

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3796 of 2018

ORDER:

This petition is filed under section 482 Cr.P.C. to quash the proceedings in S.C.No.30 of 2018 pending on the file of the Additional Sessions Judge, Chodavaram, Visakhapatnam District.

The petitioners are Accused Nos.1 and 2 in the Sessions Case and respondent No.2 is the *de facto* complainant. The *de facto* complainant lodged a report before the Police alleging that on 11.03.2017 at 3 p.m her mother-in-law and father-in-law contacted her husband to kill her and her husband returned to the house, picked up a quarrel, questioning about missing of black-gram and paddy, and in the meanwhile, the petitioners put up a lock to the gate and caught hold of her tuft of hair, pulled her into the room, that her mother-in-law came along with a kerosene bottle and poured on her body and made an attempt to set fire to her body and when she tried to go to other room, her father-in-law put up another lock to the room. When the *de facto* complainant raised cries, the neighbours came there and questioned what had happened, thereupon, the petitioners again caught hold of hair of the *de facto* complainant and beat her and necked her out, thrown the utensils and other household articles of the *de facto* complainant from the house, thus, the petitioners allegedly made an attempt to kill her by pouring kerosene and setting fire to her body. It is also alleged that on earlier occasion also her in-laws, including her sister-in-law and her husband subjected her to cruelty in connection with dowry and they made an attempt to kill her. Based on such report, the police registered a case in Cr.No.17/2017 of Devarapalli Police Station,

Visakhapatnam District, for the offences punishable under Sections 498-A, 448, 307 and 509 r/w.Sec.34 IPC. On the strength of the FIR filed by the Station House Officer, Devarapalli P.S, the Sub-Inspector of Police, Devarapalli P.S took up investigation and examined as many as 11 witnesses and recorded their statements under Section 161 (3) Cr.P.C. On the basis of evidence collected, the Sub-Inspector of Police came to the conclusion that there is *prima facie* material to proceed against the petitioners/accused for the offences under Sections 498-A, 448, 307 and 509 r/w.Sec.34 IPC and filed the charge sheet.

The main contention before this court in the present petition is that the Sessions Case is arising out of second complaint which is impermissible under law, and for the same offence, two FIRs cannot be maintained and mainly on this ground, the learned counsel appearing for the petitioners requested this court to quash the proceedings, since the other crime is pending in C.C.No.706/2017 on the file of the Additional Judicial First Class Magistrate, Chodavaram, for the offence punishable under Section 498-A IPC only against these petitioners and two others.

During hearing, the learned counsel for the petitioners while contending that these petitioners did not commit any offence as alleged, the second complaint alleging the same offence against same persons is not maintainable. Whereas, the learned counsel for the respondents opposed the petition on the ground that the earlier report and the report which is the subject matter in the Sessions Case are different and the *de facto* complainant made a reference in her complaint about the earlier incident, for which, the police registered a crime and investigated into and filed charge sheet against the petitioners herein and two others.

Therefore, the subject matter of the incident is totally distinct and different and on that ground, the proceedings cannot be quashed against these petitioners.

The incident in the present charge sheet occurred on 11.03.2017 at 3 p.m. In the same report, the *de facto* complainant made a reference about the earlier incident subjecting her to cruelty. Based on the allegations made in the complaint, without verifying the material allegations made in the earlier complaint, the police issued FIR against the petitioners for the offences punishable under Sections 498-A, 448, 307 and 509 r/w.Sec.34 IPC. During investigation, the police examined the witnesses and recorded their statements under Section 161(3) Cr.P.C. Even according to the statements recorded by the police, there is a reference about the earlier incident of subjecting the *de facto* complainant to cruelty by these petitioners and others. The incident which is subject matter of the Sessions Case took place on 11.03.2017, i.e., on Saturday at about 3 p.m and the same is supported by the statements of witnesses recorded under Section 161 (3) Cr.P.C. The witnesses in both cases are one and the same. But in the earlier incident of Crime No.7/2017, which is subject matter of C.C.No.706/2017 on the file of the Additional Judicial First Class Magistrate, Chodavaram was only for the offence punishable under Section 498-A IPC, and the date of occurrence is 26.01.2017 at 18.00 hours. Therefore, there is time gap of three months between the earlier incident, which is the subject matter of Cr.No.7/2017 and the present incident, which is the subject matter of the Sessions Case. The earlier case was only for the offence punishable under Section 498-A IPC which is referred in the present complaint. Therefore, the registration of

FIR against these petitioners for the same offence punishable under Section 498-A IPC, based on the earlier incident, which is subject matter of C.C.No.706/2017 on the file of the Additional Judicial First Class Magistrate, Chodavaram, is a serious illegality. However, based on this ground, the proceedings cannot be quashed, since the incident which is subject matter of the Sessions Case is totally distinct and different with the earlier incident, which is subject matter of C.C.No.706/2017.

In view of the above, to meet the ends of justice, the best course open to this court is to direct the Sessions Judge to try both the Sessions Case No.30 of 2018 pending on the file of the Additional Sessions Judge, Chodavaram and CC.No.706/2017 pending on the file of the Additional Judicial First Class Magistrate, Chodavaram to avoid unnecessary complications and punishment twice for the same offence, if the case is proved by the prosecution.

Accordingly, the Criminal Petition is disposed of, withdrawing C.C.No.706/2017 from the file of the Addl.Judicial First Class Magistrate, Chodavaram and transferred the same to the Additional Sessions Judge, Chodavaram, Visakhapatnam District to try both the cases simultaneously and pronounce separate judgments on the same day.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.SATYANARAYANA MURTHY,J

Date: 01.08.2018
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