



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.R.C.(MD)No.579 of 2017

and

Cr1.M.P.(MD)Nos.6413 and 6414 of 2017

1.Mr.Christudas

2.Mr.Thangamani

3.Mrs.Thangam

4.Mr.Kunjappi

5.Mrs.Thamaratchi

: Petitioners/R1 to R5/A2 to A6

Vs.

1. The Sub Inspector of Police,
Kuzhithurai All Women Police Station,
Marthandam,
Marthandam Post,
Kanyakumari District.

: Respondent/Respondent

2. P.Priya

: Respondent/Petitioner

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records relating to the impugned order dated 05.05.2017 passed by the learned Judicial Magistrate No.I, in Cr.M.P.No.4053 of 2016 and the consequential summons issued to the petitioners and the proceedings now pending against them in C.C.No.74 of 2016 and set aside the same.

For Petitioners : Mr.N.Dilip Kumar

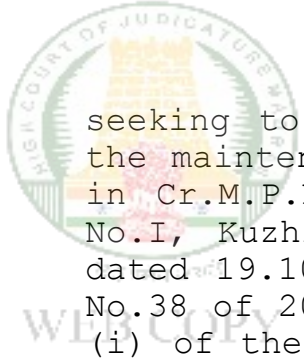
For Respondent No.1 : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

For Respondent No.2 : Mr.K.P.Narayanakumar

ORDER

For the sake of convenience, the parties will be referred to by their name.

2. Thansilas got married to Priya on 09.09.2013 and a son was born to them on 01.06.2014. Sometimes in February, 2015, the couple got separated and Priya filed O.S.No.221 of 2015 before the Sub Court, Kuzhithurai claiming maintenance from Thansilas and also



seeking to create a charge over his properties for realization of the maintenance amount. Thereafter, Priya filed a private complaint in Cr.M.P.No.10394 of 2015 before the learned Judicial Magistrate No.I, Kuzhithurai and on the directions of the learned Magistrate dated 19.10.2015, the respondent police registered a case in Crime No.38 of 2015 on 04.11.2015 under Sections 294(b), 498(A), 406, 506 (i) of the Indian Penal Code and Sections 3, 4 and 6 of the Dowry Prohibition Act against Thansilas and his parents and sisters and the person who arranged for the marriage. The police took up the investigation of Crime No.38 of 2015 and has filed a charge sheet in C.C.No.74 of 2016 before the learned Judicial Magistrate No.I, Kuzhithurai, for the offences under Sections 294(b), 498(A), 406 and 506(i) of the Indian Penal Code against Thansilas alone and not against his family members. On notice, Priya entered appearance and filed a protest application before the learned Judicial Magistrate No.I, Kuzhithurai, which was taken on file as Cr.M.P.No.4053 of 2016. The sworn statements of five witnesses were recorded in Cr.M.P.No.4053 of 2016 and thereafter, on 05.05.2017, the learned Judicial Magistrate No.I, Kuzhithurai, has passed the following order:

"Petitioner appeared. Records and statement perused. Prima facie found against A2 to A6 Respondent 1 to 5 u/s. 498(A), 406, 294(b), 506(i) of IPC. Hence, this court taken cognizance against A2 to A6 u/s.498(A), 406, 294(b), 506(i) of IPC. Accordingly, the Crl.M.P. merged with C.C.No.74/2016 and issue summon to A2 to A6."

Challenging the order, the petitioners, who are the relatives of Thansilas, have filed the present Criminal Revision Case.

3. Heard Mr.N.Dilip Kumar, learned counsel for the petitioners, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor for the first respondent and Mr.K.P.Narayanakumar, learned counsel for the second respondent.

4. The short point that arises for consideration in this case is whether the order dated 05.05.2017 passed by the Trial Court is sustainable. In the First Information Report in Crime No.38 of 2015, seven persons including Thansilas have been shown as accused. The police have filed the final report only against Thansilas and, therefore, the *defacto* complainant has the opportunity to file a protest application. When a protest application is filed, the learned Magistrate has got the following options:

(a). He can accept the final report and reject the protest application;

(b) He can order further investigation;

(c) He can take cognizance of the offences disclosed in the final report and issue process to those of the accused who have been let off by the police. [M/s.SWIL Ltd. vs. State of Delhi (AIR 2001 SC 2747)];

(d) He can treat the protest application as a private complaint, if the complaint discloses the commission of



cognizable offence and after taking cognizance of the offences disclosed in the complaint, proceed to record the statements of the complainant and the witnesses under Section 200 of the Code of Criminal Procedure and thereafter, take a decision whether to dismiss the complaint under Section 203 of the Code of Criminal Procedure or issue process to the accused named in the private complaint under Section 204 of the Code of Criminal Procedure.

Instead of adopting any of the above procedures, the learned Magistrate has adopted a very peculiar procedure of recording the sworn statements of the witnesses produced by Priya and thereafter, taking cognizance of the offences and merging the case with C.C.No.74 of 2016. Such a procedure is unknown to law.

5. In the result, this Criminal Revision Case is allowed and the order dated 05.05.2017 in Cr.M.P.No.4053 of 2016 passed by the learned Judicial Magistrate No.I, Kuzhithurai is, hereby, set aside. Cr.M.P.No.4053 of 2016 is remanded back to the learned Judicial Magistrate No.I, Kuzhithurai, who shall first analyze the protest application and be satisfied that it discloses the commission of a cognizable offence before proceeding further. The Trial Court shall also bear in mind the law laid down by the Supreme Court in **Arnesh Kumar Vs.State of Bihar** reported in **2014 (8) Scale 250**, wherein the Supreme Court has observed that the complaints are being filed indiscriminately against all the family members of the husband in order to harass them. If the Magistrate is satisfied, he may pass a speaking order to take cognizance of the offence and proceed to record the statements of witnesses under Section 200 of the Code of Criminal Procedure and thereafter, decide to proceed with under Section 203 or under Section 204 of the Code of Criminal Procedure. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,
Kuzhithurai.
2. The Sub Inspector of Police,
Kuzhithurai All Women Police Station,
Marthandam,
Kanyakumari District.



3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.P.NARAYANAKUMAR, ADVOCATE IN SR No. 54624

+ 1 CC TO Mr.N.DILIPKUMAR, ADVOCATE IN SR No. 53999

SML

TE/KKR/SAR-1 : 22/03/2018 : 4P/6C

Order made in
Crl.R.C.(MD)No.579 of 2017
Dated:-08.03.2018