

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.02.2019

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Revision Case No.122 of 2012
& M.P.Nos.1 & 2 of 2012

1. Vanaja,
Wife of Kumaravadivel,
No.43, Anna Nagar,
Koothapakkam, Cuddalore.
2. Kumaravadivel,
S/o.Shanmugam Sundaram,
No.43, Anna Nagar,
Koothapakkam, Cuddalore. Petitioners/Accused 5 & 6

/versus/

State (represented by
Station House Officer,
All Women Police Station,
Villianur, Puducherry). Respondent/Complainant

Prayer:- Criminal Revision Case is filed under Section 397 and 401 of Criminal Procedure Code, praying against to allow the above said Criminal Revision case, to set aside the order dated 18.11.2011 passed by the Learned Chief Judicial Magistrate, Puducherry in M.P.No.1039 of 2011 in C.C.No.185 of 2010 on his file and direct that the petitioners be discharged from the above case.

For Petitioners : Mr.A.Raghunathan, Senior Counsel
for Mr.T.I.Ramanathan

For Respondent : Mr.D.Bharatha Chakravarthy
Public Prosecutor (Pondy)

O R D E R

This Revision Petition is directed against the dismissal of the discharge petition by the trial Court. The petitioners herein are the elder sister and her husband of A-1. The husband of defacto complainant Vani is wife of A-1. In the matrimonial dispute, alleging cruelty prosecution is launched against the family members of the husband.

2. Initially, the father of the defacto complainant initially gave a complaint to the Senior Superintendent of Police, Puducherry on 30.12.2009. Thereafter, alleging that the complaint was not acted upon by the police, the defacto complainant herself has made a private complaint before the Chief Judicial Magistrate, Puducherry to take the complaint on file and to initiate action against the accused persons. The Chief Judicial Magistrate, Puducherry, had directed the police to register the complaint, investigate and file final report.

3. On completion of the investigation, final report filed against Kamalakannan [A1], Dhatchanamurthy [A2], Ramanibai [A3], Chandravadhana [A4], Vanaja [A5], Kumaravadivel [A6] for offences under Section 498-A I.P.C and 4 of Dowry Provision Act r/w 34 I.P.C.

4. Except Chandravadhana [A4] other accused filed petition to discharge under Section 239 of Cr.P.C before the Chief Judicial Magistrate, Puducherry. On the ground that the complaint is outcome of animosity against the entire family members just to harass them. The defacto complainant has roped them though the petitioners were living separately at Anna Nagar, Koothapakkam, Cuddalore and they have nothing to do with the internal domestic affairs of Vani and Kamalakannan.

5. Further, it was also pointed out before the trial Court that the defacto complainant Vani has filed H.M.O.P and got exparte decree of divorce in the Family Court, Puducherry and left to France. Her husband Kamalakannan [A1] is also not residing in India. While so, without any prima facie material to prosecute the in laws of the defacto complainant. The respondent police has filed final report based on the statements recorded from vested interest persons, which are not only self-contradictory but also contra to the facts.

6. The trial Court has dismissed the petition on the ground without examining the defacto complainant, the Court cannot come to the conclusion about whether merits of the complaint. The delay in lodging the complaint is fatal to the prosecution, can be decided only after trial. The subsequent event after filing the complaint cannot be taken into consideration to exonerate the accused persons.

7. Aggrieved by the dismissed order the present Revision Petition is filed.

8. Before the trial Court, except A4, all other accused filed the discharge petition, and same was dismissed by the Chief Judicial Magistrate, Puducherry. The Present Revision Petition is filed only by A5 and A6.

9. The learned Senior Counsel appearing for the appellant would submit that the facts of the case squarely falls within the dicta of Hon'ble Supreme Court judgment in Geeta Mehrotra and another Vs. State of U.P and another reported in 2012 10 SCC 741. He referred paragraph 14 of the judgment and submitted that the complaint itself is perverse and without any basis.

10. The learned Counsel submitted that, even according to the complaint and the statements, no specific incriminating act has been attributed to these two petitioners. While so, except to harass them, no fruitful result will be their in prosecuting them.

11. The trial Court has forwarded the entire case records. The Lower Court records which are available for this Court to peruse indicates that the couple Vani and Kamalakannan were engaged on 28.08.2008 and got married on 08.11.2008. From the date of engagement, it is alleged that there was some misunderstanding between the bride groom and bride family regarding dowry but after few negotiations, the marriage held on 08.11.2008. After marriage A1 was first to lean for USA for his avocation followed by the wife/defacto complainant. They lived together at USA for sometime. The defacto complainant later A-1 at USA and returned to India, after a brief stay in France.

12. The overt act attributed against these petitioners in the 161 Cr.P.C Statement of the defacto complainant is that on 04.11.2008, when she was at her husband's house, her husband family pressurized her for more than a hour and quarrelled with her why her father has not transferred the plot in A1's name. It is specifically stated by all the witnesses in their statements that at the time, these two petitioners who are arrayed as A5 and A6 were who present. Except this there is no other material available against these two petitioners to prosecute under Section 498-A r/w 34 of I.P.C. In fact, in the 1st complaint given by the father on 30.12.2009, the name of the 2nd petitioner who is now arrayed as 6th accused is not at all referred as one of the family members indulged in dowry harassment. By including the 2nd petitioner in the complaint filed by the Vani, the embellishment is palpably seen.

13. From the 1st complaint given by the father on 30.12.2009 and subsequent complaint lodged by the daughter Vani on 12.04.2010, this Court could find contradictions in the dates and event, alleged against these petitioners. In the complaint, Vani has stated that the accused A1 to A6 on 31.12.2008 assaulted her and pressurized her to register the plot in A1's name by 02.01.2009. Whereas, in 161 Cr.P.C statements, all the

witnesses have invariably said that this incident took place on 04.11.2008. As rightly pointed out by the learned Senior Counsel appearing for the petitioners when the marriage itself was solemnized only on 08.11.2008, this incident could not have happened on 04.11.2008. If it is a typographical error, this error would have been crept only in any one of the witness statement and not in all the statement of the witnesses.

14. The Hon'ble Supreme Court in Geeta Mehrotra and another's Vs. State of U.P and another's reported in 2012 (10) SCC 741 cited supra has held that:-

14. The High Court further overlooked the fact that during the pendency of this case, the complainant-respondent No.2 has obtained an ex-parte decree of divorce against her husband Shyamji Mehrotra and the High Court failed to apply its mind whether any case could be held to have been made out against Kumari Geeta Mehrotra and Ramji Mehrotra, who are the unmarried sister and elder brother of the complainant's ex-husband. Facts of the FIR even as it stands indicate that although a prima facie case against the husband Shyamji Mehrotra and some other accused persons may or may not be constituted, it surely appears to be a case where no ingredients making out a case against the unmarried sister of the accused Shyamji Mehrotra and his brother Ramji Mehrotra appear to be existing for even when the complainant came to her in-law's house after her wedding, she has alleged physical and mental torture by stating in general that she had been ordered to do household activities of cooking meals for the whole family. But there appears to be no specific allegation against the sister and brother of the complainant's husband as to how they could be implicated into the mutual bickering between the complainant and her husband Shyamji Mehrotra including his parents.

17. Their Lordships of the Supreme Court in this matter had been pleased to hold that the bald allegations made against the sister in law by the complainant appeared to suggest the anxiety of the informant to rope in as many of the husband's relatives as possible. It was held that neither the FIR nor the charge sheet furnished the legal basis for the magistrate to take cognizance of the offences alleged against the appellants. The learned Judges were pleased to hold that looking to the allegations in the FIR and the contents of

the charge sheet, none of the alleged offences under Section 498 A, 406 and Section 4 of the Dowry Prohibition Act were made against the married sister of the complainant's husband who was undisputedly not living with the family of the complainant's husband. Their Lordships of the Supreme Court were pleased to hold that the High Court ought not to have relegated the sister in law to the ordeal of trial. Accordingly, the proceedings against the appellants were quashed and the appeal was allowed.

15. In this Case no ingredient for the offence under Section 498-A of I.P.C is made out against the petitioners, who were living separately away from the house of the defacto complainant and her husband.

16. This Court is convinced that there is no prima facie material to proceed against these two petitioners. The trial Court has failed to appreciate the statements and material placed before him in a holistic manner, which has lead to filing of this Revision Petition.

17. In the result, the Criminal Revision Case is Allowed. A5 and A6 are discharged. Registry is directed to forward the records forthwith to the trial Court. The trial Court is directed to frame charge against the other accused and complete the trial at the earliest. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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bsm

To

1. The Learned Chief Judicial Magistrate, Puducherry.
2. The Additional Public Prosecutor (Pondy), High Court, Madras.
3. The Station House Officer,
All Women Police Station,
Villianur, Puducherry.

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4. The Section Officer, Crl.Section, High Court, Madras.

+lcc to Mr.T.I.Ramanathan, Advocate SR.No.12255

Crl.R.C.No.122 of 2012
& M.P.Nos.1 & 2 of 2012

NMI (CO)
GMY (01/03/2019)



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