



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.08.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **N.ANAND VENKATESH**

Crl.O.P.[MD].No.5579 of 2018

and

Crl.M.P.(MD)Nos.2686 and 2687 of 2018

1.Murugesan
2.Ponnammam
3.Yashoodha
4.Subakaran

: Petitioners

Vs.

Vernitha

: Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the charge sheet in private complaint in C.C.No.222 of 2017 on the file of the learned Judicial Magistrate II, Nagercoil filed under Sections 200 Cr.P.C and quash the same as illegal as against the petitioners alone.

For Petitioners : Mr.T.Lajapathi Roy
For Respondent : Mr.S.Balaji

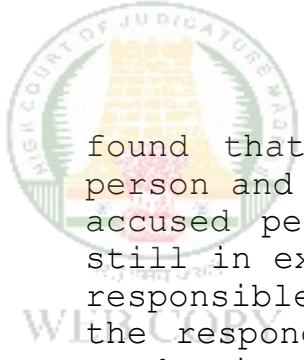
ORDER

This petition has been filed to quash the private complaint in C.C.No.222 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil.

2.The petitioners are arrayed as A2, A3, A4 and A5 in the complaint. The first petitioner is the father-in-law, the second petitioner is the mother-in-law, the third petitioner is the sister-in-law and the fourth petitioner is the brother-in-law of the respondent.

3.A reading of the complaint reveals that the respondent and the first accused in the complaint were married on 28.09.2005 under the Hindu Rites and Customs. Thereafter, a child was born to the respondent. It is seen from the complaint that the respondent has been living in her parent's house right from the fourth month of her pregnancy at Nagercoil. It is the further case in the complaint that from the year 2007, the husband was working in Dubai and was sending Rs.5,000/- towards maintenance to the respondent and after sometime, he stopped sending the maintenance and stopped calling the respondent and enquiring about the child.

While so, in the year 2016, the respondent attended a function and



found that the husband was very close with the sixth accused person and on enquiry found that the husband had married the sixth accused person when the first marriage with the respondent was still in existence. When this was questioned by the respondent, no responsible answer was given by the petitioners. It is the case of the respondent in the complaint that the petitioners instead of condemning the act of the husband, have instigated him to marry the sixth accused person and therefore, the life of the respondent and her child have become a big question mark. In the complaint, it is further stated that the respondent gave a complaint in this regard on 31.01.2017 and after enquiring both parties, the police have closed the complaint without taking any action. Therefore, the present private complaint has been filed against all the accused persons for the offence punishable under Sections 498(A), 494 r/w Section 34 of I.P.C.

4.The learned counsel for the petitioners would submit that a reading of the complaint, does not reveal any offence against the petitioners. The learned counsel would further submit that the in-laws have been unnecessarily roped in this case, when the real dispute is between the respondent and her husband and his illegal relationship with the sixth accused person. The learned counsel would further rely upon the judgment of the Hon'ble Supreme Court in Bajanlal reported in 1992 supp 1 SCC 335. The learned counsel would rely upon guidelines 1, 3 and 7 found in the said judgment and would submit that the present complaint will have to be quashed.

5.Per contra, the learned Counsel appearing for the respondent would submit that the petitioners had knowledge about the marriage that happened between the first accused and the sixth accused and in fact the petitioners had arranged for the said marriage. Therefore, the learned counsel for the respondent would submit that there is no ground to quash the private complaint at this stage.

6.This Court has carefully considered the submissions made on either side.

7.It is seen from the records that initially the respondent has given a complaint before the police and the same was taken on file in C.S.R.No.34 of 2017. The police had called both the parties and enquired. It is seen from the closure report given by the All Women Police Station, Nagercoil that the respondent did not have any contact with the petitioners. The learned counsel for the respondent would submit that the respondent did not make any such statement before the police and the police themselves have recorded the said statement and had filed a closure report. The counsel for the respondent would submit that it is only for this reason that the respondent proceeded to file a private complaint



against the accused persons.

8. A reading of the entire complaint reveals the fact that the marriage happened in the year 2005 and the respondent had been living away from the matrimonial home right from the fourth month of pregnancy. It is also seen that the husband had left for Duabi in the year 2007 and thereafter, the respondent had contact with the husband, since she was receiving maintenance and subsequently such contact was also discontinued. Right from 2007 to 2016, the respondent had no complaint against the present petitioners in this Criminal Original Petition. The first cause of action that has been raised in the complaint is in the year 2016, when the respondent saw her husband along with other lady, who has been arrayed as A6 in the complaint.

9. According to the respondent, the husband has illegally married the sixth accused person and thereby has committed an offence of bigamy. The complaint also reveals certain allegations about the demand of dowry. However, these complaints pertained to something which happened immediately after marriage and before the respondent left the matrimonial house when she was four months pregnant. The only ground on which the respondent has chosen to rope in in-laws of the husband in this case is on the ground that the in-laws instead of condemning the act of the husband, encouraged him to live with the sixth accused.

10. The learned counsel for the respondent would further submit that the respondent has been left in lurch along with two children and the husband is continuing to live with another lady by illegally marrying her. Therefore, the learned counsel would submit that an offence under Section 498(A) and Section 494 r/w Section 34 of I.P.C has been made out on the allegations levelled in the complaint.

11. The Hon'ble Supreme Court has time and again expressed displeasure on the relatives of the husband being roped in as accused in all criminal cases. The Hon'ble Supreme Court has also gone into the issue in detail and found that in most of the cases where the complaint is made under Section 498(A) of I.P.C, invariably the in-laws are also being made as accused. It is true that a poor lady, who has been left in lurch is anxiously struggling to get justice and is knocking the doors of the court to safeguard herself and her children. Therefore, it is possible that she has a grievance against the in-laws. It is also possible that in order to bring the husband to terms, sometimes the in-laws are also roped in as accused persons in many of the matrimonial complaints which itself actually delays the disposal of such cases, since the in-laws immediately approach the High Court seeking for quashing the proceedings and invariably, this Court entertains the petitions and stay the proceedings before the court



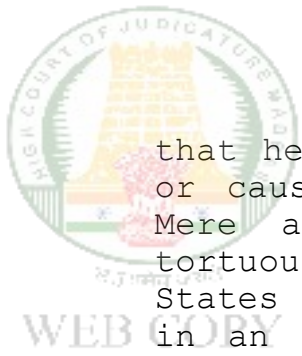
below. Therefore, by unnecessarily including the in-laws in the complaint, it is only going against the interest of the wife, since the proceedings are stalled and the husband who will be a real accused person will directly be a beneficiary in all proceedings, which are stayed by this court in 482 proceedings.

12. The Hon'ble Supreme court in the judgment in **Pinakin Mahipatray Rawal Vs. State of Gujarat** reported in **2013 (10) SCC 48**, wherein issue as to whether an extramarital relationship of a husband with another woman will amount to cruelty as contemplated under Section 498(A) of I.P.C was gone into. The relevant portions of the judgment in this regard is extracted here under.

13. Alienation of affection by a stranger, if proved, is an intentional tort i.e. interference in the marital relationship with intent to alienate one spouse from the other. Alienation of affection is known as "Heart Balm" action. Anglo-Saxon common law on alienation of affection has not much roots in this country, the law is still in its nascent stage. Anglo-Saxon based action against third parties involving tortuous interference with the marital relationship was mainly compensatory in nature which was earlier available to the husband, but, of late, a wife could also lay such a claim complaining of alienation of affection. The object is to preserve marital harmony by deterring wrongful interference, thereby to save the institution of marriage. Both the spouses have a valuable interest in the married relationship, including its intimacy, companionship, support, duties, affection, welfare of children etc.

14. We notice, in this country, if the marital relationship is strained and if the wife lives separately due to valid reasons, the wife can lay a claim only for maintenance against the husband and if a third party is instrumental for disrupting her marriage, by alienating her spouse's affection, companionship, including marital obligations, seldom, we find the disgusted spouse proceeds against the intruder into her matrimonial home. Possibly, in a given case, she could question the extent, that such injuries can be adequately compensated, by a monetary award. Such an action, of course, may not protect a marriage, but it compensates those who have been harmed.

15. We are, however, of the view that for a successful prosecution of such an action for alienation of affection, the loss of marital relationship, companionship, assistance, loss of consortium, etc. as such may not be sufficient, but there must be clear evidence to show active participation, encouragement or



that he/she must have played a substantial part in inducing or causing one spouse's loss of other spouse's affection. Mere acts, association, liking as such do not become tortuous. Few countries and several States in the United States of America have passed legislation against bringing in an action for alienation of affection, due to various reasons, including the difficulties experienced in assessing the monetary damages and few States have also abolished "criminal conversation" action as well.

20. We have to examine the correctness or otherwise of the findings recorded by the trial Court, affirmed by the High Court, as to whether the alleged relationship between A-1 and A-2 has in any way constituted cruelty within the meaning of explanation to Section 498A IPC. The facts in this case have clearly proved that the A-1 has not ill-treated the deceased, either physically or mentally demanding dowry and was living with A-1, in the matrimonial home till the date, she committed suicide. Cruelty includes both physical and mental cruelty for the purpose of Section 498A. Section 498A IPC reads as under :-

23. We are of the view that the mere fact that the husband has developed some intimacy with another, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to "cruelty", but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the explanation to Section 498A IPC. Harassment, of course, need not be in the form of physical assault and even mental harassment also would come within the purview of Section 498A IPC. Mental cruelty, of course, varies from person to person, depending upon the intensity and the degree of endurance, some may meet with courage and some others suffer in silence, to some it may be unbearable and a weak person may think of ending one's life. We, on facts, found that the alleged extra marital relationship was not of such a nature as to drive the wife to commit suicide or that A-1 had ever intended or acted in such a manner which under normal circumstances, would drive the wife to commit suicide.

13. The ratio in the above judgment reveals that the mere fact that husband has developed some intimacy with another woman, during the subsistence of marriage and failed to discharge his marital obligations, as such would not amount to 'cruelty', but it must be of such a nature as is likely to drive the spouse to commit suicide to fall within the Explanation to Section 498-A I.P.C.



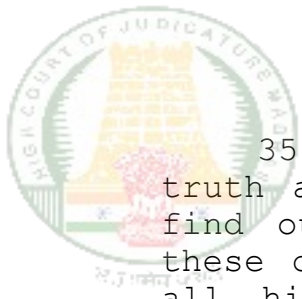
14. Keeping the ratio laid down by the Hon'ble Supreme Court in the above judgment in mind, in the present case the complaint of the respondent is that the husband has developed an extramarital relationship with the sixth accused and is living with her. It is for the respondent to prove in the course of evidence that such relationship by itself will amount to a cruelty under Section 498(A). However, for the said relationship of the husband with the sixth accused, the petitioners who are in-laws, cannot at any rate be made responsible and cannot be made as accused persons, merely on the ground that they are aware about the relationship between the husband and the sixth accused.

15. It is also necessary to refer to the judgment of the Hon'ble Supreme Court in **Preeti Gupta & Another vs. State Of Jharkhand & Another** reported in **2010 (7) SCC 667**. In this judgment, the Hon'ble Supreme Court has gone into the issue as to the manner in which the in-laws namely, the close relatives of the husband are being roped in as an accused in cases filed under Section 498(A) I.P.C. The relevant paragraphs in the judgment is extracted here under.

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.

16. It is also relevant to refer to the judgment of the Hon'ble Supreme Court in **Rajesh Sharma and others Vs. State of U.P and another** reported in **2017 (4) CTC 667**. In this judgment certain directions/guidelines were issued by the Hon'ble Supreme Court in cases or complaints filed under Section 498(A) I.P.C. The relevant



14. Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand. It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted.

The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the Judgment. The abuse of the provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In *Arnesh Kumar* (supra) this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.

15. Following areas appear to require remedial steps :-
i) Uncalled for implication of husband and his relatives and arrest.
ii) Continuation of proceedings in spite of settlement between the parties since the offence is non-compoundable and uncalled for hardship to parties on that account.

16. Function of this Court is not to legislate but only to interpret the law. No doubt in doing so laying down of norms is sometimes unavoidable. Just and fair procedure being part of fundamental right to life, interpretation is required to be placed on a penal provision so that its working is not unjust, unfair or unreasonable. The court has incidental power to quash even a non-compoundable case of private nature, if continuing the proceedings is found to be oppressive. While stifling a legitimate prosecution is against public policy, if the proceedings in an offence



of private nature are found to be oppressive, power of quashing is exercised.

17. We have considered the background of the issue and also taken into account the 243rd Report of the Law Commission dated 30th August, 2012, 140th Report of the Rajya Sabha Committee on Petitions (September, 2011) and earlier decisions of this Court. We are conscious of the object for which the provision was brought into the statute. At the same time, violation of human rights of innocent cannot be brushed aside. Certain safeguards against uncalled for arrest or insensitive investigation have been addressed by this Court. Still, the problem continues to a great extent.

18. To remedy the situation, we are of the view that involvement of civil society in the aid of administration of justice can be one of the steps, apart from the investigating officers and the concerned trial courts being sensitized. It is also necessary to facilitate closure of proceedings where a genuine settlement has been reached instead of parties being required to move High Court only for that purpose.

19. Thus, after careful consideration of the whole issue, we consider it fit to give following directions :-

i) (a) In every district one or more Family Welfare Committees be constituted by the District Legal Services Authorities preferably comprising of three members. The constitution and working of such committees may be reviewed from time to time and at least once in a year by the District and Sessions Judge of the district who is also the Chairman of the District Legal Services Authority.

(b) The Committees may be constituted out of para legal volunteers/social workers/retired persons/wives of working officers/other citizens who may be found suitable and willing.

(c) The Committee members will not be called as witnesses.

(d) Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication.

(e) Report of such committee be given to the Authority by whom the complaint is referred to it latest within one month from the date of receipt of complaint.

(f) The committee may give its brief report about the factual aspects and its opinion in the matter.

(g) Till report of the committee is received, no arrest should normally be effected.

(h) The report may be then considered by the Investigating



Officer or the Magistrate on its own merit.

(i) Members of the committee may be given such basic minimum training as may be considered necessary by the Legal Services Authority from time to time.

(j) The Members of the committee may be given such honorarium as may be considered viable.

(k) It will be open to the District and Sessions Judge to utilize the cost fund wherever considered necessary and proper.

ii) Complaints under Section 498A and other connected offences may be investigated only by a designated Investigating Officer of the area. Such designations may be made within one month from today. Such designated officer may be required to undergo training for such duration (not less than one week) as may be considered appropriate. The training may be completed within four months from today;

iii) In cases where a settlement is reached, it will be open to the District and Sessions Judge or any other senior Judicial Officer nominated by him in the district to dispose of the proceedings including closing of the criminal case if dispute primarily relates to matrimonial discord;

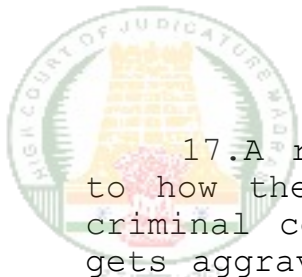
iv) If a bail application is filed with at least one clear day's notice to the Public Prosecutor/complainant, the same may be decided as far as possible on the same day. Recovery of disputed dowry items may not by itself be a ground for denial of bail if maintenance or other rights of wife/minor children can otherwise be protected. Needless to say that in dealing with bail matters, individual roles, prima facie truth of the allegations, requirement of further arrest/ custody and interest of justice must be carefully weighed;

v) In respect of persons ordinarily residing out of India impounding of passports or issuance of Red Corner Notice should not be a routine;

vi) It will be open to the District Judge or a designated senior judicial officer nominated by the District Judge to club all connected cases between the parties arising out of matrimonial disputes so that a holistic view is taken by the Court to whom all such cases are entrusted; and

vii) Personal appearance of all family members and particularly outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.

viii) These directions will not apply to the offences involving tangible physical injuries or death.



17. A reading for the above said judgments makes it clear as to how the in-laws/close relatives of the husband are roped in criminal complaints and thereby the entire dispute unnecessarily gets aggravated and reaches a situation where it becomes totally impossible for the parties to come together. In the present case, this court does not find any ground in the complaint, to sustain the same as against the petitioners. This court finds that the continuation of the complaint against the petitioners will only cause injustice to the petitioners. The respondent, who is the wife had certain grievance against the petitioners for not taking any serious steps to make the husband live with her. That by itself is not a ground to rope in the in-laws/close relatives as accused in a criminal complaint. This Court finds that this case falls under the guidelines of the Bajanlal Case.

18. Accordingly, this Criminal Original Petition is allowed and the proceedings are quashed, insofar as the petitioners are concerned. It is made clear that none of the finding in this Criminal Original Petition will have any bearing on the Court below when considering the complaint against the husband and A6. The C.C is of the year 2014. Therefore, the learned Judicial Magistrate No.II, Nagercoil is directed to proceed further with the complaint insofar as A1 and A6 are concerned and dispose of the same within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar (CS-iv)

To

1. The Judicial Magistrate II, Nagercoil.

+1 CC To MR.T.LAJAPATHI ROY, Advocate SR. NO. 81343

+1 CC To MR.S.BALAJI, Advocate SR. NO. 81437

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and

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