

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.09.2018

Pronounced on : 24.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.9362 of 2009

and

Crl.M.P.No.1 of 2009

Sivakamu,
W/o.Gopinath.

... Petitioner/Accused

Vs.

1.State of Tamil Nadu,
Rep. by the Inspector of Police,
All Women Police Station (East),
Coimbatore,
[Cr.No.141 of 2008].

... Respondent/Complainant

2.Mahalakshmi,
W/o.Sundara pandiyan.

... Respondent/Defacto
Complainant

[The Second Respondent impleaded
as per the order of this Court
dated 12.08.2009 in M.P.No.3 of
2009]

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the records in
C.C.No.350 of 2008, on the file of the learned Judicial
Magistrate No.VII, Coimbatore and quash the same and pass
suitable orders.

For Petitioner : Mr.M.Sounder Vijay Arul Ram for
Mr.R.C.Paul Kanagaraj

For R1 : Ms.V.Saratha Devi,
Government Advocate [Crl. Side]

For R2 : No appearance [Party in person]
[Name printed]

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.350 of 2008, on the file of the learned Judicial Magistrate No.VII, Coimbatore and quash the same.

2.The petitioner, who is A5 in Crime No.141 of 2008 on the file of the first respondent/complainant for an offence under Section 498-A of the Indian Penal Code read with Section 4 of Dowry Prohibition Act.

3.The case of the prosecution is that the second respondent/defacto complainant and the brother of the petitioner had their marriage on 21.02.2005. During the marriage the second respondent/defacto complainant were given 25 sovereigns of gold jewels and cash of Rs.35,000/- [Rupees thirty five thousand only] as Sreedhana. During the reception in the presence of the second respondent/defacto complainant the petitioner/A5 and her husband/A6 said to have demanded a cash of Rs.15,000/- [Rupees fifteen thousand only] as dowry.

4.Further it was stated that the second respondent/defacto complainant's husband was working in Carrier, a private company and he also holding the post of shareholder in a Distributor company for Dairyday Ice cream. After the marriage, the second respondent/defacto complainant was residing in joint family along with her in-laws. One of the brother-in-law was a mentally affected person, though during the marriage it was stated that the second respondent/defacto complainant and her husband would live as a separate family and a nearby house was taken for rent and it was not implemented and they were staying in the nearby house for a short-while and they used to come to the in-laws house for taking food.

5.Further the second respondent/defacto complainant was compared with other daughter-in-laws and stated that she had not brought jewels and sreedhana as other daughter-in-laws and she was ill-treated. Further demand of Rs.50,000/- [Rupees fifty thousand only] and 50 sovereigns jewels was made. Without informing the second respondent/defacto complainant the nearby rented house was vacated and all her belongings were kept in the hall of the house where in-laws stayed and the second respondent/defacto complainant was compelled to have a matrimonial life without any privacy in the hall.

6.On one such occasion the father-in-law was standing near the window and watching the privacy, on questioning the same the husband of the second respondent/defacto complainant had stated that it is the duty of the parents to see whether the physical

relationship is proper or not. The second respondent/defacto complainant's husband would receive phone calls at the late hours and he would share to his friends about their private affair. Further, he forced the second respondent/defacto complainant and involved in physical relationship in a disgusting manner. When one of the family friend of the second respondent/defacto complainant questioned the same, the husband of the second respondent/ defacto complainant called him by using his caste name in a derogatory manner. Thereafter, she had given a complaint to the Maathar Sangam. On their intervention also the issue could not be sorted out and hence, she was forced to give a complaint.

7.The contention of the learned counsel for the petitioner is that the petitioner was married earlier and residing separately and she was not sharing the the common roof. The only averment against the petitioner is that during the reception the petitioner along with her husband had demanded Rs.15,000/- [Rupees fifteen thousand only] as additional dowry. It is an admitted case of the second respondent/defacto complainant is that she had brought 25 sovereigns of gold jewels and Rs.35,000/- [Rupees thirty five thousand only] as cash as Sreedhana for the marriage, this being the case there was no reason for the petitioner to demand Rs.15,000/- [Rupees fifteen thousand only] as additional dowry during the reception. Further, the second respondent/defacto complainant's only aim is to move away from the joint family, wherein the other brothers and their wives are living as a joint family.

8.Further, one of the brother, who is mentally disabled is said to have pushed over the second respondent/defacto complainant would go to show that to any extent the second respondent/defacto complainant would go to make false allegations against the family members of the petitioner's. Marriage between the petitioner and her husband took place in the year 1989 and she lived in Sri Ram Nagar, Chettipalayam Road, Podanur, Coimbatore. Other allegation is that the second respondent/defacto complainant was asked to cook non-vegetarian food items. Further, the second respondent/defacto complainant had suppressed the fact about the case in HMOP No.195 of 2007, which is pending on the file of the Family Court, Coimbatore seeking divorce by dissolving the marriage. The entire allegation is without any specific time, date and place.

9.The learned Government Advocate [Crl. Side] submits that on the complaint received by the second respondent/defacto complainant, a case has been registered and 13 witnesses have been examined and several documents have been collected and thereafter, a charge sheet has been filed.

10. On perusal of the statement of the witnesses except for a bald allegation, there is no specific averment against this petitioner to impute that the petitioner had demanded Rs.15,000/- [Rupees fifteen thousand only] and had ill-treated and caused harassment to the second respondent/defacto complainant. In the final report it is admitted that the petitioner had never lived in a joint family with the second respondent/defacto complainant.

11. Despite the notice have been received by the second respondent/defacto complainant, the second respondent/defacto complainant failed to appear, her name has been printed in the cause list, then to none appeared.

12. Further the Order dated 08.02.2017 made in HMOP.No.806 of 2017 passed by the learned Additional Principal Judge, Additional Family Court, Coimbatore, which has been produced. On perusal of the same, it is seen that the complaint and the averments made by the second respondent/defacto complainant are the same. Further, the HMOP.No.195 of 2007 for restitution of conjugal rights, which was filed by the petitioner's brother, despite on receipt of the the same the second respondent/defacto complainant had failed to join the matrimonial life and thereafter, the HMOP No.806 of 2007 is filed.

13. The second respondent/defacto complainant having preferred a petition in HMOP No.195 of 2007 seeking the relief of divorce as early as on 14.02.2007 and the second respondent/defacto complainant instead of letting in evidence having not pressed the petition for divorce would make explicit her mind and intention. It is not the case of the second respondent/defacto complainant that she withdrew the petition because she changed her mind to resume to matrimonial life with the petitioner. Till date the second respondent/defacto complainant has not filed any petition for restoration of conjugal rights.

14. Further, the Family Court on going through the evidences in detail had come to the conclusion that the second respondent/defacto complainant had left the matrimonial home within five months from the date of marriage and in the absence of any intention of the respondent to resume to conjugal relationship with the petitioner's brother and there having been no co-habitation after the separation and hence, divorce had been granted on the ground of desertion.

15. It is an admitted case that as early as on 20.07.2005, the HMOP No.195 of 2007 had filed seeking divorce and this complaint came to be registered in the year 2008 would go to show that where a criminal proceedings is manifestly attended

with mala fide, which is maliciously instituted with an ulterior motive to spite the vengeance and personal grudge as contemplated in the case of STATE OF HARIYANA VS. BHAJANLAL reported in 1992 SCC Cr1.426. This Court quashed the case as against this petitioner alone in C.C.No.350 of 2008, which is pending on the file of the learned Judicial Magistrate No.VII, Coimbatore.

16.In the result, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.VII,
Coimbatore.

2.The Inspector of Police,
All Women Police Station (East),
Coimbatore,

3.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.9362 of 2009

BS (CO)
GMY (13/03/2019)

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