

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :26.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.24800 of 2014  
and M.P.Nos.1 of 2014 and 10706 of 2019

Srinivasan

... Petitioner

Vs.

State rep. by:

1.The Inspector of Police,  
Pallapatty Police Station,  
Salem.  
(Crime No.608 of 2012)

2.S.Nagaraj

.... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records in PRC.No.6 of 2014, on the file of the Judicial Magistrate No.II, Salem, quash the proceedings.

For Petitioner : Mr.M.G.Udayashankar

For Respondent : Mr.M.Mohamed Riyaz,

Additional Public Prosecutor  
for R1

Mr.P.Jagadeesan for R2

ORDER

This petition has been filed seeking to quash the proceedings in PRC.No.6 of 2014, pending on the file of the learned Judicial Magistrate No.II, Salem.

2. The case of the prosecution is that the deceased was given IN marriage to the petitioner on 22.10.2007. Through the wedlock, a female child was born and the petitioner is said to be working as a Junior Assistant in the City Police Office at Salem. There seems to be some quarrel between the parties with regard to the sale of a plot. There was also regular quarrel between the petitioner and the deceased, since the petitioner was insisting that the deceased must go for work and therefore he was pressurising her to take a job. The deceased resisted the same on the ground that there was a child aged about 1 1/2 years and she cannot go for a job. On 12.05.2012 at about 05.30 p.m., the deceased contacted her brother and informed him that he should bring the documents pertaining to the plot immediately, since the petitioner was pressurising to sell the

plot. On the very same day at about 07.15 p.m, there was a quarrel between the petitioner and the deceased and the petitioner is said to have uttered the following words:

நீ படித்த ஸ்கூல் சாட்சிகேட் உன்னால் பாதுகாக்க முடியவில்லை, நீ வேலைக்கு போய் என்ன செய்ய போற, நான் கடைக்கு போய்விட்டு வரத்துக்குள்ளே சாட்சிகேட் இல்லைன்னா நீ எதுக்கு பிரயோசனம் இல்லை, நீ இருந்தும் ஒன்னுதான், இல்லாம இருந்தாலும் ஒன்னுதான் .

3. Not able to take it any further, the deceased took the extreme step of committing suicide by hanging at about 07.30 p.m., on the same day.

4. Based on the complaint given by the father of the deceased, an FIR came to be registered for the offence under Sections 498 A and 306 of IPC, before the respondent police. On the completion of the investigation, a final report was also laid before the Court below and the Court below had taken the report on file in PRC.No.6 of 2014.

5. The learned counsel for the petitioner submitted that the report of the RDO has clearly found that the death was not due to any dowry harassment or family quarrel. The learned counsel further submitted that even if the case of the prosecution is taken as it is, no offence of suicide has been made out in this case. The learned counsel further submitted that the quarrel that is said to have taken place between the petitioner and the deceased cannot by itself be construed as a mental cruelty and therefore the offence under Section 498 A of IPC is also not made out. Therefore, the learned counsel seeks for quashing the proceedings pending against the petitioner.

6. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that there are prima facie materials to frame charges against the petitioner for the offence under Sections 498 A and 306 of IPC. The learned counsel submitted that the case is pending at the committal stage from the year 2014 onwards, without any progress and therefore a time limit can be fixed by this Court for the completion of the proceedings.

7. The learned counsel appearing on behalf of the second respondent submitted that there was sustained cruelty that was exerted against the deceased, which ultimately culminated in the deceased taking the extreme step of committing suicide on 12.05.2012. The learned counsel submitted that even if the words used by the petitioner by itself may not constitute the offence of abatement to commit suicide, the words spoken by the petitioner was the last straw on the camels back and there was already a sustained cruelty and the final words spoken by the petitioner, made the deceased take the extreme step of

committing suicide and therefore, this Court has to take an over all view regarding the various incidents that have been spoken by the witnesses. The learned counsel submitted that even a strong suspicion is enough to frame a charge against the petitioner and there are prima facie materials to constitute an offence both under Sections 498 A and 306 of IPC and therefore, there is no ground to interfere with the proceedings by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

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

9. This Court will first consider the submissions made with regard to the offence under Section 306 of IPC. In order to constitute an offence under Section 306 of IPC, there must be materials to show that the petitioner has aided or abetted the commission of suicide by the deceased. In order to substantiate the said offence the mental element on the part of the accused plays a major role. In other words, the accused must have an intention to instigate the deceased by his words or action, to push the deceased to take the extreme step of committing suicide. The words, per se, do not in anyway satisfy the requirements of section 107 of IPC. Therefore, if 107 of IPC is not satisfied, the offence under Section 306 of IPC, cannot be made out.

10. It is true that in a case, where there is a sustained cruelty/pressure exerted on the deceased and ultimately after a final word is uttered by the accused, the deceased takes the extreme step of committing suicide, that will also satisfy the requirements of abatement under Section 107 of IPC.

11. Even to bring the case under sustained pressure exerted by the husband, there must be a positive act on the part of the accused to instigate and aid in the commission of suicide, to establish mens rea to commit abetment.

12. In the considered view of this Court, the case of the prosecution even if it is taken as it is, does not constitute an offence under Section 306 of IPC and therefore this Court is inclined to interfere with the final report insofar as the offence under Section 306 of IPC, is concerned.

13. This Court is now getting into the next issue to see if any offence under Section 498 A of IPC, has been prima facie made out. The witnesses, from whom the statements have been collected by the Investigating Officer, have spoken about various incidents, where there was a quarrel between the petitioner and the deceased. Two specific incidents that have

been consistently spoken by the witnesses is that the petitioner was putting pressure on the deceased to sell a particular property. That apart, the petitioner was also putting pressure on the deceased to go for a job, inspite of the deceased resisting the same on the ground that there is a child aged about 1 1/2 years , who has to be taken care by the deceased.

14. In order to attract the offence under section 498 A of IPC, the husband should have subjected his wife to cruelty. The cruelty is explained under the very same provision as any willful conduct which is of such a nature as is likely to drive the woman to commit suicide.

15. In the present case, there are prima facie materials available against the petitioner to the effect that he has subjected the deceased to mental cruelty, which has gone to the extent of pushing the deceased to take an extreme step of committing suicide. Therefore, this material is enough for the purpose of framing charges against the petitioner for an offence under Section 498 A of IPC.

16. Useful reference can be made to the judgment of the Hon'ble Supreme Court in Amalendu pal alias Jhantu Vs State of West Bengal reported in (2010) 1 Supreme Court Cases 707. The relevant portions of the judgment is extracted hereunder:

'22. After carefully assessing the evidence on record we find that there is no direct evidence to show that the appellant had by his acts instigated or provoked the deceased to commit suicide and has not done any act which could be said to have facilitated the commission of suicide by the deceased.'

23. we now intend to proceed to find out whether a case under section 498-A of IPC is made out against the appellant or not. In Girdhar Shankar Tawade Vs State of Maharashtra, this Court gave a succinct enumeration of the object and ingredients of Section 498-A of IPC when it observed as follows in paras 3 and 17 SCC pp.180 and 183-84.

3. The basic purport of the statutory provision is to avoid 'cruelty' which stands defined by attributing a specific statutory meaning attached thereto as noticed hereinbefore. Two specific instances have been taken note of in order to ascribe a meaning to the word

'cruelty' as is expressed by the legislature; whereas explanation (a) involves three specific situations viz., (i) to drive the woman to commit suicide, or (ii) to cause grave injury, or (iii) danger to life, limb or health, both mental and physical and thus involving a physical torture or atrocity; in Explanation (b) there is absence of physical injury but the legislature thought it fit to include only coercive harassment which obviously as the legislative intent expressed is equally heinous to match the physical injury; whereas one is patent, the other one is latent but equally serious in terms of the provisions of the statute since the same would also embrace the attributes of 'cruelty' in terms of Section 498-A.

17. As regards the core issue as to whether charges under Sections 306 and 498 A of IPC are independent of each other and acquittal of one does not lead to acquittal on the other, as noticed earlier, there appears to be a long catena of cases in affirmation thereto and as such further dilation is not necessary neither are we inclined to do so, but in order to justify a conviction under the later provision there must be available on record two inconsistent versions of the brother and the cousin, as such no credence can be attributed thereon - the documentary evidence (namely, those three letters), in our view, falls that there is no contradiction in the oral testimony available on record, the cousin goes to the unfortunate girl's in-laws' place and requests the husband to treat her well - at best some torture and a request to treat her well. This by itself would not bring home the charge under section 498-A. Demand for dowry has not seen the light of day.'

24. From the evidence on record available before us, we find that the prosecution witnesses have in their testimonies stated that the deceased was

tortured both physically and mentally by the appellant for the first time after his marriage with the deceased when he was refused permission for marriage with said Anitha by the deceased. On having been refused the permission for his second marriage with Anitha, the appellant again, after a few days requested the deceased to accede to his request for marriage with Anita, which request was again refused by the deceased. Consequent to the said position and due to the adamant position taken by the deceased, cruelty was meted out to her by the accused which fact is sufficiently proved from the evidence on record. Therefore, we find no reason to take a different view than what has been taken by the trial court and the High court as far as Section 498 A of IPC is concerned.''

17. In view of the availability of prima facie materials against the petitioner for an offence under Section 498A of IPC, this Court is not inclined to interfere with the proceedings, insofar as, the offence under Section 498 A of IPC is concerned.

18. In the result, this Criminal Original Petition is partly allowed and the proceedings in PRC.No.6 of 2014 is quashed, insofar as, the offence under Section 306 of IPC is concerned. The final report, insofar as the Section 498 A of IPC is sustained. The learned counsel for the petitioner brought to the notice of this Court that the case has already been committed before the Mahila Court, Salem and the same has been taken on file in S.C.No.373 of 2014 and charges have already been framed. In view of this order, the Mahila Court, Salem, is directed to send the entire case papers to the file of the learned Judicial Magistrate No.II, Salem and the learned Magistrate shall assign a new number to the case and proceed further against the petitioner for an offence under Section 498 A of IPC by framing necessary charges. The proceedings shall be completed within a period of three months from the date, on which the charges are framed by the Court below. consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,  
Salem.

2. The Judge,  
Mahila Court, Salem.

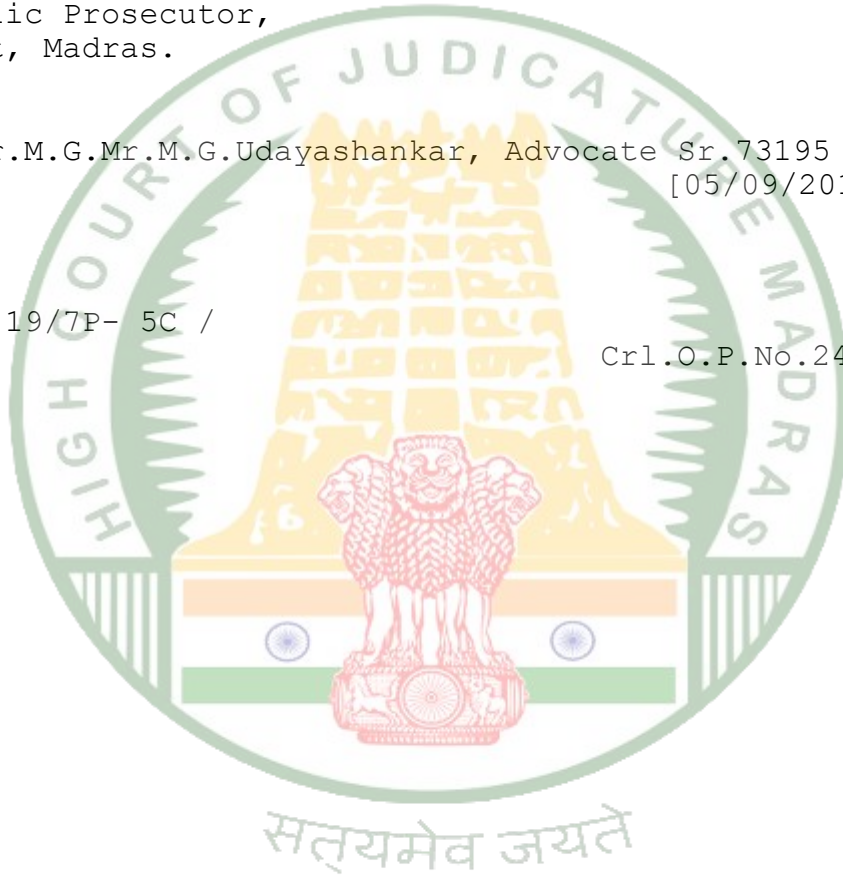
3.The Inspector of Police,  
Pallapatty Police Station, Salem.

4.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.M.G.Mr.M.G.Udayashankar, Advocate Sr.73195  
[05/09/2019]

AKM/03.09.19/7P- 5C /

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