

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 24.04.2019
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P.No.19530 of 2018
and
Crl.Mp.No.1483 of 2018

1.K.Jothi
2.J.Subbulakshmi

... Petitioners

Vs

State by

1.The Inspector of Police
W.35 All Women Police Station
Tambaram
Chennai
(Crime No.8 of 2016)

2.Murugan

.... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in P.R.C.No.01 of 2018 on the file of Judicial Magistrate, Tambaram dated 12.01.2018 and quash the same.

For Petitioner : Mr.R.Sankarasubbu
For RR1 : Mr.Mohamed Riyaz
(Addl. Public Prosecutor)
For RR2 : Mr.M.Prabakar

O R D E R

This Criminal Original Petition has been filed seeking direction to quash the proceedings in P.R.C.No.01 of 2018 on the file of the Judicial Magistrate, Tambaram dated 12.01.2019.

2.The learned counsel for the petitioner would submit that there are totally three accused and the petitioners are arrayed as A2 and A3 who are father-in-law and mother-in-law of the deceased. The marriage took place between the first accused and the deceased on 21.04.2011. Thereafter, both went to U.S.A and stayed there for two years and thereafter came to India on 27.10.2013. Again on 16.11.2013, both went to U.S.A and as such, both lived in India hardly for only twenty days. Unfortunately, on 27.09.2015 the deceased committed suicide in U.S.A on the complaint lodged by the second respondent, the first respondent laid charge sheet for the offence under Section 498 (A) ,108(A), 306 IPC and section 3,6(2) Dowry Prohibition Act. He further submitted that the entire occurrence took place in U.S.A. Therefore, before initiation of prosecution, they have to comply

the provisions as contemplated under Section 188 Cr.P.C. Further he submitted that without getting any previous sanction from the State Government or the Central Government of India, the first respondent cannot prosecute the quotation petitions. Therefore, prays for the quashment of entire proceedings in P.R.C.No.01 of 2018.

3.Per cantra the learned counsel for the second respondent submitted that, there are specific allegations for the offences under Section 498 (A) ,108(A),306 IPC and section 3,6(2) Dowry Prohibition Act. They also filed e-mail communications between the petitioners and the first accused in respect of cruelty committed on the deceased. He further submitted that to attract the offence under section under Section 498 (A) ,108(A),306 IPC and section 3,6(2) Dowry provision Act, there are specific allegations as against the petitioners and as such, under Section 482 CRPC, the points raised by the petitioners cannot be considered and he prayed for dismissal of quash petition and he also relied Judgment reported in (2011)9 SCC 527 (Thota Venkateswarlu Vs. State of Andhra Pradesh Through Principal Secretary and another) and (1996) 7 SCC 440 (Mushtaq Ahmad vs. Mohd.Habibur Rehman Faizi and others). He further submitted that in respect of the sanction 188 Cr.P.C, before initiation of prosecution it can be obtained by the prosecution to proceed. Therefore, he prayed for dismissal of quash petition.

4.The learned Additional Public Prosecutor would submit that there are totally three accused, the petitioners are arrayed as second and third accused. Admittedly, the occurrence took place in U.S.A and as such the procedure contemplated in 188 of Cr.P.C has to be complied with. Now, pending committal stage, the prosecution applied for sanction and it is pending with the concerned parties. Insofar as other offence under Section 498 (A) ,108(A),306 IPC and section 3,6(2) of Dowry Prohibition Act. There are specific averments as against the petitioners and as such prayed for dismissal of the quash petition.

5.Heard both sides.

6.Admittedly, the crime has been committed in USA and the deceased committed suicide in U.S.A on 27.09.2015. The petitioners are in-laws of the deceased/father and mother of the first accused. The marriage took place between the first accused and the deceased on 21.04.2011. immediately, after their marriage both the first accused and the deceased went U.S.A on 07.05.2011. Thereafter, they visited India only on 27.10.2013 and stayed for 20 days and thereafter again went back to U.S.A. Though there are so many allegations as against the petitioners

to attract offence under Section 498 (A) ,108(A),306 IPC and section 3,6(2) and Dowry Prohibition Act through e-mail and through phone, in respect of the offence under Section 306 IPC is concerned, even according to the prosecution, the petitioners did not question the cruelty and harassment committed by the first accused and supported the first accused to commit the offence under Section 306 IPC. Except this allegation, there is no direct allegation to instigate the deceased to commit suicide. Therefore, this Court is inclined to quash the charge sheet for the offence under Section 306 IPC alone as against the petitioners. In respect of the other offences as against the petitioner, there are specific allegations and averments to proceed with the trial. Further, in respect of sanction as contemplated under section 188 Cr.P.C is concerned, now, the case is stage of pending committal and the proceedings are pending before the concerned authorities for getting sanction. It is relevant to extract Section 188 Cr.P.C.

"Accordingly, when Indian citizen committed offence outside the India can be prosecuted with the previous sanction of Central Government. In this regard, the learned Counsel for the second respondent relied upon judgment reported in (2011) 9 Supreme Court Cases 527 (Thota Venkateswarlu Vs. State of Andhra Pradesh Through Principal Secretary and another) reads as follows:

"14. The language of Section 188 Cr.P.C is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offences as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of the Central Government. As mentioned hereinbefore, in Ajay Aggarwal case, it was held that sanction under Section 188 Cr.P.C is not a condition precedent for taking cognizance of an offence and, if need be, it could be obtained before the trial begins. Even -in his concurring judgment, R.M.Sahai, J., observed as follows: (SCC p.628, para 29)

"29. Language of the section is plain and simple. It operates where an offence is committed by a citizen of India outside the country. Requirements are, therefore, one-commission of an offence; second-by an Indian Citizen; and third-that it should have been committed outside the country."

15. Although the decision in Ajay Aggarwal Case was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Cr.P.C. The proviso to Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offence mentioned in the earlier part of the section, except with the previous sanction of the Central Government. The fetters, however, are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till the commencement of the trial. It is only after the decision to try the offender in India was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

16. Accordingly, up to the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 Cr.P.C. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government. The Magistrate is, therefore, free to proceed against the accused in respect of offences having been committed in India and to complete the trial and pass judgment therein, without being inhibited by the other alleged offences for which sanction would be required."

7. The Hon'ble Supreme Court of India held that up to the stage of taking cognizance no previous sanction would be required. However, the trial cannot proceed beyond the cognizance stage without previous sanction of the Central Government. As submitted by the learned Additional Public Prosecutor proceedings are pending with the Central Government to obtain sanction to prosecute the petitioners and also the proceedings are pending for committal in P.R.C.No.01 of 2018 on the file of the Judicial Magistrate, Tambaram. Therefore, the point raised by the learned counsel for the petitioners cannot be considered at this stage. At the same time, it is made clear that the trial court is directed not to proceed with the trial without any previous sanction. If the prosecution obtain the sanction from the Central Government under Section 188 Cr.P.C, the trial Court is directed to proceed with the trial as against the petitioners insofar as the offence under section 498 (A) ,108(A),306 IPC and section 3,6(2) and Dowry Prohibition Act alone. Insofar as offence under Section 306 IPC is concerned,

the proceedings in P.R.C.No.01 of 2018 is here by quashed as against the petitioners alone.

8.In view of the above, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsn/mpa

To

1.The Inspector of Police
W.35 All Women Police Station
Tambaram
Chennai

2.The Public Prosecutor
High Court, Madras.

+1cc to Mr.R.Sankarasubbu, Advocate sr.39181
+2cc to Mr.M.Prabakar, Advocate sr.40273

CRL.O.P.No.19530 of 2018
and
Cr1.Mp.No.1483 of 2018

ppa(co)
nr 02/07/2019

सत्यमेव जयते

WEB COPY