



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
09.03.2018	20.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.760 of 2017
and
Crl.M.P(MD).No.8884 of 2017

Rejitha : Petitioner/Accused No.4

Vs.

1. The Inspector of Police
All Women Police Station,
Kanyakumari, Kanyakumari District,
Crime No.2 of 2013.

2. Thangarani : Respondents

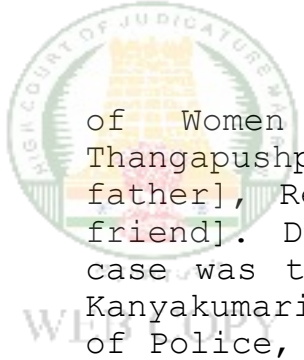
PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for records relating to the order passed by the learned Judicial Magistrate No.I, Nagercoil, in Crl.M.P.No.5791 of 2016 in C.C.No.188 of 2014, dated 29.07.2017 and set aside the same.

For Petitioner : Mr.N.Dilipkumar
For Respondent No.1 : Mrs.S.Bharathi
Government Advocate [Criminal Side]
For Respondent No.2 : Mr.Joseph Thathus Jerome

O R D E R

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

2. Thangarani got married to Jeganathan, a police constable, on 21.10.2009 and a son was born to them on 13.07.2010 and a daughter was born to them on 20.10.2011. On 10.08.2012, Thangarani lodged a complaint against her husband and in-laws, based on which, the All Women Police Station, Tirunelveli, registered a case in Crime No.24 of 2012, for the offences under Sections 498(A), 406, 294(b), 506(i) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition



of Women Harassment Act, 2002, against Jeganathan, [A-1], Thangapushpam, [A-2 - A-1's mother], Kanthakesavan [A-3 - A-1's father], Rejitha [A-4 - A-1's sister] and Manikandan [A-5 - A-1's friend]. During investigation, Jeganathan died on 31.08.2012. The case was transferred to the file of the All Women Police Station, Kanyakumari and was registered as Crime No.2 of 2013. The Inspector of Police, All Women Police Station, completed the investigation and filed a final report on 08.01.2014, before the Judicial Magistrate, No.I, Nagercoil, against Thangapushpam, [A-2] and Kanthakesavan [A-3], leaving out Rejitha [A-4] and Manikandan [A-5]. The cognizance of the said offences were taken and the case was numbered as C.C.No.188 of 2014. Charges for the aforesaid offences were framed against Thangapushpam [A-1] and Kanthakesavan [A-2] and the trial began with the examination of Thangarani as PW-1, on 10.09.2015. Thereafter, one Lakshmanan and Jegatheesan, the brothers of Thangarani, were examined as PW-2 and PW-3, on 28.01.2016 and 11.08.2016. While so, the prosecution filed a petition in CrI.M.P.No.5791 of 2016 in C.C.No.188 of 2014 under Section 319 of the Code of Criminal Procedure to implead Rejitha and Manikandan as accused.

3. On notice, the proposed accused entered appearance and filed their counters. The Trial Court, by order dated 29.07.2017, in CrI.M.P.No.5791 of 2016 in C.C.No.188 of 2014, dismissed the petition with regard to Manikandan, but, however, directed impleadment of Rejitha as accused No.3 in C.C.No.188 of 2014, aggrieved by which, Rejitha is before this Court with this Criminal Revision Case.

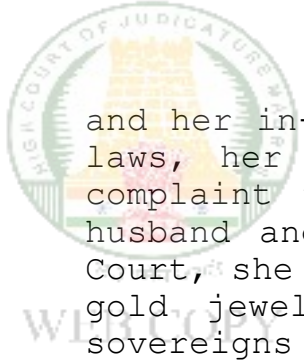
4. Heard Mr.N.Dilip Kumar, learned counsel appearing for Rejitha, Mrs.S.Bharathi, learned Government Advocate [Criminal Side] appearing for the first respondent and Mr.Joseph Thathus Jerome, learned counsel appearing for Thangarani.

5. The learned counsel appearing for Rejitha submitted that Rejitha was given in marriage to one Prakash and she settled in Chennai; that her husband - Prakash died and she continues to live with her in-laws in Chennai; that she had no occasion to ill-treat Thangarani, as alleged by her.

6. Per contra, Mr.Joseph Thathus Jerome, learned counsel appearing for Thangarani, submitted that even in the complaint given by Thangarani, she has made serious allegations against Rejitha and therefore, the order passed by the Trial Court does not warrant interference by this Court.

7. This Court gave its anxious consideration to the above submissions made by the learned counsel on either side.

8. In the complaint given by Thangarani, which formed the basis for the registration of the First Information Report in Crime No.24 of 2012, she has made sweeping allegations as against her husband



and her in-laws. She has alleged that on the instigation of her in-laws, her husband had assaulted her. She has also stated in the complaint that 30 sovereigns of gold ornaments were taken by her husband and in-laws deceitfully. In her evidence before the Trial Court, she has stated that at the time of marriage, 15 sovereigns of gold jewels were given by her parents to her husband and 75 sovereigns of gold jewels were given to her; that on the instigation of her parents-in-law and sister-in-law that she is not beautiful and not educated, her husband would beat her; that her husband took away 30 sovereigns of gold jewels belonging to her for the purpose of redeeming the mortgage of the house; that on the afternoon of 04.10.2012, her husband and his friend - Manikandan were talking abusively outside the house and on hearing that, her parents-in-law and Rejitha pulled her and took her to the road, where both her husband and Manikandan assaulted her indiscriminately. This in short is the evidence adduced by PW-1 qua Rejitha and Manikandan. The Trial Court disbelieved her evidence qua Manikandan, but, accepted the evidence vis-a-vis Rejitha and has directed her impleadment as accused No.3.

9. Mr. Joseph Thathus Jerome, learned counsel appearing for Thangarani, submitted that Thangarani [PW-1] is a poor widow, who has been subjected to untold cruelty and misery at the hands of not only her parents-in-law, but also Rejitha and therefore, the order passed by the Trial Court does not require interference by this Court. He submitted that Thangarani [PW-1] has clearly stated about the role played by Rejitha in perpetrating the domestic violence on her.

10. While appreciating the evidence of a complainant in a case relating to matrimonial offence, the Court should bear in mind the following dictum laid down by the Supreme Court in **Rajesh Sharma and others Vs. State of UP [2017 (8) Scale 313]**:-

"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.⁸ 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".

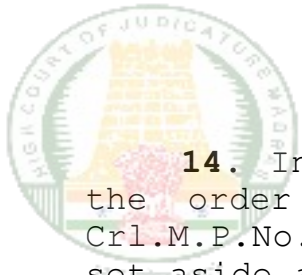
[Emphasis supplied]

11. Rejitha, admittedly, is now a widow. The marriage between Jeganathan and Thangarani was solemnized in the year 2009 and two children were born and that the First Information Report was registered on 10.08.2012. Even in the complaint, PW-1 has made only general allegations against Rejitha to the effect that her husband would beat her on the instigation of her parents-in-law and Rejitha. As regards the incident, that is said to have place on 04.10.2002, she has not stated in the complaint that Rejitha and her parents-in-law pulled her out of the house and brought her to the street, where she was beaten by her husband. She has only stated that on 04.10.2012 around 12.00 noon, her husband and Manikandan came to the house and started abusing her and her husband beat her with a belt. The Trial Court has disbelieved this portion of the evidence of PW-1 qua Manikandan, but has strangely placed reliance upon it as against Rejitha.

12. In **Hardeep Singh Vs. State of Punjab [2014 (3) SCC 92]**, the Supreme Court has laid down certain parametres for impleading a person as an accused under Section 319 of the Code of Criminal Procedure, which is as under:-

"106. Thus, we hold that though only a *prima facie* case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused".

13. In the opinion of this Court, the materials against Rejitha do not pass muster the law laid down in **Hardeep Singh** [supra]. The evidence is only general in nature and if this evidence goes un rebutted, the chance of Rejitha being convicted is very remote. The test that is required to be applied is more than *prima facie* evidence.



14. In the result, this Criminal Revision Case is allowed and the order passed by the learned Judicial Magistrate No.I, in CrI.M.P.No.5791 of 2016 in C.C.No.188 of 2014, dated 29.07.2017, is set aside and the trial shall proceed as against Thangapushpam [A-1] and Kanthakesavan [A-2], without, in any manner, being influenced by what is stated above. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CrI.side)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I, Nagercoil.

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

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

+ 1 CC TO Mr.N.DILIP KUMAR, ADVOCATE IN SR No. 56891

NB

TE/KKR/SAR-4 : 02/04/2018 : 5P/5C

ORDER MADE IN
CrI.R.C.(MD)No.760 of 2017
Dated:-20.03.2018