

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4256 of 2013

and

M.P.No.1 of 2013

1.S.Kavitha

2.Shanmugasundaram

3.Vijaya ... Petitioners/Respondents

/Vs./

Ponnamal ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the complainant in C.M.P.No.2729 of 2012 on the file of the Judicial Magistrate - V, Salem and quash the same.

For Petitioners : Ms.C.Uma

For Respondent : Mr.K.S.Karthikraja

O R D E R

Criminal Original Petition filed to call for the records of the complainant in C.M.P.No.2729 of 2012 on the file of the Judicial Magistrate - V, Salem and quash the same.

2.The petitioners are the respondents in C.M.P.No.2729 of 2012. The respondent herein has filed a petition under the Domestic Violence Act, seeking protection order against the petitioners from using, occupying holding the house and households articles located at A4, Marutham Apartment, Sivaya Nagar, Salem - 16.

3.The first petitioner is the daughter-in-law of the respondent, the second and third petitioners are the father and mother of the first petitioner. The marriage between the first petitioner and the respondent's son Prabakar, who is working at

Canada had taken place on 28.05.2007 at Erode. After the marriage, the respondent's son on 28.06.2007, left alone to Canada. The respondent and her husband demanded a sum of Rs.4,00,000/- (Rupees Four Lakh Only) and luxury car as dowry from the petitioners. However the petitioners expressed their inability, but the respondent stood firm on the dowry demands. On 12.11.2007, the first petitioner had gone to Tanjore along with the second and third petitioners where the petitioner's in-laws are residing. The petitioner's in-laws took the petitioner to Salem for the house warming ceremony function. After the function the in-laws of the first petitioner persisted with the dowry demanded and compelled the first petitioner's parents to comply with the demands.

4.The first petitioner's in-laws threatened the petitioner that if her parents do not comply with the dowry demand they will not allow the first petitioner to join Prabakar in Canada. After great difficulty the petitioners with the assistants of officials of HCL got visa for the first petitioner. On 20.07.2008, the first petitioner had left for Canada to join her husband Prabakar, thereto the dowry demand and harassment continued. On 31.07.2008, within ten days, the first petitioner was forcibly sent back from Canada. Thereafter on 20.10.2008, the first petitioner had gone to Salem and stayed with her in-laws. The in-laws of the first petitioner had raised the issue of dowry and did not allow the first petitioner to reside peacefully in the flat. The petitioner managed to stay in the flat. The in-laws of the petitioner left the flat by handing over the keys of the flat to the petitioner. Thereafter, they lodged a police complaint against the first petitioner and request the police to evict the first petitioner from the flat. After the enquiry the police officials advised the in-laws of the first petitioner asking them not to disturb the first petitioner's stay in the flat.

5.The Assistant Commissioner of Police, Salem West called upon in-laws for pacification which failed. Hence, the case came to be registered on 11.04.2009 under Section 498-A and 506 (ii) IPC and Section 4 of Dowry Prohibition Act in FIR.No.4 of 2009.

6.The in-laws of the first petitioner had obtained Anticipatory Bail in this case. Thereafter, the first petitioner's husband Prabakar had filed a Divorce Petition in H.M.O.P.No.12 of 2009 before the Sub Court, Erode, which was transferred to the file of Family Court, Salem and re-numbered as F.C.O.P.No.54 of 2010. The above said F.C.O.P. was withdrawn by the Power of Attorney of Prabakar i.e. his father. Thereafter, the first petitioner filed M.C.No.25 of 2009 seeking maintenance before the Family Court, Salem and interim

maintenance of Rs.10,000/- was ordered to be paid from 2009. Till today no amount has been paid.

7.The parents of the said Prabakar had filed a suit in O.S.No.472 of 2011 before the first Additional District Munsif, Salem for eviction of first petitioner from the flat and for delivery of vacant possession. Since the harassment of the in-laws continued the first petitioner lodged a case in C.M.P.No.1982 of 2012 before the Judicial Magistrate-V, Salem under the Domestic Violence Act, 2005. As a counter blast the respondent i.e. the mother-in-law of the first petitioner had filed a complaint in C.M.P.No.2729 of 2012 before the Judicial Magistrate V, Salem to restrain the first petitioner from using, occupying, holding the house and household articles at A4, Marutham Apartment, Sivaya Nagar, Salem - 16. Against which the present quash petition is filed.

8.The learned counsel appearing for the petitioners would submit that the marriage between the first petitioner and the respondent's son Prabakar had taken place on 28.05.2007. The said Prabakar was working in HCL, Canada and promised after marriage the petitioner would be taken to Canada, despite the same the respondent's son had not made any arrangement. On the contrary, the respondent made dowry demand, which could not be met out and for the same, the first petitioner was not allowed to join her husband at Canada. The first petitioner's husband Prabakar whereabouts in Canada was not known. With the assistance of the officials HCL at Canada the first petitioner obtained visa and she reached Canada on 20.07.2008. Within ten days i.e. on 31.07.2008 the first petitioner was forcibly sent out from Canada. But the demand of dowry was persistent.

9.The first petitioner was staying with her in-laws in Salem. The first petitioner had lodged a complaint and filed a matrimonial case before the Family Court, Salem. She had also filed a Domestic Violence Case in C.M.P.No.1982 of 2012 before the Judicial Magistrate-V, Salem seeking monthly maintenance, resident order and other protection orders. The learned Judicial Magistrate, Additional Mahila Court, Salem by an order dated 29.12.2015 in D.V.O.P.No.78 of 2015 had directed the respondent's son Prabakar to pay a sum of Rs.75,00,000/- (Rupees Seventy Five Lakh Only) to the first petitioner as compensation within one month from the date of order, which has not been complied with. Further, she had filed a case before the Judicial Magistrate, Additional Mahila Court, Salem. The Judicial Magistrate, Additional Mahila Court, Salem by order dated 07.10.2016 in D.V.O.P.No.32 of 2013 had directed the respondent's son Prabakar to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) towards accommodation and Rs.20,000/- for

maintenance and Rs.2,00,000/- (Rupees Two Lakh only) for cost. Nothing has been paid. The said Prabakar has not made any payment till date.

10.The learned counsel appearing for the petitioners further submitted that the respondent had lodged a complaint before the Commissioner of Police, Salem, which was forwarded to the Inspector of Police, Alagapuram Police Station, Salem. In the said complaint the respondent admits that on 20.10.2008, the respondent and her husband had voluntarily left the house and they have joined with their elder son. On perusal of the materials, it is seen that the respondent and her husband had left their home voluntarily on 20.10.2008 leaving the possession and occupation to the first petitioner. In view of the same, the respondent cannot now make a claim that she was forcibly sent out, the property was purchased out of their own funds and the first petitioner has no right to occupy the flat.

11.The learned counsel appearing for the respondent would submit that the respondent's husband Dr.A.Chandrasekaran had passed away and the respondent is a widow and the flat was purchased out of the funds of her husband and they were residing there. Further the first petitioner never resided and shared common households and does not have any right over the property. The respondent could not be the reason for the broken marriage. The matrimonial cases are pending and civil suit in O.S.No.472 of 2011 is pending before the District Munsif Court, Salem. The first petitioner being the resident of Chennai living with her parents i.e. petitioner Nos.2 and 3. She never resided in the said flat. The respondent is a widow have no place to reside. The first petitioner is in the illegal possession. Hence she prayed to dismiss the quash petition.

12.Considering the rival submissions and the materials produced before this Court, this Court finds that the marriage between the first petitioner and the respondent's son had taken place on 28.05.2007. Thereafter, on 28.06.2007, he had left to Canada alone. The demand of dowry has been persistent, the respondent's son's whereabouts in Canada was not known to the petitioner, with great difficulty and with the help of the HCL officials the petitioner was sent to Canada on 20.07.2008, within ten days i.e. on 31.07.2008, she was forcibly sent back from Canada and thereafter no communication. The petitioner is unable to withstand the dowry demand and harassment caused to her by her husband and his family members. The first petitioner had lodged a complaint with the police and a case in FIR No.4 of 2009 came to be registered for the offence under Section 498-A and 506(ii) IPC and Section 4 of the Dowry Prohibition Act. Thereafter, the matrimonial case and the maintenance case are filed and decided in favour of the first petitioner.

13.Till date no maintenance amount has been paid. The respondent and her husband on more than one occasion had categorically submitted that on 20.10.2008 they had voluntarily left the flat situated at A4, Marutham Apartment, Sivaya Nagar, Salem - 16 and resided with their elder son. A domestic violence case has been filed by the first petitioner in C.M.P.No.1982 of 2012 during June 2012 and as a counter blast to the same the respondent i.e. the mother-in-law of the first petitioner had filed a complaint in C.M.P.No.2729 of 2012 before the Judicial Magistrate-V, Salem. The respondent's son Prabakar staying in Canada deserted his wife i.e. the first petitioner. The first petitioner has no means of support and she is residing in the flat of the respondent. The relationship between the first petitioner and the respondent's son as husband and wife is not disputed. In view of the same, this Court finds that the continuation of the proceedings in C.M.P.No.2729 of 2012 on the file of the Judicial Magistrate Court No.V, Salem would amount to abuse of process of law.

14.Hence, this Criminal Original Petition stands allowed and the proceedings in C.M.P.No.2729 of 2012 on the file of the Judicial Magistrate Court No.V, Salem is hereby quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Judicial Magistrate No.V,
Salem.

+1cc to Mr.K.S.Karthik Raja, Advocate Sr.33083
+1cc to Ms.C.Uma, Advocate Sr.33264

Cr1.O.P.No.4256 of 2013

br[co]
srg 10/09/2019