. Since, the 1st petitioner died pending this petition, the proposed charges against him are abated."

3. The learned Judicial Magistrate appraised her finding on the basis of the fact that the substantial accusation is only at the accused No.1, the husband of the petitioner's daughter, who died during the pendency of the trial due to heart attack on 14.03.2016. Since the substantial allegation made against him has abated due to the death of the accused No.1, independently other accusation against the respondents 1 to 3, cannot be maintained and such accusation is completely unfounded, baseless and contrary to the facts.

4. In the above circumstances, the learned Judicial Magistrate has rightly discharged the accused viz., respondents 1 to 3 herein. In fact, the learned Judicial Magistrate has also relied on the decision of the Hon'ble Supreme Court of India, reported in (2009) 13 SCC 330, in regard to the definition of cruelty. The learned Judicial Magistrate was also guided by the relevant factor viz., age of the accused viz., father-in-law was 82 years old and the mother-in-law was 67 years old and they were sick persons and therefore, the learned Judicial Magistrate rightly held that the respondents 1 to 3 herein, need not undergo the ordeal of facing the trial with insufficient allegations.

5. In the above said circumstances, the Trial Court has rightly allowed the discharge petition filed by the respondents 1 to 3 herein under Section 239 of Cr.P.C. on the basis that there were no sufficient materials to frame charge against them under Sections 406 and 498(A) of I.P.C. Therefore, this Court does not find any iota of infirmity in the order passed by the learned Trial Court and finds that the reasons as stated by the learned Judicial Magistrate is well-founded and acceptable both legally and factually and hence, the impugned order in Cr.M.P.No.4513 of 2015 in C.C.No.86 of 2015, dated 10.11.2016, does not call for any interference from this Court. Therefore, the criminal revision case lacks merits and substance and the same is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gsk

To

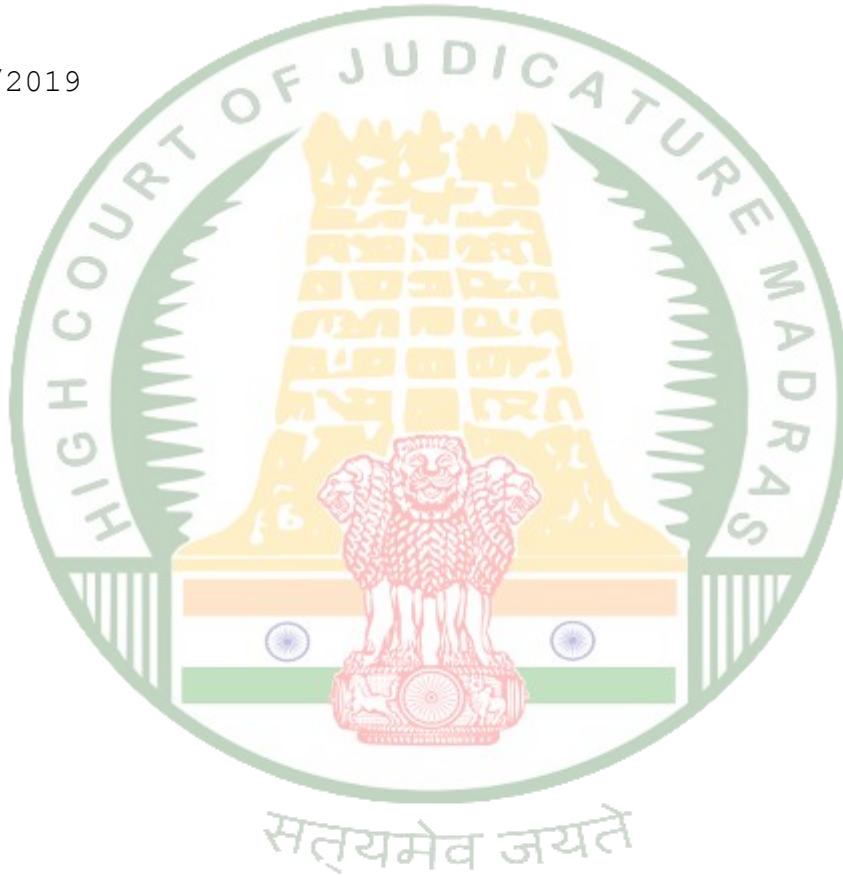
- 1.The learned Judicial Magistrate,
Katpadi, Vellore.
- 2.The Inspector of Police,
Katpadi Police Station (Women Wing),
Vellore District.
- 3.The Public Prosecutor,
High Court, Madras.

4.The Section Officer/Record Clerk,
Criminal Section,
High Court, Madras.

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