

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.13949 of 2017 and
Crl.O.P.Nos.19192 & 21010 of 2016 &
Crl.M.P.Nos.8936 & 8937 of 2017 and
Crl.M.P.Nos.9022 & 9732 of 2016

Crl.O.P.No.13949/17

1. M.Maraiyarasu
 2. Manohar
 3. Mahalakshmi
- Petitioners/A1 to A3

Crl.O.P.No.19192/16

M.Vivek

.... Petitioner/A8

Crl.O.P.No.21010/16

1. Raghupathy
 2. Jeyamani
 3. Asokan
 4. Elampoorani
- ... Petitioners/A4 to A7

Vs.

1. Sudha

2. The State rep. by
The Inspector of Police,
W-28, All Women Police Station,
Ambattur,
Chennai.
- ... Respondents/Respondents in
Crl.O.P.Nos.13949/17 &
19192 &21010 of 2016

COMMON PRAYER in all Crl.O.Ps: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records relating to the Criminal Case in C.C.No.99 of 2016 on the file of the learned Judicial Magistrate, Ambattur and quash the same

by allowing this Criminal Original Petition.

For Petitioners : Mr.R.John Sathyan for
Mr.D.R.Arun Kumar in
Crl.O.P.No.13949/17

: Mr.R.John Sathyan for Mr.S.Suresh
in Crl.O.P.Nos.19192 & 21010/16

For R1 : M/s.A.Laxmi Raj Rathnam in all Crl.O.Ps

For R2 : Mr.M.Mohamed Riyaz
Addl. Public Prosecutor in all Crl.O.Ps

C O M M O N O R D E R

These petitions have been filed seeking to quash the proceedings in C.C.No.99 of 2016, pending on the file of the learned Judicial Magistrate, Ambattur.

2. The 1st petitioner is the husband, the 2nd petitioner is the father-in-law, the 3rd petitioner is the mother-in-law, the 4th petitioner is the elder brother of the 2nd petitioner, the 5th petitioner is the wife of the 4th petitioner, the 6th petitioner is the younger brother of the 2nd petitioner, the 7th petitioner is the sister-in-law and the 8th petitioner is the brother-in-law. The 2nd respondent/Sudha has given a complaint against all these petitioners and an FIR came to be registered by the respondent police for an offence under Sections 498(A) and 406 of IPC.

3. The respondent police, on completion of the investigation, filed a final report as against all these petitioners by showing them as A1 to A8 in the final report and the same has been taken the cognizance by the Court below for an offence under Sections 498(A) and 406 of IPC.

4. The learned counsel for the petitioners would submit that the marriage between the 1st petitioner and the 2nd respondent took place on 11.02.2015 at Vedaranyam. The 1st petitioner and the 2nd respondent lived hardly for ten days at Trichy and on 22.02.2015, they travelled to Singapore and they lived in Singapore till 08.06.2015. In the mean time, there was some misunderstanding between the parties and the 2nd respondent returned back to India and started living with the parents. The learned counsel for the petitioners would further submit that the actual dispute in this case between the 1st petitioner and the 2nd respondent and the in-laws have been unnecessarily roped in this case as accused persons. The learned counsel for the

petitioners would further submit that admittedly the entire dispute happened when the 1st petitioner and 2nd respondent were living in Singapore and there is no reason as to why the in-laws should be roped in as accused for an offence under Sections 498 (A) and 406 of IPC.

5. The learned counsel for the petitioners submitted that the roping in in-laws without there being any strong materials against them has been deprecated by the Hon'ble Supreme Court in various judgements and this is yet another case where the in-laws have been unnecessarily made as accused persons and they are made to face criminal proceedings. The learned counsel in order to substantiate his the arguments relied upon the judgements of the Hon'ble Supreme Court.

6. The learned counsel appearing for the 2nd respondent would submit that the 2nd respondent underwent cruelty in the hands of the 1st petitioner and all his family members. The learned counsel would further submit that while travelling to Singapore, the in-laws also travelled along with them and they caused cruelty to the second respondent while she was living in Singapore with the 1st petitioner. The learned counsel would further submit that sufficient allegations have been made against the in-laws both in the complaint as well as in the final report and the same is substantiated by the statements recorded by the respondent police in the course of investigation. Therefore, the learned counsel would submit that prima facie materials are available against the petitioners and the petitioners will have to necessarily undergo trial before the Court below and this Court should not interfere with the proceedings at this stage.

7. The learned Additional Public Prosecutor would submit that the respondent police have collected sufficient materials against all the petitioners in the course of investigation and the Court below has taken cognizance against the petitioners for an offence under Sections 498(A) and 406 of IPC and this Court should not interfere with the proceedings at this stage.

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

9. This Court, on going through the materials and the statement given by the witnesses, is able to see that substantial allegations have been made as against A1, viz., the husband and A3, viz., the mother-in-law. Insofar as other accused persons are concerned, only general allegations have been made and there is absolutely no materials to show the commission of offence by the other accused persons. This is a

classical case where the entire family has been roped in and the respondent police have mechanically filed the final report as against all the family members without even collecting sufficient materials against them. Unfortunately, the Court below while taking cognizance, has not applied his mind to the materials available on record and the Court below is also mechanically taken the cognizance as against all the family members.

10. It will be useful to refer to the judgements of the Hon'ble Supreme Court in this regard.

(i) The judgment of the Hon'ble Supreme Court in the case of GEETA MEHROTRA AND ANOTHER V. STATE OF UTTAR PRADESH reported (2012) 10 SCC 741, the relevant portion is extracted hereunder:

14. On a perusal of the complaint and other materials on record as also analysis of the arguments advanced by the contesting parties in the light of the settled principles of law reflected in a catena of decisions, it is apparent that the High Court has not applied its mind on the question as to whether the case was fit to be quashed against the appellants and has merely disposed of the petition granting liberty to the appellants to move the trial court and raise contentions on the ground as to whether it has territorial jurisdiction to continue with the trial in the light of the averment that no part of the cause of action had arisen at Allahabad and the entire incident even as per the FIR had taken place at Faridabad.

15. 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.

16. Under the facts and circumstance of similar nature in the case of Ramesh vs. State of Tamil Nadu reported in (2005) SCC (Cr1.) 735 at 738 allegations were made in a complaint against the husband, the in-laws, husband's brother and sister who were all the petitioners before the High Court wherein after registration of the F.I.R. and investigation, the charge sheet was filed by the Inspector of Police in the court of Judicial Magistrate III, Trichy. Thereupon, the learned magistrate took cognizance of the offence and issued warrants against the appellants on 13.2.2002. Four of the accused-appellants were arrested and released on bail by the magistrate at Mumbai. The appellants had filed petition under Section 482, Cr.P.C. before the Madras High Court for quashing the proceedings in complaint case on the file of the Judicial Magistrate III, Trichy. The High Court by the impugned order dismissed the petition observing that the grounds raised by the petitioners were all subject matters to be heard by the trial court for better appreciation after conducting full trial as the High Court was of the view that it was only desirable to dismiss the criminal original petition and the same was also dismissed. However, the High Court had directed the Magistrate to dispense with the personal attendance of the appellants.

17. Aggrieved by the order of the Madras High Court dismissing the petition under Section 482Cr.P.C., the special leave petition was filed in this Court giving rise to the appeals therein where threefold contentions were raised viz.,

- (i) that the allegations are frivolous and without any basis;
- (ii) even according to the FIR, no incriminating acts were done within the jurisdiction of Trichy Police Station and the court at Trichy and, therefore, the learned magistrate lacked

- territorial jurisdiction to take cognizance of the offence and
- (iii) taking cognizance of the alleged offence at that stage was barred under Section 468 (1) Cr.P.C. as it was beyond the period of limitation prescribed under Section 468 (2) Cr.P.C.

Apart from the subsequent two contentions, it was urged that the allegations under the FIR do not make out any offence of which cognizance could be taken.

18. 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.

21. It would be relevant at this stage to take note of an apt observation of this Court recorded in the matter of G.V. Rao vs. L.H.V. Prasad & Ors. reported in (2000) 3 SCC 693 wherein also in a matrimonial dispute, this Court had held that the High Court should have quashed the complaint arising out of a matrimonial dispute wherein all family members had been roped into the matrimonial litigation which was quashed and set aside. Their Lordships observed therein with which we entirely agree that:

"12. there has been an outburst of

matrimonial dispute in recent times. Marriage is a sacred ceremony, main purpose of which is to enable the young couple to settle down in life and live peacefully. But little matrimonial skirmishes suddenly erupt which often assume serious proportions resulting in heinous crimes in which elders of the family are also involved with the result that those who could have counselled and brought about rapprochement are rendered helpless on their being arrayed as accused in the criminal case. There are many reasons which need not be mentioned here for not encouraging matrimonial litigation so that the parties may ponder over their defaults and terminate the disputes amicably by mutual agreement instead of fighting it out in a court of law where it takes years and years to conclude and in that process the parties lose their "young" days in chasing their cases in different courts."

The view taken by the judges in this matter was that the courts would not encourage such disputes."

(ii). The judgment of the Hon'ble Supreme Court in the case of RAJESH SHARMA & OTHERS V. STATE OF U.P. Reported in 2017 (4) CTC 667. The relevant portions are extracted hereunder:

14. Section 498A was inserted in the statute with the laudable object of punishing cruelty at the hands of husband or his relatives against a wife particularly when such cruelty had potential to result in suicide or murder of a woman as mentioned in the Statement of Objects and Reasons of the Act 46 of 1983. The expression 'cruelty' in Section 498A covers conduct which may drive the women to commit suicide or cause grave injury (mental or physical) or danger to life or harassment with a view to coerce her to meet unlawful demand.⁸ It is a matter of serious concern that large number of cases continue to be filed under Section 498A alleging harassment of married women. We have already referred to some of the statistics from the Crime Records Bureau. This Court had earlier noticed the fact that most of such complaints are filed in the heat of the moment over trivial issues. Many of such complaints are not bona fide. At the time of filing of the complaint, implications and

consequences are not visualized. At times such complaints lead to uncalled for harassment not only to the accused but also to the complainant. Uncalled for arrest may ruin the chances of settlement. This Court had earlier observed that a serious review of the provision was warranted.

The matter also appears to have been considered by the Law Commission, the Malimath Committee, the Committee on Petitions in the Rajya Sabha, the Home Ministry, which have been referred to in the earlier part of the Judgment. The abuse of the 8 Explanation to Section 498A 9 Preeti Gupta (supra) provision was also noted in the judgments of this Court referred to earlier. Some High Courts have issued directions to check such abuse. In Arnesh Kumar (supra) this Court gave directions to safeguard uncalled for arrests. Recommendation has also been made by the Law Commission to make the offence compoundable.

15. Following areas appear to require remedial steps :-

- i. Uncalled for implication of husband and his relatives and arrest.
- ii. Continuation of proceedings in spite of settlement between the parties since the offence is non-compoundable and uncalled for hardship to parties on that account.

11. From the above judgments, it is clear that the Hon'ble Supreme Court has deprecated this practice of roping in all the family members as accused in the matrimonial disputes. The Hon'ble Supreme Court also took note of the fact that most of the complaints are filed in the heat of the moment over trivial issues and many of the complaints are not bona fide. The Hon'ble Supreme Court also took note of the fact that these complaints lead to uncalled for harassment to the family members of the husband, who have nothing to do with the dispute between the husband and wife.

12. The above judgments squarely applies to the facts of the present case. This Court is not able to find any material against A2, A4 to A8, except for some general allegations made against them. This Court is able to see that prima facie materials available as against the 1st petitioner/husband and the 3rd petitioner/mother-in-law. The genuineness or otherwise of the

allegations made against these petitioners cannot be tested under Section 482 of Cr.P.C., and the same can only be tested in the course of proceedings during trial.

13. These Criminal Original Petitions are partly allowed and the proceedings insofar as A2, A4 to A8 is quashed and insofar as A1 and A3 are concerned, the same is dismissed. The Court below is directed to proceed further with the case insofar as the A1/husband and A3/mother-in-law are concerned and complete the proceedings within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kal/ssr

To

1. The Judicial Magistrate,
Ambattur, Chennai.
2. The Inspector of Police,
W-28, All Women Police Station,
Ambattur, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.D.R.Arunkumar, Advocate Sr.No.1647

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