

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.01.2019

Delivered on: 27.02.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CrI.OP.No.8783 of 2013

and

M.P.No.1 of 2013

1. V.M.Shameer Ahmed
2. P. Mohamed Yousuff
3. A.M.Laila
4. Asarfu Nisa
5. V.M.Sharmila
6. P.M.Nasrath banu ... Petitioners/Accused Nos.1 to 6

Vs.

1. State by Inspector of Police,
All Women Police Station,
West Coimbatore,
Coimbatore District.
(Cr.No.1 of 2012)

2.K. Shameem Pariven
(The 2nd respondent impleaded as per the order
dated 20.08.2013 in MP.No.3 of 2013)

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the complaint in C.C.No.98 of 2012 on the file of the Judicial Magistrate No.1, Coimbatore and quash the same as far as the petitioners are concerned.

For Petitioners: Mr.V. Karthick,
Senior Counsel for Mr.I.Abrar Md.Abdullah

For Respondents: Mr.P. Wilson,
Senior Counsel for M/s.G. Gokul for R2.
Mr. R. Surya Prakash,
Government Advocate
(CrI.Side) for R1.

O R D E R

This Criminal Original Petition has been filed by the Accused Nos.1 to 6 under Section 482 Cr.P.C., to quash the proceedings against them in C.C.No.98 of 2012 on the file of the Judicial Magistrate, No.1, Coimbatore.

2. The second respondent had lodged a complaint before the Superintendent of Police, Erode District, alleging that the marriage between herself and the first petitioner herein held on 13.08.2006 and thereafter they lived together along with her in-laws/ petitioners 2 to 5 at Coimbatore and at that time, the petitioners 1 to 5 caused cruelty by demanding dowry and also criminally intimidated her and brought her to her parents' house and left there but, subsequently, they did not take steps to take her to the matrimonial home. She also stated that on 20.07.2009, the first petitioner contracted second marriage with the sixth petitioner and hence she made a request to take action against the petitioners.

3. The said complaint has been forwarded to the All Women Police Station, Erode on 16.11.2011 and based on the said complaint, an FIR was registered in Cr.No.13 of 2011 in the All Women Police Station, Erode under Sections 498-A and 506 (i) IPC. Subsequently, the said FIR was transferred to the first respondent herein and renumbered as Cr.No.1 of 2012. Based on the said FIR, the first respondent has investigated the matter and filed a charge sheet against the petitioners herein under Sections 498-A, 494 and 506 (ii) IPC. Based on the said charge sheet, the learned Judicial Magistrate No.1 Coimbatore, has taken the case on file in C.C.No.98 of 2012 under Sections 498-A, 494 and 506 (i) IPC and issued summons to the petitioners herein. After receipt of the summons, the petitioners herein have filed the present petition under Section 482 Cr.P.C., to quash the proceedings against them in the aforesaid C.C.

4. Heard Mr.V.Karthick, learned Senior Counsel assisted by Mr.I.Abrar Md. Abdullah, counsel for the petitioners and Mr.P. Wilson, learned Senior Counsel for M/s.G. Gokul appearing for the second respondent assisted by Mr.R.Surya Prakash and learned Government Advocate (Crl.Side) for the first respondent.

5. The learned Senior Counsel for the petitioners has submitted that the first petitioner married the second respondent/defacto complainant on 13.08.2006 as per Islamic Customs and Rites. He further submitted that at the time of marriage, the father of the defacto complainant had voluntarily

offered Rs.1,00,000/- and 77 sovereigns of jewellery as gift to the defacto complainant. He further submitted that the petitioners 1 to 5 never demanded any dowry from the defacto complainant. He further submitted that ever since the marriage, the defacto complainant developed hatred with the first petitioner and picked up quarrels frequently for trivial reasons. He further submitted that as per the instructions of his family members, the first petitioner brought the defacto complainant to Chennai and set up a separate residence and treated her well but she stayed only for a short period and gone to her parents' house. He further submitted that the second petitioner constructed a new house in Coimbatore and invited the Defacto complainant and her parents for warning ceremony of the house which was held in 02.09.2007 and hence she attended the said ceremony and created ugly scene and defamed the first petitioner and his parents in the presence of relatives and thereafter on 09.09.2007, she left for her parents' home with her father and thereafter she did not return.

6. The learned Senior Counsel for the petitioners further submitted that on 11.11.2007, the second petitioner through the common friend approached the defacto complainant's father for a discussion to sort out the differences along with local Jamath. He further submitted that since no positive result came, the first petitioner has sent a letter dated 20.05.2008 expressing 'Talaq' and subsequently, he sent another letter dated 02.07.2008 by saying 'Talaq' and the third letter dated 25.10.2008 and thereby the marital relationship between the first petitioner and defacto complainant came to an end. He further submitted that after pronouncing third 'Talaq', the first petitioner married the sixth petitioner on 20.07.2009 and out of wedlock, they got two children.

7. The learned Senior Counsel for the petitioners has further submitted that the defacto complainant had filed a suit in O.S.No.403 of 2009 on the file of the District Munsif, Erode, for the relief of restitution of conjugal rights and in the said suit, she has not stated that the petitioners 1 to 5 herein made any demand for dowry. He further submitted that in the said suit, the first petitioner herein had filed a written statement stating the fact that only after pronouncing of 'Talaq', he contracted the second marriage with the sixth petitioner herein. He further submitted that the defacto complainant did not pursue the said suit and hence the said suit was dismissed for default on 09.06.2011 and thereafter, she filed an application to restore the suit and the same was also dismissed on 06.03.2013. He further submitted that the father of the Defacto complainant had arranged for second marriage and accordingly, the defacto complainant had contracted the second marriage with one Mr.A.S.Rajack Mohamed on 26.01.2012. He further submitted that in view of the bar under Section 198 of

Cr.P.C., the learned Judicial Magistrate No.1, should not have taken cognizance of an offence punishable under Section 494 of IPC based on the charge sheet filed by the police. He further submitted that after contracting second marriage, the defacto complainant cannot lodge a complaint alleging that the marriage between the first petitioner and sixth petitioner is illegal. He further submitted that the facts and circumstances of the case would show that the provisions of Sections 498-A and 506(i) IPC will not attract.

8. The learned Senior Counsel for the petitioners, in support of his contentions, relied upon the decision in State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568

9. Per contra, Mr. Wilson, learned Senior Counsel for the second respondent assisted by Mr. R. Surya Prakash, learned has submitted that in view of Sub-Section (4) of Section 155 of Cr.P.C., if the facts reported to the police disclosed both cognizable and non-cognizable offence, the police can investigate both the offences and hence the police is entitled to file a charge sheet. He further submitted that once the police is entitled to file a charge sheet in respect of the offence including the non-cognizable offence, the Judicial Magistrate is bound to take cognizance based on the charge sheet and therefore, it cannot be said that the Judicial Magistrate No.1 Coimbatore has acted without jurisdiction. He further submitted that the second respondent is denying the fact that she has been legally divorced by the first petitioner by pronouncing triple 'Talaq'. He further submitted that the questions of disputed facts cannot be decided by this court while dealing with the petition under Section 482 of Cr.P.C. He further submitted that the FIR and the statement recorded under Section 161 (3) Cr.P.C., of the witnesses would prima facie disclose the offences under Sections 498-A, 494 and 506 (ii) IPC and therefore, he prayed to dismiss the petition.

10. The learned Senior Counsel for the second respondent/defacto complainant, in support of his contentions, relied upon the following decisions:

- (i) State of Orissa Vs. Sharat Chandra Sahu and Another (1996) 6 SCC 435
- (ii) State of Haryana and Others Vs. Bhajanlal and Others 1992 Supp (1) SCC 335.

11. The learned Government Advocate (Criminal Side) who is appearing for the first respondent has adopted the arguments advanced by the learned Senior Counsel for the second respondent/defacto complainant. He further submitted that the FIR and the statements recorded under Section 161 (3) Cr.P.C., of the witness would clearly show that the petitioners herein have committed offences punishable under Sections 494, 498-A and 506 (ii) IPC and therefore, he prayed to dismiss the

petition.

12. Section 198(1) of Cr.P.C says that no court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code except upon a complaint made by some person aggrieved by the offence. But in this case, the first respondent has filed a chargesheet not only in respect of the offence under Section 494 IPC but also under Sections 498-A and 506 (ii) IPC. The offence under Sections 498-A and 506(ii) IPC are cognizable. In State of Orissa Vs. Sharat Chandra Sahu and Another, (supra), the Hon'ble Supreme Court, taking into consideration of the Sub-section (4) of Section 155 of Cr.P.C, held that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable and therefore, the police is entitled to investigate in respect of the offence under Section 494 IPC along with other cognizable offences and file a charge sheet including the offence under 494 IPC. The relevant portion of the said judgment is extracted hereunder:-

"12. Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in Sub-section (4) provides that even non-cognizable.

13. This Court in Preveen Chandra Mody vs. State of M.P. AIR 1965 SC 1185 has held that while investigating a cognizable offences and presenting a charge-sheet for it, the police are not debarred from investigation any non-cognizable offence arising out of the same facts and including them in the charge-sheet.

14. The High Court was thus clearly in error in quashing the charge under Section 494 I.P.C. on the ground that the Trial Court could not take cognizance of that offence unless a complaint was filed personally by the wife or any other near relation contemplated by Clause (c) of the Proviso to Section 198(1). "

13. In this case, according to the respondents, the complaint lodged before the police discloses the offences under Sections 494, 498-A and 506 (ii) IPC. Hence, in view of the aforesaid decision of the Hon'ble Supreme Court, the police can investigate the matter and file a charge sheet and based on the said charge sheet, the Magistrate can take cognizable of the offences including the offence under Section 494 IPC.

14. In this case, the contention of the petitioners is that the marriage between the first petitioner and the second respondent was dissolved by pronouncing Triple 'Talaqs' by the first petitioner and only thereafter, the first petitioner contracted second marriage with the sixth petitioner. Therefore, this Court has to see whether the marriage between the first petitioner and the second respondent was legally dissolved.

15. Since the efforts taken for reunion not fructified, according to the petitioners, the first petitioner had pronounced the first Talaq through the letter dated 20.05.2008, the second Talaq was pronounced through the letter dated 02.07.2008, and the third Talaq was pronounced through the letter dated 25.10.2008. It is their further case that after pronouncing the 'third Talaq', the marriage between the first petitioner and the second respondent came to an end and thereafter, the second respondent cannot claim the status of wife of the first petitioner and hence, the first petitioner had married the sixth petitioner on 20.7.2009. Their further case is that the second respondent had filed a suit in O.S.No.403 of 2009 on the file of the District Munsif, Erode, for the relief of restitution of conjugal rights and the same was dismissed for default on 09.06.2011. Their further case is that suppressing the aforesaid facts, the second respondent has lodged a complaint before the Superintendent of Police, Erode, and based on the said complaint, and FIR was registered against the petitioners and charge sheet also has been filed. Their further case is that after taking the complaint before the Police, the second respondent got married one Mr.A.S.Rajack Mohamed on 26.01.2012.

16. The petitioners have filed xerox copies of the plaint and written statement filed in O.S.No.403 of 2009 on the file of the District Munsif, Erode, and also a xerox copy of the judgment passed in the said suit dated 09.06.2011. They also filed a xerox copy of the marriage certificate issued by the Office of the Tamil Nadu Government Kazi, Erode District dated 26.01.2012.

17. At this juncture, it would be relevant to refer to the decision in State of Orissa Vs. Debendra Nath Padhi (supra), wherein, the Hon'ble Supreme Court in paragraph No.21 has held as follows:-

".... It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code..."

18. From the aforesaid decision, it is clear that this Court can consider and unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Criminal Procedure Code. In this case, xerox copies of the plaint, and written statement filed in the suit in O.S.No.403 of 2009 and the judgment passed in the said suit and the marriage certificate issued by the Tamil Nadu Government Kazi, Erode District dated 26.01.2012, were not denied by the second respondent by filing counter. She has filed a petition in CMP.No.3 of 2013 to implead her as one of the said petitioners. In that petition also, she has not denied the filing of the aforesaid suit and the said suit was dismissed for default. She also not denied the allegation that she got married one Mr.A.S.Rajack Mohamed on 26.01.2012 and also not denied the marriage certificate issued by the Tamil Nadu Government Kazi, Erode District dated 26.01.2012. Therefore, the aforesaid documents are unimpeachable and in view of the aforesaid decision of the Hon'ble Supreme Court, the said documents can be taken into consideration by this Court.

19. In the said marriage certificate issued by the office of the Tamil Nadu Government Kazi, Erode District, it is stated that the second respondent herein has been divorced by the husband Mr.V.M.Shameer Ahmed (1st petitioner herein) with Triple Talaq on 25.10.2008 and the same is valid and confirmed with the Fathwa issued by the Bakiyath Salihath, Vellore. So, it is clear that the second respondent herself has admitted that the first petitioner herein has divorced her with Triple Talaq on 25.10.2008. It is also clear that only after confirming the said divorce, she got married one Mr.A.S.Rajack Mohamed. If the marriage between the first petitioner and the sixth petitioner which took place on 20.07.2009 is an offence, the same principle will equally apply to the second respondent also. Having married another man, she cannot prosecute the first petitioner as if he committed an offence under Section 494 IPC. She cannot approbate and reprobate.

20. In the proceedings issued by the Tamilnadu Government Kazi for Erode District dated 15.04.2008, nowhere it is stated that either the first petitioner or the petitioners 2 to 5 have caused cruelty to the second respondent by demanding dowry. In the suit filed by the second respondent in O.S.No.403 of 2009 on the file of the District Munsif, Erode also, she has not stated that the first petitioner has made any demand for dowry or he has caused cruelty to her. Though she has filed the said suit for restitution of conjugal rights, subsequently she has allowed the said suit for dismissal. Further, after dismissal of the said suit, she married another man on 26.01.2012.

21. In the complaint filed before the Police, the second respondent has stated that at the time of marriage, their parents gave 77 sovereigns of jewellery and gift of Rs.1,00,000/- and house hold articles worth about Rs.1,00,000/- as sreedhana to the first petitioner's parents. She further stated that after three months from the marriage, the first petitioner and their parents asked her to remove the 77 sovereigns of dowry which were wearing by her and hand over to them, but, she rejected that demand. So, it is clear that the 77 sovereigns of jewellery are only with the second respondent.

22. In the aforesaid complaint, she further stated that since she refused to give jewellery, the first petitioner scolded her and pressed on her neck and pushed her outside the house. She further stated that when she was trying to raise, the first petitioner has stated that 'are you alive still' and thereafter, she called her father and went to her parents' house. But the aforesaid allegations were not mentioned in the plaint filed in O.S.No.403 of 2009 on the file of the District Munsif, Erode. Further, if really the aforesaid act was done by the first petitioner, the second respondent would not have filed a suit for restitution of conjugal rights. Therefore, this Court is of the view that there is no sufficient materials to proceed against the petitioners under Section 498-A IPC.

23. In respect of the allegation that the petitioners 1 to 5 have committed an offences of criminal intimidation, except bald and vague allegations made by the second respondent in the complaint and in the statement recorded under Section 161(3) Cr.P.C., no other matierals produced by the first respondent.

24. It is to be pointed out that it is seen from the

typed set of papers filed by the petitioners that the First Information Report was registered under Sections 498-A, 494 and 506(i) IPC, but chargesheet was filed under Sections 498-A, 494 and 506(ii) IPC. However, the learned Judicial Magistrate has taken the case on file under Sections 498(A), 494 and 506(i) IPC. As already pointed out that the offence under Section 494 will not attract and in such a case, the remaining Sections are 498-A and 506(i) IPC. The punishment prescribed for the offence punishable under Section 498-A IPC is imprisonment for a term which may extend to three years and also fine. The punishment prescribed for the offence under Section 506(i) IPC is imprisonment for a term which may extend to two years or with a fine. As per Sub-section (1) of Section 468 of Cr.P.C., no Court shall take cognizance of an offence of the category specified in sub-sections (2) after the expiry of the period of limitation. As per sub-section (2) of Section 468 of Cr.P.C., the period of limitation shall be three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

25. In this case, as per the complaint lodged by the second respondent before the Police, the accused persons demanded to hand over the jewellery within a period of three months from the date of marriage. Admittedly, the marriage between the first petitioner and the second respondent was held on 13.08.2006. So, the aforesaid occurrence, according to the second respondent, took place on or before 13.11.2006. In the said complaint, it was alleged that on 27.11.2007, the petitioners 1 to 5 came to her parents' house along with 10 others and at that time also, they demanded to handover the jewellery and thereafter, she has not stated any occurrence took place. So, as per the complaint, the occurrence said to have been taken place finally on 27.11.2007 and in such a case, the limitation for taking cognizance of the offence punishable under Sections 498-A and 506(i) IPC would have expired on 27.11.2010 itself. But a complaint was presented by the second respondent before the Police only on 16.01.2011 and after investigation, charge sheet was filed on 05.03.2012 and the Magistrate has taken cognizance on 19.03.2012. So, it is clear that only after expiry of the limitation, the learned Judicial Magistrate has taken cognizance. There is no evidence that any petition has been filed under Section 473 of Cr.P.C., to condone the delay in filing the charge sheet. Hence, taking cognizance by the Magistrate is clearly barred by the limitation and on that ground also, the proceedings against the petitioners have to be quashed.

26. In State of Haryana and others Vs. Bhajan Lal and others (supra), the Hon'ble Supreme Court in paragraph No.102

has held as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases, wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) 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.

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide 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."

27. In this case, as already pointed out that the second respondent after admitting the fact that the first petitioner has divorced her with 'Triple Talaq' on 25.10.2008, she married another man viz., A.S.Rajack Mohamed on 26.01.2012 and in such a case, she cannot blame the first petitioner for contracting second marriage by him with the sixth petitioner. Further, as per Mulla's principles of Mohamedan law, a Mohamedan may have as many as four wives at the same time but not more. When the personal law of Muslims permits to have as many as four wives at the same time, the provision of Section 494 IPC will not attract. As per Section 494 IPC, whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife is an offence. Since the personal law permits the Mohamedan to have four wives at the same time, even during the subsistence of the first marriage, contracting of the second marriage is not void. But in this case, as already pointed out that the marriage between the first petitioner and the second respondent was already legally dissolved with Triple Talaq and the same has been admitted by the second respondent herself and also she got the second marriage. Further in the suit filed by her for restitution of conjugal rights, she has not made any allegation against the first petitioner that he caused cruelty demanding dowry. Further, in the proceedings issued by the Tamilnadu Government Kazi of Erode District dated 15.04.2008, it is not stated that the second respondent has made any complaint against the petitioners that as they have demanded dowry or caused

cruelty. Further, taking cognizance of the case in respect of the offence under Sections 498-A and 506(i) are clearly barred by limitation under Section 468 Cr.P.C. Further, as already pointed out that the second respondent herself got married another man by saying that she was already divorced by the first petitioner and therefore, this Court is of the view that the continuance of the proceedings against the petitioners in C.C.No.98 of 2012 on the file of the Judicial Magistrate No.I, Coimbatore, is clearly abuse of process of the court and hence, this Court is inclined to allow this petition.

28. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioners in C.C.No.98 of 2012 on the file of the Judicial Magistrate No.I, Coimbatore, are quashed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gv/dna
To

1.The Inspector of Police,
All Women Police Station,
West Coimbatore,
Coimbatore District.
(Crime No. 1/2012)

2. The Judicial Magistrate No.1,
Coimbatore.

3. The Public Prosecutor,
High Court, Madras 104.

+1 CC to Mr.G.Gokul , Advocate sr 18683.

PM(CO)
SP(01/04/2019)

Cr1.O.P.No.8783 of 2013