



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.951 of 2017

and

Crl.M.P.(MD)No.11658 of 2017

M.P.Siva Kumar

: Petitioner

Vs.

1.State rep. by

The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.

2.Saravana Vairava Sundar

3.Arunachalam

4.Ramya

: Respondents

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 order passed in Cr.M.P.No.788 of 2017 in S.C.No.22 of 2017 on the file of Fast Track Mahila Court, Dindigul, set aside the same and add all charges made out against the accused by allowing this revision.

For Petitioner

: Mr.B.Brijesh Kishore

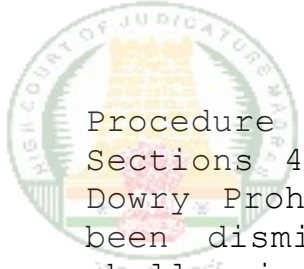
For Respondent No.1

: Mr.M.Asokan,

Government Advocate (Crl.side)

ORDER

Bharathi got married to Saravana Vairava Sundar on 16.09.2009 and they have one child through the wedlock. On account of some matrimonial discord, Bharathi committed suicide by hanging on 14.05.2012 and on the complaint of her brother-Siva Kumar, who is the petitioner herein, the police registered a case in Crime No.251 of 2012 on 15.05.2012 under Section 174 of the Code of Criminal Procedure. Since the death of Bharathi was within seven years of marriage, inquest was conducted by the Revenue Divisional Officer and thereafter, the case was altered to one under Sections 304-B, 498(A), 406 of the Indian Penal Code and Section 4 of Dowry Prohibition Act. After completing the investigation, the police have filed a charge sheet and the case is now pending in S.C.No.22 of 2017 before the Fast Track Mahila Court, Dindigul. The Trial Court framed a charge under Section 304-B of the Indian Penal Code against Saravana Vairava Sundar (A-1), his father Arunachalam (A-2), mother Prema (A-3) and sister Ramya (A-4). They pleaded not guilty to the charges. Thereafter, Siva Kumar (defacto complainant) filed Cr.M.P.No.788 of 2017 in S.C.No.22 of 2017 for alteration of the charge under Section 216 of the Code of Criminal



Procedure on the ground that charges for the offences under Sections 498(A), 406 of the Indian Penal Code and Section 4 of Dowry Prohibition Act should be included. The said petition has been dismissed by the Trial Court by order dated 22.11.2017, challenging which, Siva Kumar (defacto complainant) has filed the present revision.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal side) for the first respondent.

3. The learned counsel for the petitioner submitted that the gold ornaments and jewels of the deceased Bharathi are still with the accused party and they are not handing over the same to the defacto complainant and, therefore, the provision of Section 406 of the Indian Penal Code should be included and a further direction should be given to the police to recover those jewels. He also submitted that Bharathi suffered cruelty and, therefore, Section 498(A) of the Indian Penal Code should also be included.

4. Per contra, the learned Government Advocate (Criminal side) refuted the contentions.

5. The fact remains that the accused are facing the charge under Section 304-B of the Indian Penal Code, which would also include cruelty under Section 498(A) of the Indian Penal Code. For a charge under Section 304-B of the Indian Penal Code, the presumption under Section 113-B of the Indian Evidence Act, 1872 will get invoked. Though the Trial Court has got the power to alter the charges at any time under Section 216 of the Code of Criminal Procedure, this Court is of the view that from the materials collected by the police, there is no scope for including the provisions of Section 406 of the Indian Penal Code and Section 4 of Dowry Prohibition Act and, therefore, the Trial Court was right in dismissing the application filed by Siva Kumar (defacto complainant).

6. In fact, in P.Kartikalakshmi v. Sri Ganesh [2017(3) SCC 347], the Supreme Court has stated as follows:

"In the light of our conclusion that the power of invocation of Section 216 CrPC is exclusively confined with the Court as an enabling provision for the purpose of alteration or addition of any charge at any time before pronouncement of the judgment, we make it clear that no party, neither de facto complainant nor the accused or for that matter the prosecution has any vested right to seek any addition or alteration of charge, because it is not provided under Section 216 CrPC. If such a course to be adopted by the parties is followed, then it will be well-nigh impossible for the criminal court to conclude its proceedings and the concept of speedy trial will get jeopardised."



7. In such view of the matter, the order of the Trial Court does not suffer from any perversity or illegality warranting interference by this Court. Hence, this revision is devoid of merits and accordingly, the same is dismissed. However, the Trial Court is directed to expeditiously complete the trial in S.C.No.22 of 2017. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Fast Track Mahila Court,
Dindigul.
- 2.The Inspector of Police,
Dindigul Taluk Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.K.Kanimozhy, Advocate SR.No. 41848

Order made in
Cr1.R.C. (MD) No.951 of 2017
Dated:-
09.01.2018

SML
JM/SV MMS/SAR 1/18.01.2018/3P/5C