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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
15.04.2019	22.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. (MD) No.5603 of 2014 & M.P. (MD) No. 1 of 2014

1.Nagarajan
2.Kasthuri
3.Kavitha

:Petitioners/Respondents 2 to 4

Vs.

1.The Inspector of Police
All Women Police Station
Thallakulam
Madurai

:1st Respondent/Complainant

2.Pradeepa

:2nd Respondent/Defacto
Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records pertaining to C.C. No.491 of 2013 on the file of the Judicial Magistrate Court No.II, Madurai and quash the same.

For petitioners :Mr. G. Karuppasamy Pandian
for Mr. F. Deepak

For R1 :Mr. M. Chandrasekaran
Additional Public Prosecutor

For R2 :Ms. M. Benazir Begum

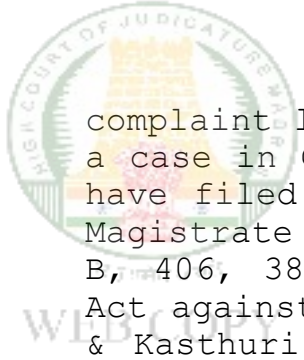
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ORDER

This criminal original petition has been filed to call for the records pertaining to C.C. No.491 of 2013 on the file of the Judicial Magistrate Court No.II, Madurai and quash the same.

2.For the sake of convenience, the parties will be referred to by their name.

3.Senthil Kumaran (A1) got married to Pradeepa (de facto complainant) on 18.05.2008 and their marriage ran into rough weather, resulting in the spouses getting estranged. On the



complaint lodged by Pradeepa, the first respondent police registered a case in Cr. No.15 of 2013 and after completing the investigation, have filed final report in C.C. No.491 of 2013 before the Judicial Magistrate No.II, Madurai for the offences under Section 498-A, 120-B, 406, 387 and 506(I) IPC and Section 4 of the Dowry Prohibition Act against Senthil Kumaran (A1), his parents, viz., Nagarajan (A2) & Kasthuri (A3) and his sister Kavitha (A4), seeking quashment of which, A2 to A4 are before this Court.

4. Heard Mr. Karuppasamy Pandian, learned counsel representing Mr. F. Deepak, learned counsel on record for petitioners/A2 to A4, Mr.M.Chandrasekaran, learned Additional Public Prosecutor appearing for the first respondent State and Ms. M. Benazir Begum, learned counsel for Pradeepa.

5. This Court carefully plodded through the final report and the accompanying Section 161(3) Cr.P.C. statements of witnesses.

6. On reading the charge sheet, it is seen that it is alleged therein that Pradeepa got married to Senthil Kumaran (A1) on 18.05.2008 and at the time of marriage, the groom's side demanded 60 sovereigns of gold and a sum of Rs.3 lakhs as dowry, which was given by Pradeepa's parents; after marriage, Pradeepa lived with her husband Senthil Kumaran (A1) in joint family with Nagarajan (A2) and Kasthuri (A3) for two months and thereafter, the couple shifted to Chennai where Senthil Kumaran (A1) was employed; while they were living in Chennai, Nagarajan (A2) and Kasthuri (A3) continued their demand with another 40 sovereigns of gold and a car as additional dowry and Kavitha (A4) who was married and living in Chennai, used to often come to the house of Senthil Kumaran (A1) and harass Pradeepa for dowry; when Senthil Kumaran (A1), got a job in Madurai, the couple came back to Madurai, where, the demand for more dowry by Nagarajan (A2) and Kasthuri (A3) continued and therefore, mediation talks were held between the elders of both sides, but, to no avail; after the failure of the mediation talks, Pradeepa lived with her parents and did not join her husband in her matrimonial home; when Pradeepa came to know that her husband is likely to get married for the second time, she went to his house and demanded return of the jewels and household articles which were given at the time of marriage, which, the accused refused to give; hence, the complaint and charge sheet.

7. Ms. Benazir Begum, learned counsel for Pradeepa submitted that Pradeepa initiated proceedings under the Protection of Women from Domestic Violence Act seeking various reliefs including right to residence and despite the order passed by the Magistrate in her favour, the accused are refusing to take her back.

8. *Per contra*, the learned counsel for A2 to A4 submitted that the police complaint itself was lodged by Pradeepa only after Senthil Kumaran (A1) filed divorce proceedings in H.M.O.P. No.573 of

<https://hcservices.ecourts.gov.in/hcservices/>

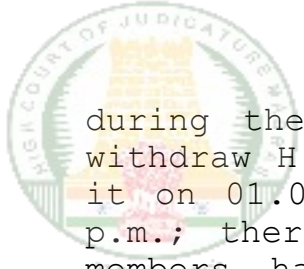


2012 before the Family Court, Madurai. He further contended that during the pendency of the divorce proceedings, Pradeepa lodged a police complaint implicating all the family members of her husband Senthil Kumaran (A1), in which, the first respondent police called Senthil Kumaran (A1) for enquiry; fearing arrest, Senthil Kumaran (A1) approached the High Court for anticipatory bail; Pradeepa entered appearance and opposed the grant of anticipatory bail; the matter was referred to the Mediation and Conciliation Centre, where, the talks failed; during police enquiry, Senthil Kumaran (A1) was forced to withdraw the divorce case in H.M.O.P. No.573 of 2012 and so, he withdrew it on 01.03.2013; after the withdrawal of the case by Senthil Kumaran (A1), on the same day, the police registered the FIR in Cr. No.15 of 2013 under Sections 498-A and 406 IPC and Section 4 of the Dowry Prohibition Act against all the family members of Senthil Kumaran (A1); therefore, Senthil Kumaran (A1) and others had to once again approach the High Court seeking anticipatory bail to avoid arrest by the police; Senthil Kumaran (A1) has filed a fresh divorce petition in H.M.O.P. No.228 of 2013 before the Family Court, Madurai, in which, he has stated all the facts, including the fact of withdrawal of H.M.O.P. No.573 of 2012; hence, the entire prosecution is an abuse of process of law.

9.Refuting the contentions, Ms. Benazir Begum submitted that the FIR in Cr. No.15 of 2013 was registered at 6.00 a.m. on 01.03.2013 and only knowing about it, Senthil Kumaran (A1) withdrew the divorce case in the afternoon on 01.03.2013; the accused filed a discharge petition under Section 239 Cr.P.C. before the Trial Court which was dismissed; hence, this is not a fit case to quash the prosecution.

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

11.On a careful reading of the final report and the accompanying statements of witnesses and the petitions for divorce, it is seen that the marriage between Senthil Kumaran (A1) and Pradeepa was solemnized in the year 2008, after which, Pradeepa lived with Senthil Kumaran (A1) in her matrimonial home in Madurai along with Nagarajan (A2) and Kasthuri (A3) for two months; Kavitha (A4), sister of Senthil Kumaran (A1) was already married and was settled in Chennai; the Senthil Kumaran - Pradeepa couple had serious differences of opinion and they got separated on 05.08.2012; Senthil Kumaran (A1) filed H.M.O.P. No.573 of 2012 seeking divorce on the ground of cruelty; during the pendency of the said divorce proceedings, Pradeepa lodged a police complaint, based on which, no FIR was initially registered, but, only a petition enquiry was conducted; fearing arrest, Senthil Kumaran (A1) and his family members approached the High Court seeking anticipatory bail and the parties were referred to the Mediation and Conciliation Centre; after the failure of the mediation proceedings, the matter was referred back to the Court; but, the anticipatory bail application was closed on the ground that only a petition enquiry was pending;



during the petition enquiry, Senthil Kumaran (A1) was forced to withdraw H.M.P. No.573 of 2012 by the police and after he withdrew it on 01.03.2013, the FIR was registered on the same day at 6.00 p.m.; therefore, once again, Senthil Kumaran (A1) and his family members had to run for anticipatory bail; thereafter, Senthil Kumaran (A1) has filed a fresh divorce proceedings in H.M.O.P. No.228 of 2013 before the Family Court, Madurai, wherein, he has narrated all the facts.

12.It is true that the discharge petition filed under Section 239 Cr.P.C. was dismissed by the Trial Court and a perusal of the order reveals that the Trial Court has not discussed anything and has merely stated that there are sufficient allegations in the complaint and Section 161(3) Cr.P.C. statement of the witnesses. Dismissal of the discharge application cannot be construed as a complete bar to prefer a petition under Section 482 Cr.P.C. As regards the contention of Ms. Benazir Begum that the FIR in Cr. No.15 of 2013 was registered at 6.00 a.m. on 01.03.2013, records of the Trial Court show that the same reached the Magistrate only on 02.03.2013 at 10.00 a.m. Hence, the contention of Ms. Benazir Begum that the accused withdrew H.M.O.P. No.573 of 2012 on 01.03.2013 fearing the criminal prosecution does not cut ice with this Court, because, no prudent man will act in that manner. The explanation given by the accused in the subsequent divorce petition, viz., H.M.O.P. No.228 of 2013, that during police enquiry, he was pressurised to withdraw H.M.O.P. No.573 of 2012 appears more plausible than the interpretation of Ms. Benazir Begum.

13.On a conspectus of the facts obtaining in this case, this Court finds that the family members of Senthil Kumaran (A1) have been unnecessarily roped into the prosecution for simply harassing them. In such perspective of the matter, the proceedings in C.C. No.491 of 2013 on the file of the Judicial Magistrate Court No.II, Madurai is hereby quashed insofar as Nagarajan (A2), Kasthuri (A3) and Kavitha (A4).

Ex consequenti, this criminal original petition stands allowed. Connected CrI.M.P. is closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate Court No.II
Madurai



2.The Inspector of Police
All Women Police Station
Thallakulam, Madurai

3.The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1 CC to M/s.F.DEEPAK, Advocate in SR-61689

Cr1.O.P. (MD) No.5603 of 2014
22.04.2019

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