



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.08.2018
CORAM :
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl OP(MD)Nos.10110 & 15734 of 2011
and
MP(MD)No.1 of 2011 in Crl OP(MD)No.10110 of 2011 and
MP(MD)No.1 of 2011 in Crl OP(MD)No.15734 of 2011

Crl OP(MD)No.10110 of 2011 :

1.M.G.M.Joseph Anand

2.M.G.M.Maran

3.Selvaseetha

4.Mary Chellathai

5.Tamilselvi

6.M.L.A.Sudhandar

7.M.L.A.Raja

... Petitioners/Accused

Vs.

Suvitha Suganthi

... Respondent/Complainant

Prayer : This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records and quash the proceedings in Crl MP.No.4834 of 2009 on the file of the Judicial Magistrate No.II, Tuticorin.

Crl OP(MD)No.15734 of 2011 :

1.M.G.M.Joseph Anand

2.Mari Chellathai

3.Tamil Selvi

4.M.L.A.Sudhandar

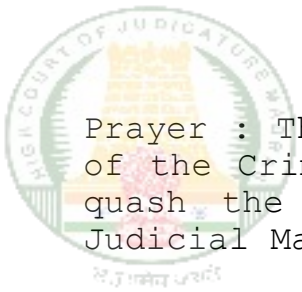
5.M.L.A.Raja

... Petitioners/Accused

Vs.

Suvitha Suganthi

... Respondent/Complainant



Prayer : This Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the entire records and quash the proceedings in C.C.No.86 of 2011 on the file of the Judicial Magistrate No.II, Tuticorin.

In both cases :

For Petitioners : Mr.Shanmugasundaram,
Senior Counsel
for Mr.M.Karthikeya Narayanan

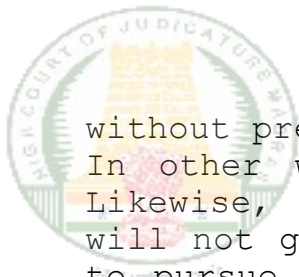
For Respondent : Mr.Ajmal Khan, Senior Counsel
for Mr.R.Alagumani

COMMON ORDER

The respondent herein namely Ms.Suvitha Suganthi got married to Mr.M.G.M.Joseph Anand, the first petitioner in both these petitions, on 09.09.1992 at Tuticorin as per christian rites and customs. The matrimonial home was initially at Santhome, Chennai and thereafter at Neelankarai. Two children were born through the wedlock. The elder one is a special child. The respondent alleges that the first petitioner herein had developed bad habits and caused physical and mental cruelty to her. She was also turned out of the matrimonial home in the year 2004. The first petitioner filed IDOP No.55 of 2004 on the file of the District Court, Chengalpattu and obtained an exparte order of divorce behind her back. It is further alleged that a sum of Rs.6.90 lakhs was temporarily misappropriated from the respondent's bank account by the first petitioner herein. Therefore, the respondent/complainant lodged a criminal case leading to registration of Crime No.12 of 2007 on the file of the All Women Police Station, Tuticorin. The same was closed as Mistake of Fact and even though the matter was re-opened and further investigation was ordered, nothing came out of it as once again the police filed a report in favour of the accused. She would further allege that the title deeds of the property which the respondent had purchased in the year 1997 are being unlawfully withheld by the first petitioner. The first petitioner did not bother to maintain the respondent herein at all. The respondent filed a petition in CrI MP.No.4834 of 2009 under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate No.II, Tuticorin. She also lodged a private complaint in C.C No.86 of 2011 on the file of the learned Judicial Magistrate No.II, Tuticorin. To quash both these proceedings, the petitioners have filed these two Criminal Original Petitions.

2.Heard the learned Senior Counsel on either side.

3.The learned Senior Counsel appearing for the petitioners undertook on instructions from the first petitioner that the first petitioner would pay a sum of Rs.2.00 crores to the complainant

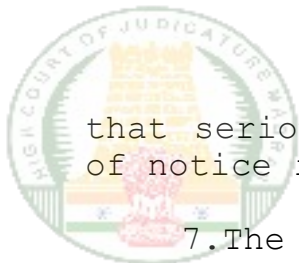


without prejudice to the respective stand taken by both the parties. In other words, the first petitioner is not conceding on facts. Likewise, by accepting the aforesaid amount, the complainant also will not give up any of her rights. It is open to the complainant to pursue the matters and also workout her remedies in the manner known to law.

4.The learned Senior Counsel appearing for the petitioners submitted that the very institution of these proceedings constituted a gross abuse of legal process. He took me through the final report filed by the police closing Crime No.12 of 2007 on the file of the All Women Police Station, Tuticorin as Mistake of Fact. It is seen therefrom that on 23.01.2005, a communication had been sent by the first petitioner herein to the complainant/respondent that in view of the dissolution of marriage, it was proposed to return all the articles of the complainant. This communication was received by the complainant. On 26.01.2005, articles such as 642 sovereigns of gold and documents worth about Rs.22 - ½ lakhs were handed over to the complainant. Acknowledgement was also obtained and the father of the complainant had attested the same. The investigation officer has thus given a categorical finding in her report that the articles belonging to the complainant such as cash or jewels were not with the accused. In the impugned private complaint, this finding has not been challenged by the complainant.

5.The learned Senior Counsel for the petitioners would therefore contend that initiation of the impugned proceedings more than one year and two months thereafter, can only be categorised as an after thought. He also pointed out that the parties had all along resided only at Chennai and that therefore, filing of the impugned complaints before Tuticorin court is not appropriate. The courts at Tuticorin do not have the territorial jurisdiction to entertain the impugned private complaint. He also contended that the petition filed in Crl MP.No.4834 of 2009 on the file of the Judicial Magistrate No.II is hit by limitation as it was not filed within one year from the date when the cause of action arose. The learned Senior Counsel relied on the decision reported in (2011) 12 SCC 588 (Inderjit Singh Grewal vs. State of Punjab and another) which was followed in 2018 CRI.L.J.1553 (Santosh Kumar v. State of Bihar).

6.The learned Senior Counsel appearing for the complainant / respondent pointed out that this is not a case in which the inherent powers of this Court are to be exercised. When disputed questions of fact have been raised, it is only appropriate to relegate the parties to go before the Trial Court. He took this court through the averments set out in the private complaint in C.C No.86 of 2011 to show that part of the cause of action arose within the territorial jurisdiction of the Judicial Magistrate No.II, Tuticorin. As regards the Crl MP No.4834 of 2009, it is a complaint filed under Section 12 (1) of the Protection of Women from Domestic Violence Act, 2005. He drew the attention of this Court to the fact



that serious allegations have been made with regard to the service of notice in the IDOP as well as GWOP.

7. The learned Senior counsel for the respondent did not mince words and contended that fraud was perpetrated on the court in the matter of service of summons in both those proceedings instituted by the first petitioner herein. The learned Principal District Judge, Chengalpattu had allowed I.A No.493 of 2006 filed by the complainant for condoning the delay occasioned in filing the set aside application in IDOP No.55 of 2004. Of course, the said order allowing the condone delay petition is the subject matter of challenge in CRP (NPD) No.4744 of 2012 and interim order has been granted therein. Since the order dissolving the marital relationship between the parties has not yet attained finality, the learned Senior Counsel for the complainant wanted this Court to ignore the divorce decree.

8. This court anxiously considered the rival contentions. The plea of limitation put forth by the learned Senior Counsel for the petitioners for quashing the proceedings initiated by the respondent under Section 12(1) of the Protection of Women from Domestic Violence Act, 2005 can be taken up first. As pointed out by the learned Senior Counsel, the Hon'ble Supreme Court in the decision reported in (2011) 12 SCC 588 (Inderjit Singh Grewal vs. State of Punjab and another) held as follows :

"32. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 CrPC, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the 2005 Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of CrPC applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty and NOIDA Entrepreneurs Assn. v. NOIDA."

It is also true that the said decision was followed by the Patna High Court in the decision reported in 2018 CRL.LJ.1553 (Santhose Kumar vs. State of Bihar) which held as follows :

"17. The law declared by the Supreme Court has got binding force and, in that view of the matter, it can safely be said that the provisions of Section 468 of the Cr.P.C. would clearly be applicable in cases instituted under the provisions of the D.V. Act."

9. Before I answer the point of limitation raised by the petitioners' Senior Counsel, I deem it relevant to place on record that the SCC reporting of Inderjit Singh Grewal was accompanied by the following editorial note "a conclusive view on this issue does not seem to have been expressed - Probably, since complaint under Section 12 was found to be not maintainable on other grounds." Inderjit Singh Grewal was referred to in a subsequent decision of



WEB COPY

the Hon'ble Supreme Court reported in (2016) 2 SCC 705 (Krishna Bhattarchargee vs. Sarathi Choudhury) in the following terms :

"It has been held in Inderjit Singh Grewal that Section 468 of the Code of Criminal Procedure applies to the said case under the 2005 Act as envisaged under Sections 28 and 32 of the said Act read with Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006. We need not advert to the same as we are of the considered opinion that as long as the status of the aggrieved person remains and stridhan remains in the custody of the husband, the wife can always put forth her claim under Section 12 of the 2005 Act. We are disposed to think so as the status between the parties is not severed because of the decree of dissolution of marriage. The concept of "continuing offence" gets attracted from the date of deprivation of stridhan, for neither the husband nor any other family members can have any right over the stridhan and they remain the custodians. For the purpose of the 2005 Act, she can submit an application to the Protection Officer for one or more of the reliefs under the 2005 Act."

The appeal filed by the wife was allowed and the orders passed by the High Court and the courts below were set aside.

10.It is true that Section 28 of the Central Act 43 of 2005 states that all proceedings under Section 12 of the Protection of Women from Domestic Violence Act, 2005 shall be governed by the provisions of Code of Criminal Procedure, 1973. Therefore, applicability of Cr.PC to a proceeding initiated under Section 12 of the D.V act 2005 cannot be in doubt. But, now the question is whether Section 468 of Cr.PC can be said to apply to a petition filed under Section 12 of the D.V Act, 2005. Section 468 of Cr.PC engrafts a bar to taking cognizance after lapse of the period of limitation. Chapter 36 of Cr.PC which includes Section 467 to 473 bears the title "Limitation for taking cognizance of certain offences". Therefore, this Chapter and particularly Section 468 of Cr.PC cannot have any bearing or applicability in respect of proceedings which do not deal with taking cognizance of offences.

11.Section 31 of the Central Act 43 of 2005 prescribes penalty for breach of protection order by the respondent. Section 33 embodies penalty for not discharging duty by Protection Officer . Therefore, Section 468 of Cr.PC will come into play when cognizance is sought to be taken in respect of offences set out under the Protection of Women from Domestic Violence Act, 2005. When a person aggrieved seeks certain reliefs under provisions such as 12, 18, 19, 20, 21 and 22 etc., she does not call upon the court concerned to take cognizance of any offence committed by the opposite party. She only wants certain reliefs to be ordered in her favour. Therefore, respectfully following the later decision of the Hon'ble Supreme Court reported in (2016) 2 SCC 705 (Krishna Bhattarchargee vs. Sarathi Choudhury), I hold that Section 468 of Cr.PC does not



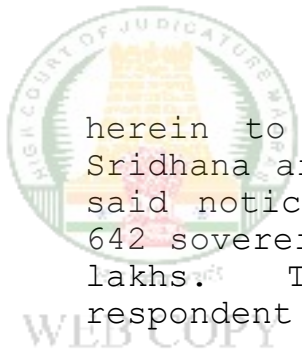
apply to a petition filed under Section 12 of the Prevention of Women from Domestic Violence Act, 2005. Hence, the contention raised by the learned Senior Counsel appearing for the petitioner deserves to be negatived.

12. Likewise, I am not impressed by the arguments advanced by the learned Senior Counsel for the petitioners with regard to the territorial jurisdiction of the court before whom the impugned complaints were filed.

13. We are in the year 2018. The marriage between the parties had taken place in September, 1992. Two sons were born through the wedlock. Destiny made the elder son as a special child. It is relevant to note here that both the sons including the special child are with the father and not with the mother. The complainant has levelled serious allegations against the first petitioner that he did not properly maintain herself and the children. I doubt if this allegation could be true. A person who wants to cheat the family would not assume the responsibility to maintain the children one of whom happens to be a special child. It was the first petitioner who filed the guardianship O.P and sought the physical custody and guardianship of the children. This clearly shows that whatever be the relationship between the first petitioner and the respondent, he has conducted himself as dutiful father towards the children.

14. The first petitioner had also obtained an exparte order of divorce against the complainant in IDOP No.55 of 2004 on the file of the District Court, Chengalpattu. It is true that this is an exparte order. But then, it was admitted by the learned Senior Counsel appearing for the complainant that the divorce decree is still holding the field. Of course, as pointed out by him, the proceedings have not yet attained finality. The set aside petition filed by the complainant has been allowed. But, further proceedings have been stayed in CRP NPD No.4744 of 2012. The fact remains that as on date there is no marital relationship between the first petitioner and the respondent. Of course, resumption of the same would depend on the outcome of CRP NPD No.4744 of 2012 which is now pending before the Principal Bench of this Court.

15. As already pointed out, the first petitioner filed IDOP No.55 of 2004 before the Principal District Judge, Chengalpattu seeking dissolution of the marriage on the ground of cruelty said to have been committed by the respondent. The said IDOP was decreed on 29.04.2004. Thereafter, complaint was made by the respondent herein on 27.03.2007. Crime No.12 of 2017 was registered on the file of AWPS, Tuticorin for offences under Sections 498 A, 406, 420, 506(ii) IPC and Section 4 of the Women Harassment Act and under Section 4 of Dowry Prohibition Act. Final reports were filed on two occasions closing the case as Mistake of Fact. The investigation officer in her final report stated that on 23.01.2005 a communication was sent through counsel by the first petitioner



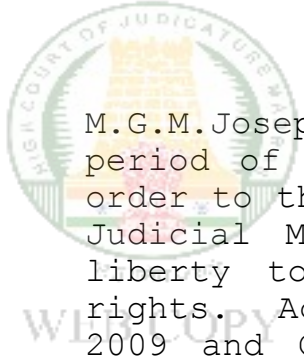
herein to the respondent with regard to the handing over the Sridhana articles and other articles. The complainant received the said notice. Thereafter, on 26.01.2005, the complainant received 642 sovereigns of gold and documents and articles worth about 22-1/2 lakhs. This receipt was duly attested by the father of the respondent also.

16. From this it is seen that the articles belonging to the complainant are not with the first petitioner. There is a gap of three years between the date of divorce and the date of filing the complaint by the respondent. After one year and two months after receiving the articles, the impugned complaint has been filed. These facts clearly show that the complaint was an afterthought. In the impugned complaint, the respondent has made it appear as if on 15.05.2006 an incident has taken place at Tuticorin. When the first petitioner has obtained a divorce on 29.04.2004 and returned all the articles in June 2005, there is absolutely no need or necessity for coming to Tuticorin and pick up a quarrel with the respondent in her house. That appears to be farfetched and improbable.

17. In State of Haryana vs. Bhajan Lal 1992 Supp (1) SCC 335, the Hon'ble Supreme Court laid down certain parameters for exercising the inherent powers under Section 482 of Cr.PC. It has been held that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the proceeding can be quashed. Likewise, where it is seen that the criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge, the proceeding can be quashed.

18. I am of the view that both these parameters can be invoked in this case. The sheer improbability is apparent. The complainant has filed both these petitions with a clear knowledge that the first petitioner herein had already obtained a decree of divorce against her. She did not lodge the present complaint immediately after receiving the sridhana articles. The delay of almost 15 months in lodging the complaint after receiving the sridhana articles indicates that it is an afterthought. When the first petitioner issued a communication to the complainant informing her that he is proposing to return all the articles through an intermediary, the respondent ought to have lodged the impugned complaints then and there. She did not do so. She chose to receive all the articles. It was not under protest. That also renders the continuance of the impugned proceedings as an abuse of legal process.

19. In view of the offer made by the learned Senior Counsel for the petitioner, this Court directs the first petitioner, namely,



M.G.M. Joseph Anand to deposit the sum of Rs.2.00 crores within a period of six months from the date of receipt of a copy of this order to the credit of CC No.86 of 2011 on the file of the learned Judicial Magistrate No.II, Tuticorin. The complainant is at liberty to withdraw the said amount without prejudice to her rights. Accordingly, the impugned proceedings in CrI MP No.4834 of 2009 and CC No.86 of 2011 on the file of the learned Judicial Magistrate No.II, Tuticorin stand quashed.

20. These Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Judicial Magistrate No.II,
Tuticorin.

+2CC to Mr.M.Karthikeya Narayanan, Advocate, SR.No.81138

CrI OP (MD) Nos.10110 & 15734 of 2011
and
MP (MD) No.1 of 2011 in CrI OP (MD) No.10110 of 2011 and
MP (MD) No.1 of 2011 in CrI OP (MD) No.15734 of 2011
28.08.2018

SKM

ES/SKN/RSK/SAR 2/03.12.2018/8P/4C