



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.143 & 180 of 2012

and

M.P.Nos.1 & 1 of 2012

1. Murugesan
2. Nesamani
3. Selvam
4. Amirtham ...Petitioners in Crl.R.C.143/2012

Amaravathy ...Petitioners in Crl.R.C.180/2012

Vs.

1. State by the Inspector of Police,
All Wome Police Station,Tiruttani.
(Crime No.8 of 2005)

2. Sridevi ...Respondents in both the Rcs

(R2 in both the revisions was impleaded as per order dated 20.07.2018 in Crl.M.P.Nos.8245/18 in Crl.R.C.No.143/2012 and 8246/2012 in Crl.R.C.No.180/2012 respectively)

Prayer in both the Revisions: These Criminal Revisions filed under Section 397 and 401 of Code of Criminal Procedure praying to call for the records of the learned Judicial Magistrate, Tiruttani, Tiruvellore District and set aside the the order in Crl.M.P.Nos.2771 & 2772 of 2011 respectively in C.C.No.357 of 2005 dated 08.09.2011.

For Petitioners	: T.Ravi - in both the Revisions
For Respondents	: Mr.T.Shanmugarajeswaran
	Govt. Advocate (Crl.Side) for R1
	- in both the Revisions

COMMON ORDER

These revisions have been filed against the order of dismissal of discharge petitions filed by the petitioners seeking to discharge from all the charges levelled against them.



2 Since the order impugned in both the revisions is a common order and the issue also one and the same and hence both the Criminal Revision Cases are taken up together and disposed of by this Common order.

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3 The respondent police registered a case against the petitioners in crime No.8 of 2005 for the offence punishable under Sections 498(A), 506(ii) of IPC r/w Section 4 of Dowry Prohibition Act, and 494 of IPC. A1 is husband of the defacto complainant and the revision petitioners in both the revisions are relatives, who has been arrayed as A2 to A6. The respondent police, after investigation, laid a charge sheet before the learned Judicial Magistrate, Tiruttani, Tiruvellore District and the learned Magistrate, after taking cognizance of the charge sheet taken the same on file in C.C.No.357 of 2005 and issued summons to the accused and on their appearance, served copies on them. At that stage, the revision petitioners/A2 to A5 and A6 had filed separate petitions seeking to discharge them from all the charges levelled against them. Both the petitions had taken up together and the learned Magistrate found that there is prima facie case against the petitioners and hence dismissed both the petitions by a common order dated 08.09.2011. Aggrieved against the dismissal of the discharge petitions, the petitioners are before this Court seeking to set aside the same.

4 According to learned counsel appearing for the petitioners, marriage took place between A1 and the defacto complainant in the year 1996 and the complaint was lodged after the lapse of nearly nine years, which was not explained properly and unexplained delay cannot be condoned and the complaint could not be entertained. The marriage had taken place in Krishnagiri as per the case of the prosecution, but the complaint was given and charge sheet was filed by the Tiruttani Police officials and hence the respondent police has no jurisdiction to investigate the matter. There is specific bar under Section 198 Cr.P.C for the police to investigate the matter for the offence charged against the petitioners, which is non cognizable in nature. There is no allegations in the complaint against the petitioners herein. There is contradictions in the complaint and the statement recorded under Section 161 of Cr.P.C. The allegations levelled against the petitioners in the complaint are not attracting the ingredients of offence charged against the petitioners and hence the petitioners are entitled for discharge.

5 The learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the Court below after considering all the above grounds raised by the petitioners, had dismissed the petition seeking discharge filed by the petitioners, since there is prima facie case and the



petitioners can very well establish their case before the Court below during trial. Therefore the present revision cases are liable to be dismissed.

6 Head the learned counsel appearing on either side and perused the materials placed on record.

7 It is contended by the learned counsel that marriage took place in the year 1996 and complaint was lodged after the lapse of nine years i.e. in 2005, which is not acceptable, since cruelty, harassment and second marriage are continuing offences from the date of marriage and till the date of filing of the complaint. In the complaint and also in the 161 statement it is clearly stated that A1 demanded dowry and also A2 to A6 scolded her for the same and assaulted her and the defacto complainant was driven out of the matrimonial home and there is allegation of second marriage. The trial Court, after considering the allegations made in the complaint and after hearing the accused in detail, had dismissed the petition seeking discharge, since there exist prima facie case.

8 It is settled proposition of law that the Court while dealing with the petition seeking discharge, has to see the averments made in the complaint and whether there exist prima facie case from the materials produced in the report filed by the prosecution under Section 173 of Cr.P.C and not the defence taken by the accused. This Court does not find any perversity in the order of dismissal of discharge petitions. There is no merit in these revisions and the same are dismissed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Tiruttani, Tiruvellore District.
2. The Station House Officer,
All Women Police Station,
Tiruttani.



3. The Additional Public Prosecutor,
High Court of Madras.

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+2cc to Mr.T.R.Ravi, Advocate, S.R.No.55645 & 55644

Crl.R.C.Nos.143 & 180 of 2012 and
M.P.Nos.1 & 1 of 2012

RSV (CO)
GN (16/08/2019)