



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.749 of 2017

WEB COPY

S.Mahabath Nisha

: Petitioner

Vs.

1.The Superintendent of Police,
O/o. Superintendent of Police,
Thoothukudi District.

2.The Inspector of Police,
All Women Police Station,
Thoothukudi,
Thoothukudi District.

3.Syed Ali

4.Khathar Mydeen

5.Hameedha

6.Mustafa

7.Sidhick

: Respondents

PRAYER: Criminal Revision Case is filed under Section 397(1) r/w 401 of the Criminal Procedure Code praying to call for the records pertaining to the order of dismissal in Cr.M.P.No.1359 of 2017, dated 11.08.2017 on the file of the learned Judicial Magistrate No.III, Thoothukudi and set aside the same.

For Petitioner : Mr.B.N.Raja Mohamed

For Respondents 1&2 : Mr.M.Asokan,
Government Advocate (Crl.side)

For Respondents 3to7 : Mr.Senthil Sankaranatha Kumar

ORDER

Mahabath Nisha got married to Syed Ali on 04.06.2009 and they have two children through the wedlock. Their marriage ran into rough weather resulting in the spouses getting estranged. Mahabath Nisha lodged a complaint before the All Women Police Station, Thoothukudi and a petition enquiry in C.S.R.No.20 of 2017 was conducted and the same was closed. Mahabath Nisha was not satisfied with the police enquiry. Therefore, she filed a petition under Section 156(3) of the Code of Criminal Procedure before the learned Judicial Magistrate No.3, Thoothukudi for a direction to the police to register an FIR against her husband and in-laws. The learned Magistrate dismissed the petition in Cr.M.P.No.1359 of 2017 on 11.08.2017, aggrieved by which, Mahabath Nisha has filed the present Criminal Revision Case.



2. Heard Mr.B.N.Raja Mohamed, learned counsel for the petitioner, Mr.M.Asokan, learned Government Advocate (Crl.side) for the first and second respondents and Mr.Senthil Sankaranatha Kumar, learned counsel for the respondents 3 to 7.

3. Mr.B.N.Raja Mohamed, learned counsel for Mahabath Nisha placed very strong reliance upon the recent judgment of the Supreme Court in Rajesh Sharma vs. The State of Uttar Pradesh [Criminal Appeal No.1265 of 2017, dated 27.07.2017], in which, the Supreme Court has issued various directions, out of which, Mr.B.N.Raja Mohamed, learned counsel placed strong reliance upon Direction No.19 (d), which reads as follows:

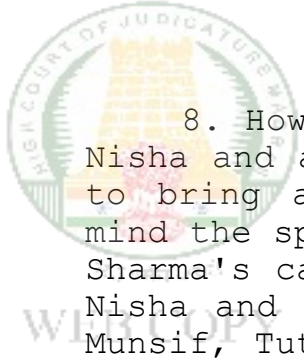
"Every complaint under Section 498A received by the police or the Magistrate be referred to and looked into by such committee. Such committee may have interaction with the parties personally or by means of telephone or any other mode of communication including electronic communication."

4. Mr.B.N.Raja Mohamed, learned counsel contended that the Magistrate should have followed the direction by referring the parties to the Committee instead of dismissing the petition.

5. Per contra, Mr.Senthil Sankaranatha Kumar, learned counsel for the respondents 3 to 7 submitted that Syed Ali has filed O.S.No.172 of 2017 before the learned Principal District Munsif, Tuticorin for dissolution of marriage, in which, Mahabath Nisha entered appearance, but, later, did not contest, on account of which, an exparte order has been passed in his favour. Only thereafter, Mahabath Nisha has filed the present complaint under Section 156(3) of the Code of Criminal Procedure. He also fairly contended that Mahabath Nisha has filed an application to set aside the exparte order.

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

7. It is a trite that an order under Section 156(3) cannot be passed mechanically by a Magistrate, especially, in the light of the law laid down by the Supreme Court in Mrs.Priyanka Srivatsava vs. State of U.P., reported in 2015 (4) Scale 120. Even, in Rajesh Sharma's case, the Supreme Court has referred to Arnesh Kumar Vs.State of Bihar reported in 2014 (8) Scale 250 and has observed that relatives of the husband should not be subjected to indiscriminate arrest and harassment. Therefore, the Court must be very circumspect in ordering police investigation in matrimonial cases, because when once the husband or his relative is arrested, the chances of re-union will become remote. The consequences will also be disastrous, inasmuch as if the arrested person is a Government servant, he may even lose his job. Under such circumstances, this Court does not find any serious infirmity in the order passed by the learned Magistrate warranting interference.



8. However, it is seen that there are two children for Mahabath Nisha and as directed by the Supreme Court, an attempt must be made to bring about a re-conciliation between the parties. Bearing in mind the spirit of the law laid down by the Supreme Court in Rajesh Sharma's case, this Court directs both the parties, namely Mahabath Nisha and Syed Ali to appear before the learned Principal District Munsif, Tuticorin in O.S.No.172 of 2017 and on such appearance, the parties may be referred to the local Mediation Centre for bringing about an amicable settlement amongst them.

9. With the above direction, the Criminal Revision Case is closed.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1.The Principal District Munsif,
Tuticorin.
- 2.The Judicial Magistrate No.III,
Thoothukudi.
- 3.The Superintendent of Police,
O/o. Superintendent of Police,
Thoothukudi District.
- 4.The Inspector of Police,
All Women Police Station,
Thoothukudi,
Thoothukudi District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.R.C. (MD) No.749 of 2017
Dated:-
10.01.2018

SML

JM/SV MMS/SAR 2/29.01.2018/3P/6C