

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.Nos.1070 & 1071 of 2017

1. Illayarani

2. Rasakannu

3. Chandran

4. Kasinathan

5. Kumar

.. Petitioners/Accused
in Crl.R.C.No.1070 of 2017

1. Baskar

2. Gunasekar

3. Murugaraj

4. Ilavarasu

5. Kruppaya

.. Petitioners/Accused
in Crl.R.C.No.1071 of 2017

Vs.

Inspector of Police,
All Women Police Station,
Perambalur.

.. Respondent/Complainant
in both revision

petitions

Common Prayer: Criminal Revision Petitions filed under Section 397 r/w 401 Cr.P.C., to set aside the order dated 28.03.2017 passed in Crl.M.P.No.17 of 2017 in S.C.No.14 of 2016 on the file of the Mahila Court, Perambalur in Crime No. 08/14 & 72/2014 on the file of the Inspector of Police, All Women Police Station.

For Petitioners
in both petitions : Mr.C.D.Johnson

For Respondent
in both petitions: Mrs.P.Kritika Kamal
Government Advocate
(Crl.Side)

C O M M O N O R D E R

These revision petitions have been filed seeking to set aside the order dated 28.03.2017 passed in Cr1.M.P.No.17 of 2017 in S.C.No.14 of 2016 on the file of the Mahila Court, Perambalur.

2. This case presents an interesting legal conundrum, which requires to be answered and unknotted. The dramatist personae in this case will be referred to by their respective names.

3. The facts of the case in a nutshell are as under:

3.1 It is the case of Kokila that Illayaraja promised to marry her and deflowered her on 12.06.2013. Thereafter, they were continuously in relationship till 27.03.2014. It appears that, since Illayaraja reneged on his promise and refused to tie the nuptial knot, Kokila lodged a complaint before the Inspector of Police, All Women Police Station (for short "the AWPS"), Perambalur, against Illayaraja and nine others. The police did not register a regular FIR and instead, took the complaint on file as C.S.R.No.76 of 2014 on 13.04.2014. Perhaps, the police did not want to precipitate the issue and wanted to mediate between the parties with the help of elders on both sides, so as to make Illayaraja marry Kokila. Even in her complaint, Kokila had reiterated this request.

3.2 On 17.04.2014, a panchayat was held in the AWPS, in which, the family members of Illayaraja, not only abused Kokila, but also stated that they will not agree for the marriage. Illayaraja implicitly toed their line and refused to marry Kokila. Therefore, the police registered a regular case in Crime No.8 of 2014 on 17.04.2014 based on the complaint in C.S.R.No.76 of 2014 dated 13.04.2014, against Illayaraja and nine others for the offences under Sections 147, 323, 294(b), 417, 376 r/w 120-B IPC. Illayaraja was arrested on 17.04.2014. The other family members escaped arrest, and were enlarged on anticipatory bail. Illayaraja was granted on regular bail on 14.05.2014.

3.3 While the investigation in Crime No.8 of 2014 was in progress, an unsavory incident took place in the village on 21.05.2014, in which, Illayaraja and his family members had incidentally come face to face with Kokila, and took that opportunity to abuse her in the choicest of epithets, touching upon her morality. On 22.05.2014, Kokila committed suicide by consuming poison. Therefore, a case in Crime No.72 of 2014 was registered by the Inspector of Police, Maruvathur Police Station, Perambalur District, for the offence under Section 306 IPC, against Illayaraja and nine others.

3.4 It may be relevant to state here that, two persons viz., Periyasamy and Kumar, who were named in the FIR in the AWPS Crime No.8 of 2014 were not shown as accused in the subsequent case. Chandran and Kasinathan, who were not shown as accused in Crime No.8 of 2014, have been shown as accused in Crime No.72 of 2014.

3.5 The Deputy Superintendent of Police, Perambalur Sub-Division, issued a proceedings dated 01.07.2015, directing that the cases in Crime No.8 of 2014 and Crime No.72 of 2014 should be clubbed and a single final report be filed as both the offences had taken place during the course of the same transaction as envisaged under Section 220 Cr.P.C.

3.6 Accordingly, the case in Crime No.72 of 2014 was transferred from the file of the Inspector of Police, Maruvathur Police Station, to the file of the Inspector of Police, AWPS, Perambalur. The investigation of the case was conducted by the Inspector of Police, AWPS, Perambalur.

3.7 After completing the investigation, the Inspector of Police, AWPS, Perambalur, filed a final report in P.R.C.No.20 of 2016 before the Judicial Magistrate, Perambalur, against Illayaraja and ten others, for the offences under Sections 147, 323, 294(b), 417, 376, 306 r/w 109 IPC and Sections 4 and 4-B of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

3.8 The case was committed to the Court of Session, Perambalur, in S.C.No.14 of 2016 and was made over to the Mahila Court, Perambalur, for trial.

3.9 Except Illayaraja, all the other accused filed Crl.M.P.No.17 of 2017 in S.C.No.14 of 2016 under Section 227 Cr.P.C., to discharge them from prosecution, on various grounds.

3.10 The Trial Court, by an order dated 28.03.2017, dismissed Crl.M.P.No.17 of 2017 in S.C.No.14 of 2016. Aggrieved by this, the accused therein, have preferred the present revision.

4. Heard Mr.C.D.Johnson, learned counsel for the petitioners and Mrs.P.Kritika Kamal, learned Government Advocate (Crl.Side) for the respondent/State.

5. The learned counsel for the petitioners submitted that the police ought not to have clubbed those two cases and filed a single final report, since the two incidents had taken place on different dates and they did not form part of the same transaction. He contended that there are no prima facie materials to show that the petitioners herein had abetted the

alleged offence of rape that is said to have been committed by Illayaraja. He further contended that there are no materials to frame a charge even for the offence under Section 306 IPC.

6. Per contra, the learned Government Advocate (Crl.Side) refuted the contentions made by the learned counsel for the petitioners and submitted that the two incidents had taken place in the course of the same transaction and therefore, the accused can be tried for different offences under Section 220 Cr.P.C. In support of her contention, she placed strong reliance on the judgment of the Supreme Court in State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and others¹ and she made a pointed reference to the following passage therein:

"25.....We have not come across a single decision of any Court which has embarked upon the difficult task of defining the expression. But it is generally thought that where there is proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it may be possible to infer that they form part of the same transaction. It is, however, not necessary that every one of these elements should co-exist for a transaction to be regarded as the same. But if several acts committed by a person show a unity of purpose or design that would be a strong circumstance to indicate that those acts form part of the same transaction. The connection between a series of acts seems to us to be an essential ingredient for those acts to constitute the same transaction and, therefore, the mere absence of the words "so connected together as to from" in clause (a), (c) and (d) of Section 239 would make little difference."

7. The learned Government Advocate (Crl.Side) also placed reliance on the following passage from the judgment of the Supreme Court in R.Dineshkumar @ Deena Vs. State represented by Inspector of Police and others²:

"19.3. This Court after taking note of the fact that the clause "same transaction" is not defined under the Cr.P.C. opined that the meaning of the clause should depend upon

1 AIR 1963 SC 1850

2 (2015) 7 SCC 497

the facts of each case. However, this Court indicated that where there is a proximity of time or place or unity of purpose and design or continuity of action in respect of a series of acts, it is possible to infer that they form part of the same transaction. This Court also cautioned that every one of the abovementioned elements need not co-exist for a transaction to be regarded as the "same transaction".

She submitted that to constitute "same transaction", it is not necessary that all the elements viz., proximity of time, place, unity of purpose, design and continuity of action should exist together. She elaborated her contention by submitting that even in the complaint which formed the basis for registration of the FIR in Crime No.8 of 2014, Kokila had only sought Police intervention to ensure that Illayaraja marries her. It is Kokila's allegation that the family members of Illayaraja abused, assaulted and threatened her in the panchayat on 17.04.2014 in the AWPS and vowed that the marriage will not happen. They did the same thing again on 21.05.2014, which resulted in the suicide of Kokila on 22.05.2014. Thus, they had the unity of purpose, design and continuity of action and hence, the series of acts were committed in the course of the same transaction, triable together under Section 223(d), *ibid*.

8. This Court gave its anxious consideration to the rival submissions.

9. The present avatar of the erstwhile Section 239 Cr.P.C., 1898, is Section 223 in the Code of 1973. In this case, we are concerned with Section 223 sub-clause (d) and not with Section 220 Cr.P.C., as was premised by the Deputy Superintendent of Police, in his proceedings dated 01.07.2015. Section 220 Cr.P.C. applies to the case of a single accused committing more offences in the course of a transaction. When there are more than one accused, Section 220 Cr.P.C. will have no application and only Section 223 will come to play. Therefore, there is a fundamental legal error in the proceedings dated 01.07.2015 of the D.S.P.

10. The expression "same transaction" appears both in Section 220 Cr.P.C. as well in Section 223(d) Cr.P.C. Cheemalapati Ganeswara Rao (*supra*), relied upon by the learned Government Advocate (Crl.Side) is a locus classicus on the law relating to the framing of a charge and every Trial Judge, should not only study it, but, imbibe and assimilate the principles laid down therein. In Cheemalapati Ganeswara Rao (*supra*), the Supreme Court has entered the following caveat:

"Whether a transaction can be regarded as the same would necessarily depend upon the particular facts of each case and it seems to us to be difficult task to undertake a definition of that which the Legislature has deliberately left undefined."

11. In the same judgment, the Supreme Court has provided the answer for the submission advanced by the learned Government Advocate (Crl.Side), which is as follows:

"25.....The series of acts which constitute a transaction must of necessity be connected with one another and if some of them stands out independently, they would not form part of the same transaction but would constitute a different transaction or transactions. (emphasis supplied)"

12. Now, the question is whether the series of acts which constitute the offences in Crime No.8 of 2014 has any connection with the offence in Crime No.72 of 2014. The answer to this question is an emphatic "No". The offence under Section 306 IPC is of a different genre qua the offences of cheating and rape. In a given case, if a person had ravished a lady on the promise of marrying her and if she commits suicide, immediately on the refusal of the person to marry her, then, we can safely infer that all the offences had taken place in the course of the same transaction. However, in this case, the offence of rape was allegedly committed between 12.06.2013 and 27.03.2014 and immediately thereafter, Illayaraja had gone back on his promise of marrying Kokila. The FIR was registered on 17.04.2014 and Illayaraja was arrested and released on bail. Thereafter, Illayaraja and his family members incidentally met Kokila on 21.05.2014 and reiterated their resolve not to marry her to Illayaraja, on account of which, she committed suicide 22.05.2014. As observed by the Supreme Court in Cheemalapati Ganeswara Rao (supra), the incident on 21.05.2014 stands out independently from the incident that took place on 17.04.2014 in the panchayat that was held in the AWPS.

13. In this case, the family members of Illayaraja were not charged for abetting the offences under Sections 417 and 376 IPC that were allegedly committed by Illayaraja. They were charged in Crime No.8 of 2014 for abusing and assaulting Kokila when she requested them to perform her marriage with Illayaraja. The mere refusal of the family members of Illayaraja to give their consent for the marriage is per se not an offence at all and it is merely the motive for assaulting and intimidating Kokila. In Crime No.72 of 2014, the allegations against the family members

of Illayaraja are that, the abuses hurled by them at Kokila on 21.05.2014 had pushed her to the wall and had triggered her suicide on 22.05.2014, thereby attracting Section 306 IPC. Just because they were consistently not agreeing for the marriage, that by itself, cannot be a reason to hold that both incidents occurred in the course of the same transaction.

14. Coming to the contention of the learned counsel for the petitioners that there are no prima facie materials to frame charges against the petitioners, either for the offences enumerated in Crime No.8 of 2014 or for the offence under Section 306 IPC in Crime No.72 of 2014, this Court is unable to subscribe to the said contention, because, the materials collected by the police clearly show that the accused named in Crime No.8 of 2014 had abused and assaulted Kokila when she sought their intervention and similarly, there are prima facie materials to show that the accused in Crime No.72 of 2014 had, by their uncouth conduct, pushed Kokila to the brink, resulting in her suicide. It is trite that a strong suspicion is enough to frame charges. In this case, there are sufficient materials against the accused to frame charges in respect of the incidents covered by Crime No.8 of 2014 and Crime No.72 of 2014. Hence, the petitioners cannot be discharged from the respective prosecutions.

15. After having held so, what next? It is easy to be critical than to be correct. This Court has a solemn duty to guide the Trial Court. The accused in this case did not raise this plea of misjoinder of charges at the stage of committal and therefore, the committal proceedings cannot be set aside.

16. In the light of the discussion made above, this Court issues the following directions to the Mahila Court, Perambalur:

(i) The case in S.C.No.14 of 2016 shall be split up and a new case number shall be assigned for the trial of the case in Crime No.72 of 2014;

(ii) Fresh copies of documents under Section 207 Cr.P.C. need not be furnished to the accused in the split up case;

(iii) Both the trials may be held simultaneously as far as possible and not jointly;

(iv) The Trial Court shall frame separate charge for the split up case under Section 306 r/w 34 IPC in Crime No.72 of 2014 against the accused who were involved in that offence;

(v) There may be some documents like police statements under Section 161 Cr.P.C. common for both the cases. The original of such documents shall be filed in the parent case viz., S.C.No.14 of 2016 and a photocopy of which, duly attested

by the Superintendent of Copyist Department may be filed in the newly formed split up case;

(vi) The Public Prosecutor in charge of the case shall interview the witnesses as laid down by the Supreme Court in Banti @ Guddu Vs. State of Madhya Pradesh³ as well by this Court in Bala & others Vs. State⁴ and examine the witnesses separately in both cases;

(vii) Some facts deposed by the witnesses are bound to be repeated and overlapping, which is inevitable in the facts and circumstances of the case;

(viii) The Trial Court shall ensure that the witnesses are cross-examined by the defence on the day of their examination-in-chief as held by the Supreme Court in Vinod Kumar vs. State of Punjab⁵;

(ix) If the accused adopt any dilatory tactics to protract the trial for any reason, it is open to the trial Court to remand them to custody by relying upon the judgment of the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh⁶;

(x) If any accused absconds, a fresh FIR can be registered under Section 229-A IPC; and

(xi) The trial in both the cases shall be completed by the Trial Court within six months from the date of receipt of a copy of this order.

With the above directions, these criminal revision petitions are disposed of.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

To

1.The Mahila Court,
Perambalur.

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2. The Inspector of Police,
All Women Police Station,
Perambalur.

+1 CC to Mr.C.D.Johnson, Advocate sr 75684.

Crl.R.C.Nos.1070 & 1071 of 2017

SVI (CO)
SP (12/09/2019)