

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.12.2018

PRONOUNCED ON : 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Cr1.O.P.No.18804 of 2010

1.B.Arunkumar

2.Bhavani

3.M.Balasubramanian

4.Vairam @ Gyananambal

5.Sudha

6.N.Bharani @ Loganathan

7.Sathya

8.R.Mukhuthan ...Petitioners/Accused 1 to 8

Vs

1.The Assistant Commissioner of Police,
Central Crime Branch,
Thousand Light,
Chennai - 6.

2.Abirami Bharathi ... Respondents

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.2253 of 2009 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.R.Vivekananthan

For Respondents : Mr.T.Shanmuga Rajeswaran
Government Advocate (Cr1. Side)
for R.1
Mr.B.Bharathi (party-in-person)
for R.2

ORDER

This application is filed by the petitioners / accused to quash the Calender Case in C.C.No.2253 of 2009, which is pending on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai. The first respondent Police had filed the final report as against the petitioners for the offences punishable under Sections 498A, 406, 34 IPC r/w Sections 4 & 6 of the Dowry Prohibition Act, 1961.

2. The case of the prosecution is that the second respondent / defacto complainant was married to the first petitioner on 26.05.1999 and the marriage is an arranged one. After the marriage, the couple resided as a joint family along with the other accused from May, 1999 to April, 2001, in the first petitioner's house. From the date of betrothal, the second petitioner, who is the mother-in-law and her sister / the fourth petitioner and the defacto complainant's sister-in-law / the fifth petitioner have demanded more dowry, jewels and precious stones. This harassment continued on the date of marriage, in the eve of first Deepavali, first Pongal and also during her sister-in-law's marriage. It is also stated that the defacto complainant's mother-in-law and sister-in-law / the petitioners 2 & 5 have also beaten her and harassed her, with an intention to separate her from her husband. They have also abused her character and intimidated that they would make the first petitioner to divorce her. The first petitioner / the husband of the defacto complainant had taken away all the jewels of the defacto complainant during his sister's marriage and the petitioners 2 & 5 said to have kicked her during Pregnancy and out of which, she was aborted and lost her ability to give birth to a child. She was subjected to various other harassments on the hands of her in-laws and therefore, she lodged a complaint before the respondent police in the year 2008 and the same was registered in Crime No.9 of 2008 for the offence punishable under Sections 498A, 406, 420, 120(b) IPC r/w Section 4 of the Dowry Prohibition Act.

3. The Assistant Commissioner of Police, Central Crime Branch / first respondent had conducted the investigation and concluded the investigation that at the time of marriage, there was a demand of dowry of 50 Sovereigns of ornaments and a sum of Rs.1,00,000/- was given as dowry. After the marriage, they have lived together as a joint family from 26.05.1999 to April, 2001 and during such time, the accused, in order to get some valuable properties as dowry, have harassed her constantly and that there was a demand of 25 Sovereigns during the first Pongal and there was a another demand of 25 Sovereigns and Rs.50,000/- during the first Deepavali and the defacto complainant was intimidated that they would make the first petitioner to divorce her if she did

not bring the jewels and money as demanded by them. They have also chased her out of the house.

4. In the final report, it is further stated that in the year 2001, the first petitioner got a job in London and the defacto complainant had also went along with the first petitioner to London. Before leaving to London, all her jewels were taken by her mother-in-law, except 18 Sovereigns. It is also stated that the first petitioner, colluding with the petitioners 2, 3, 5 & 8, had also cheated the defacto complainant by taking loans by mortgaging her joint account with the first petitioner. In conclusion of the investigation, the enquiry officer held that there are prima facie materials for the offence punishable under Sections 498A, 406, 34 IPC r/w Sections 4 & 6 of Dowry Prohibition Act.

5. Heard the learned Counsel for the petitioners, the learned Government Advocate (Crl. Side) for the first respondent and Mr.B.Bharathi, Party-in-person / father of the defacto complainant (LW2).

6. The petitioners are challenging the final report mainly on the ground that the marriage between the first petitioner and the defacto complainant was disarmed by a decree of divorce granted by the Maidstone County Court, London and that the first petitioner as well as the defacto complainant / second respondent are British citizens and the petition filed for divorce in United Kingdom was pending at the time of institution of complaint and filing of the final report. The learned Counsel would further submit that since both the first petitioner and the complainant were domicile in London, the decree of divorce granted by the United Kingdom Court dated 15.07.2010 would be binding between the parties and therefore, further prosecution would amount to abuse of process of law.

7. He further submitted that most of the allegations regarding the harassment of the defacto complainant by the first petitioner is stated to have taken place at United Kingdom and a sanction is required from the Central Government as provided under Section 188 Cr.P.C., and as such, the final report is liable to be quashed. The petitioners have also questioned the authority of the father of the defacto complainant to represent the case of the defacto complainant / second respondent in this proceedings. In support of their plea, the learned Counsel relied upon Sections 32 & 33 of the Advocate Act as well as the decision reported in AIR 1978 SC 1019.

8. In fact, the defacto complainant / second respondent is represented by her father, one Mr.B.Bharathi, before this Court, who is also witness no.2 in C.C.No.2253 of 2009. Their case is that the defacto complainant was subjected to cruelty by the

petitioners herein for want of more dowry. According to the said B.Bharathi, his daughter / defacto complainant died in November, 2013 and even prior to that, he is representing his daughter's case as party-in-person, since 2012. In fact, an application under Section 302 Cr.P.C was also filed by the defacto complainant on 15.11.2012 requesting to permit her father to represent her case as party-in-person from 15.11.2012, for the reasons that she is unable to represent her case as party-in-person because of her health condition and lack of knowledge of law and also due to her financial condition to employ a good and dependable Advocate to represent her and the Advocates who were already engaged did not represent their case in view of some outward pressure from the petitioners' side. She also raised various other allegations as against the Police Officers and Public Prosecutors. It appears that the second respondent has also taken a plea that by wrongly quoting the Calender Case number and the address of the defacto complainant, the petitioners had obtained interim stay as well as dispense with order from this Court and by way of an amendment petition, they corrected the same. Therefore, behind their back, the petitioners have obtained interim orders.

9. Perusal of record shows that Mr.B.Bharathi was permitted by this Court to file counter affidavit and was also permitted to argue the case. Apart from that, an authorisation letter dated 27.01.2012 is also available in the file.

10. For better understanding, Sections 32 & 33 of the Advocate Act, as relied upon by the petitioners, are extracted hereunder:

"32. Power of Court to permit appearances in particular cases:

Notwithstanding anything contained in this chapter, any court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

33. Advocates alone entitled to practice:

Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act."

11. In the decision referred to by the learned Counsel for the petitioners reported in AIR 1978 SC 1019, rendered by Justice V.R.Krishna Iyer, it has been held as follows:

"A private person who is not an Advocate, has no right to barge into Court and claim to argue for a party. He must get the prior permission of the Court

for which the motion must come from the party himself. It is open to the Court to grant or withhold permission in its discretion. In fact, the Court may even after grant of permission withdraw it half-way through if the representative proves himself reprehensible. The antecedents, the relationship and reasons for requisitioning the services of the private person and a variety of other circumstances must be gathered before grant or refusal of permission."

12. As per the abovesaid provisions of law and also the decision referred to above, it is open to the Court to grant or withhold permission in its discretion. Section 2(wa) Cr.P.C. defines 'victim' and the same reads thus:

"victim means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir"

13. Keeping this in mind, this Court has permitted the witness no.2, viz., the father of the defacto complainant, who is the second respondent herein to represent the case of the defacto complainant on the earlier occasions and the defacto complainant herself had also requested for the same in the year 2012 by way of an letter addressed to this Court. It also appears that the defacto complainant is no more and she had passed away in the year 2013 and under these circumstances, the objections raised by the petitioners in this regard is not sustainable. Of course, after the demise of the second respondent / defacto complainant, her father, without impleading himself as a party respondent in this case, could not represent her before this Court. But this Court, being satisfied with the materials available on record, is inclined to proceed further, without there being a representation for the second respondent / defacto complainant.

14. The marriage between the first petitioner and the second respondent / defacto complainant was held in the year 1999 at Chennai. They have lived together as joint family from 26.05.1999 to April, 2001. During such time, the defacto complainant was subjected to harassment by way of dowry and it continued during their stay in London. The investigation officer had examined six witness and concluded the investigation that there was dowry harassment by the petitioners in Tamil Nadu during 1999 to 2001, particularly during the first Pongal and first Deepavali in the year 2000. The petitioners are residents of Mehta Nagar, Chennai and a neighbour, one Somasundaram was also examined by the investigation officer during the investigation. LW4 is a retired Accountant and he is a neighbour of the petitioners and according to him, he had witnessed the quarrel between the petitioners and the defacto complainant on

account of demand of dowry and he heard the noise and witnessed the defacto complainant weeping out side the house and he had also heard the demand made by them during their quarrel. The witness no.5, who recommended the first petitioner for the marriage to LW2 and another relative of the petitioners have also spoken to about the demand of dowry and the dispute arose among all of them. The statement of the complainant and LWs 1 & 2 have specific overtact as against each of the petitioners. This petition is also filed that all the petitioners are residing in the same place. Whether the defacto complainant was subjected to cruelty and there was a demand of dowry has to be decided only during the trial by adducing evidence and when there are specific averments, as stated above, regarding the demand of dowry and the harassment given to the defacto complainant, in India, it is not a fit case to quash the proceedings pending in C.C.No.2253 of 2009 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.

15. Moreover, the divorce granted by the Maidstone County Court, London, would not hit the averments in the complaint for dowry harassment, which had occurred in India during the year 1999 to 2001, when they have lived together as joint family at Chennai. The investigation officer had examined the witnesses, including the neighbours of the petitioners and concluded the investigation that there was dowry harassment by the petitioners during the first Pongal and first Deepavali in the year 2000. According to the defacto complainant, she was also subjected to harassment even at London. Without going into the competence of the Maidstone County Court, London, in passing a decree of dissolution for the marriage solemnised at Chennai on 26.05.1999, this Court holds that the decree of divorce granted by the Maidstone County Court, London, will not have a bearing on the offence committed in India during 1999 to 2001. In view of the foregoing discussions, all the grounds raised by the petitioners for quash lack merits and this criminal original petition is liable to be dismissed.

16. Considering the age of petitioners 2, 3 & 4, this Court is inclined to dispense with their personal appearance before the trial Court, provided they shall file an affidavit of undertaking before the trial Court that they will not dispute the identity and that their Counsel will cross-examine the witnesses, in their absence and that they shall appear before the trial Court, as and when their presence is required. Since the calender case is of the year 2009, the learned Chief Metropolitan Magistrate, Egmore, Chennai, is directed to expedite the trial and conclude the same within a period of six months from the date of receipt of a copy of this order.

17. With the above observations and directions, this Criminal Original Petition stands dismissed.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

gk

To

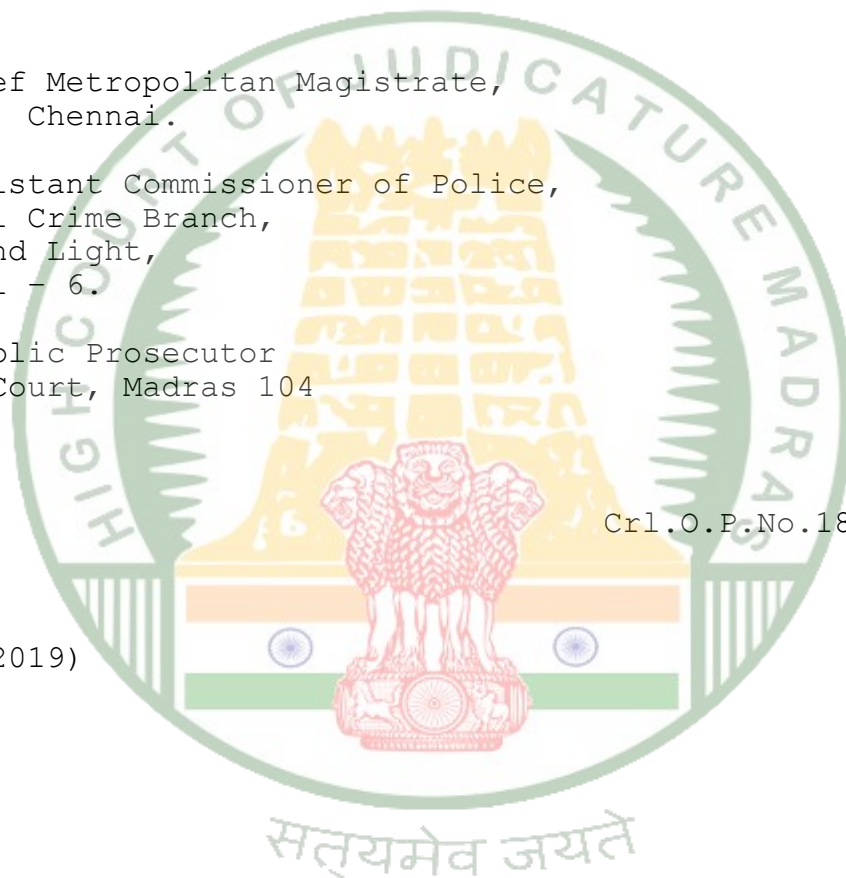
1. The Chief Metropolitan Magistrate,
Egmore, Chennai.

2. The Assistant Commissioner of Police,
Central Crime Branch,
Thousand Light,
Chennai - 6.

3. The Public Prosecutor
High Court, Madras 104

Crl.O.P.No.18804 of 2010

SJ(CO)
SP(10/04/2019)



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