

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.08.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.No.3932 of 2016
and CRL.M.P.Nos.1998 & 1999 of 2016

1. Karthikeyan

2. Nalini

3. Usharani

4. Yamuna

5. Kumaran

6. Velayutham

7. Mohana Sanathanamurthy

8. Pari

....Petitioners
/Accused 1 to 8

Vs.

1. State rep. by the
Sub Inspector of Police,
W-19, All Women Police Station,
Adayar, Chennai - 20.
(Crime No.04 of 2015)

2. S.Charulatha

....Respondents
/ Complainants

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the complaint in C.C.No.4730 of 2015 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, quash the same by allowing the Criminal Original Petition.

For Petitioners : Mr.A.M.Rahamath Ali

For Respondents : Mr.C.Raghavan
Government Advocate for R1
Mr.Yudhish Podman for R2

ORDER

This petition has been filed seeking to quash the proceedings pending in C.C.No.4730 of 2015 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai.

2. The 2nd respondent who is the wife of the 1st petitioner has given a complaint before the respondent police to the effect that after the marriage was held in the year 2013, there has been repeated cruelty committed against her by the accused persons by asking for dowry and the defacto complainant was also subjected to physical cruelty since she was made to do all the physical work in the house where all the accused persons are said to have lived as a joint family.

3. After the investigation of the complaint, the respondent police filed a final report before the Court below and the Court below has taken cognizance of the final report for an offence under Section 498(A) of IPC.

4. The 1st petitioner is the husband, the 2nd petitioner is the co-sister, the 3rd petitioner is the mother-in-law, the 4th petitioner is another co-sister, the 5th and 6th petitioners are the brothers-in-law and the 7th and 8th petitioners are cousin-brothers.

5. The marriage itself took place in the year 2013 and the 2nd respondent gave birth to a female child.

6. The learned counsel for the petitioner submitted that the entire family members have been falsely implicated in this case and the investigation conducted by the respondent police does not contain any materials against the petitioners 4 to 8. The learned counsel further submitted that the 2nd petitioner who is the co-sister will not strictly come within the definition of the relative of the husband under Section 498(A) of IPC.

7. The learned counsel for the petitioner further placed reliance upon the judgment of the Hon'ble Supreme Court in Rajesh Sharma and others vs. State of U.P. And others reported in (2017) 3 MLJ (Crl) 602 SC and in the case of Social Action Forum for Manav Adhikar and Another vs. Union of India Ministry of Law and Justice and others reported in 2018 4 MLJ (Crl) 426. The learned counsel submitted that the Hon'ble Supreme Court has deprecated the practise of roping in all the relatives of the husband as accused in 498(A) cases.

8. The learned Government Advocate appearing on behalf of the respondent police submitted that the respondent police have

collected sufficient materials against all the accused persons and the same is enough to frame charges against the petitioners. The learned counsel submitted that the defacto complainant has suffered cruelty in the hands of the accused persons and therefore the accused persons will have to necessarily undergo trial and establish their defence.

9. This Court has carefully considered the submissions made on either side and also the materials available on record.

10. On a reading of the final report and also the statement recorded from the witnesses, this Court is not able to find any materials as against the petitioners 4 to 8. Except general allegations, no specific allegations have been made against these petitioners. The 2nd respondent has added all the family members of the husband in her complaint and the respondent police without being able to collect any materials, has mechanically added petitioners 4 to 8 as accused persons.

11. The Hon'ble Supreme Court has deprecated this practice of adding all the relatives as an accused in 498(A) cases. Useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of Preeti Gupta and another vs. State of Jharkhand and Another reported in (2010) 7 SCC 667.

12. The next ground that has been raised by the learned counsel for the petitioner is that the 2nd petitioner who is admittedly the co-sister of the 2nd respondent can never come within the definition of the relative of the husband in terms of Section 498(A) of IPC.

13. A reading of Section 498(A) of IPC makes it clear that there is no scope to proceed further against any person for the said offence, unless the person comes within the scope of the relative of the husband. The Hon'ble Supreme Court in the case of Vijeta Gajra vs. State of NCT of Delhi reported in (2010) 4 MLJ (Cr1) 676 (SC) has categorically held that a relative would mean blood relation or relation by marriage. Unless a relative falls under this category, they can never be made as an accused for an offence under Section 498(A) of IPC.

14. The point raised by the learned counsel for the petitioner is left open and this Court does not want to express any opinion on the same.

15. This Court finds some materials as against the petitioners 1 to 3 and the same are enough to frame charges under Section 498 (A) of IPC. The ground raised by the petitioners 1 to 3, can always be raised before the Court below and Court below shall consider the same on its own merits and in accordance with law.

16. In the result the proceedings in C.C.No.4730 of 2015 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai is quashed insofar as the petitioners 4 to 8 are concerned and petition is dismissed insofar as the petitioners 1 to 3 are concerned.

17. The learned counsel for the petitioners requested this Court to dispense with the presence of the petitioners 2 and 3. Taking into consideration, the facts and circumstances of the case, the presence of the petitioners 2 and 3 are dispensed with and they shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioners 2 and 3 shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgment.

18. Accordingly, this criminal original petition is partly allowed and the Court below is directed to proceed further with the case as against A1 to A3 and complete the proceedings within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

ssr

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The IX Metropolitan Magistrate, Saidapet, Chennai.
2. -Do- Thro' The Chief Judicial Magistrate, Chennai.
3. The Sub Inspector of Police,
W-19, All Women Police Station,
Adayar, Chennai - 20.
4. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.A.M.Rahamath Ali, Advocate, SR.No.69129 & 69476

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Kak (27/09/2019)