



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.03.2019

Delivered on : 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.3283 of 2016

and

Crl.M.P. (MD)Nos.1674 & 1675 of 2016

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1.M.Alwin

2.D.Micheal George

3.Kani

... Petitioners

Vs.

1.State through

The Inspector of Police,
All Women Police Station,
Valliyoor.
Crime No.329 of 2014

2.Anto Gnana Uthaya

... Respondents

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in CC.No.329 of 2014 on the file of the Judicial Magistrate, Valliyoor and quash the same.

For Petitioners : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.Anandharaj
Additional Public Prosecutor for R.1

M/s.P.Kalaiyarasi Bharathi for R.2

ORDER

The second respondent herein is the wife of the first respondent and alleging harassment and dowry demand, she lodged a complaint before the first respondent police, which was taken on file in Crime No.28 of 2013. The first respondent police, after conducting enquiry, has filed the final report before the learned Judicial Magistrate, Valliyoor, in C.C.No.329 of 2014, as against the petitioners and in order to quash the same, the petitioners have filed the present criminal original petition.

2. According to the second respondent / complainant, the marriage between her and the first petitioner was solemnised on 10.12.2012 and at the time of marriage, Rs.3,00,000/- in cash, 100



sovereigns of gold jewels, Rs.1,00,000/- worth utensils and a ring of 7 ½ sovereign for the first petitioner were given by the respondent's family. It is her case that the first petitioner was employed in Kuwait at the relevant point of time and therefore, he left for Kuwait within one month from the marriage, ie., on 11.01.2013 and after his departure, the second petitioner herein, who is her father-in-law, sexually harassed her and when it was objected by the second respondent, she was beaten up and threatened and thereafter, she was harassed by the petitioners 2 & 3, both physically and mentally. When she complained all these incidents to her husband / first petitioner, he assured to settle the dispute while his return to India, but, on his return, the first petitioner started supporting his father and driven the respondent out of the matrimonial home. When the respondent and her family approached for reunion, they were harassed and beaten up by the petitioners and therefore, the present complaint came to be lodged. The first respondent police, after enquiry, has filed the final report for the commission of offence under Sections 498 (A), 406, 294(b), 506(ii) IPC as against petitioners 1 & 3 and under Sections 498(A), 406, 294(b), 506(ii) IPC & Section 4 of the Tamil Nadu Prohibition of Women Harassment Act as against the second petitioner.

3. The learned counsel for the petitioners, *inter alia*, refuted the allegations levelled against them by the second respondent. The learned counsel would submit that the marriage took place on 10.12.2012 and when the second respondent was examined on 11.02.2013 by a Gynaecologist, it was noticed that she was conceived and the foetus was 13 weeks and 8 days old. This fact was affirmed by another Doctor, on 16.02.2013, on a second checkup. It is the case of the petitioners that even prior to the marriage, the second respondent was pregnant through somebody else and suppressing this fact, she married the first petitioner. Therefore, the first petitioner has filed D.O.P.No.102 of 2013 before the learned IV Additional District Judge, Tirunelveli, to declare the marriage held between them as null and void. The learned IV Additional District Judge, after conducting detailed enquiry, has concluded that the marriage held between the first petitioner and the second respondent is by way of fraud and misconception and therefore, by judgment dated 06.10.2015, passed a decree declaring the marriage as null and void. Triggered by the filing of the petition for divorce, the second respondent has foisted a false complaint as against the petitioners and therefore, the learned counsel prays for allowing the present application.

4. The learned Additional Public Prosecutor appearing for the first respondent, on instructions, submitted that based on the complaint lodged by the second respondent, a case in Crime No.28



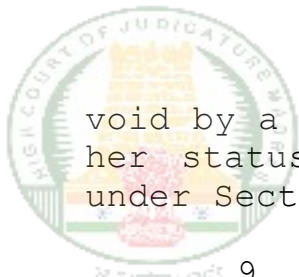
of 2013 has been registered and after enquiry, charge sheet has been filed as against the petitioners for the commission of offence punishable under Sections 498(A), 406, 294(b), 506(ii) IPC as against petitioners 1 & 3 and under Sections 498(A), 406, 294(b), 506(ii) IPC & Section 4 of the Tamil Nadu Prohibition of Women Harassment Act as against the second petitioner.

5. The learned counsel appearing for the second respondent / complainant would refute the allegation of pregnancy and intimacy with some other person before marriage. She would further contend that as against the judgment and decree of the learned IV Additional District Judge, Tirunelveli, in D.O.P.No.102 of 2013, dated 06.10.2015, she has filed an appeal before this Court in C.M.A.(MD)No.16 of 2016 and the same is pending before this Court. With regard to the allegation that after the filing of the petition for divorce, the second respondent has lodged a false complaint, the learned counsel drew the attention of this Court and submitted that the complaint was lodged on 27.05.2013, whereas, the petition for divorce was filed in the month of June, 2013.

6. Heard the learned counsel appearing for the respective parties and perused the documents placed on record.

7. The marriage between the first petitioner and the second respondent took place on 10.12.2012 and according to the petitioners, on medical examination of the second respondent on 11.02.2013, it was found that she was pregnant and the foetus was 13 weeks and 5 days old. In other words, it is stated that the second respondent was pregnant, through somebody else, even before the marriage. Therefore, the first petitioner has filed a petition for divorce before the learned IV Additional District Judge, Tirunelveli, in the month of June, 2013 and the learned Judge, considering the medical evidence adduced on behalf of the petitioners and the documents placed, allowed the petition and declared the marriage held between the first petitioner and the second respondent as null and void. In the meantime, the first respondent police, based upon the complaint lodged by the second respondent on 27.05.2013, has conducted the investigation and has filed the final report as stated supra.

8. The learned counsel for the petitioners would draw the attention of this Court and submit that as per Section 498A IPC, whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. But, in the case on hand, though the marriage between the first petitioner and the second respondent was solemnised on 10.12.2012, the same was declared as null and



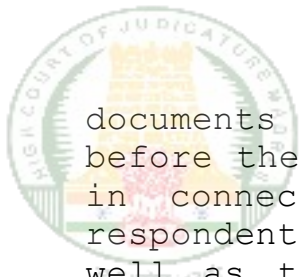
void by a competent Court, thereby, the second respondent has lost her status as wife. Therefore, she cannot maintain a complaint under Section 498A IPC.

9. The aforesaid submission of the learned counsel is not acceptable for the reason that though a competent Court has declared the marriage between the parties as null and void, they were having the status of husband and wife, as on the date of lodging the complaint and as on the date of the alleged occurrence and moreover, as against the judgment of the trial court, an appeal in C.M.A.(MD)No.6 of 2016 is filed and pending before this Court.

10. It is also the case of the petitioners that within one month from the date of marriage, the first petitioner has gone to Kuwait and on medical check-up, it was revealed that even prior to the solemnization of marriage, the second respondent has conceived by having illegal relationship with somebody else and by suppressing the same, she got married. Admittedly, there was a strangled relationship and the misunderstanding emanated only thereafter. It, *prima facie*, appears that this complaint was lodged only after the petitioners have begun to take steps to dissolve the marriage and therefore, the allegations, as contended by the petitioners, may be vague and have been instituted maliciously to wreck vengeance. But, it is for the trial Court to decide the same based on the oral / documentary evidence adduced on either side. Therefore, this Court is of the view that the petitioners have to face the charges under Section 498A IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act and prove their innocence.

11. With regard to the offence under Section 406 IPC, the learned counsel for the petitioners contended that the Seethana articles and the jewels were returned to the second respondent by a deed dated 23.11.2013 and pursuant to the deed, the second respondent has also agreed to withdraw the complaint and gave a letter on 23.11.2013 to the respondent police to withdraw the complaint as against the petitioners and despite the same, the respondent police has filed the final report. In support of this contention, the learned counsel has relied upon two documents in the typed set of papers, namely, the agreement dated 23.11.2013 and the letter given by the second respondent to the first respondent dated 23.11.2013.

12. Perusal of these documents would show that the signature of the respondent / complainant is not there in the documents enclosed in the typed set of papers and in the absence of any such signature, in the opinion of this Court, the documents cannot be relied upon. The petitioners have also produced the



documents pertaining to the deposition of the second respondent before the IV Additional District and Sessions Court, Tirunelveli, in connection with D.O.P.No.102 of 2013, wherein the second respondent has accepted the finality of compromise arrived upon as well as the receipt of cash and jewels. But, this Court under Section 482 of Cr.P.C., cannot conduct a roving enquiry and decide the genuineness of these documents. If the petitioners have already surrendered the belongings of the second respondent to her and if they are having any documents to prove the same, it is open to them to produce the same before the trial Court and establish their case.

13. Insofar as the offence under Sections 294(b) & 506(ii) IPC are concerned, the alleged occurrence was said to have taken place on 16.04.2013, wherein the second petitioner alleged to have abused the second respondent by filthy words when the complainant was talking to LW2 over phone. It is also alleged that the second and third petitioners have also intimidated her on 22.04.2013 and pushed her out of the house on 30.04.2013. For the occurrence said to have taken place on these dates, the complaint was lodged before the respondent police on 27.05.2013. A person who makes a complaint for intimidation must have felt the threat. When the complaint was lodged belatedly after one month, it cannot be termed that the complainant felt the intimidation alleged to have made by the accused. Similarly, the abusive words said to have been uttered by the second accused when she was inside the house, not in the vicinity of any public place and out of which no public was annoyed, the offence under Sections 506(ii) & 294(b) IPC are not made out in the given circumstances of the case.

14. In view of the foregoing discussions, this Court is of the view that the charge under Sections 294(b) & 506(ii) IPC are not made out and they are liable to be quashed. Insofar as the other sections are concerned, viz., Sections 406, 498(A) IPC & Section 4 of Tamil Nadu Prohibition of Women Harassment Act, it is a matter for trial and the petitioners have to establish their case before the trial Court by adducing evidences.

15. In the result, this Criminal Original Petition is partly allowed and the charges as regards the offence punishable under Sections 294(b) & 506(ii) IPC is quashed. The trial Court is directed to proceed with the trial insofar as the offence under Sections 406 & 498(A) IPC & Section 4 of the Tamil Nadu Prohibition of Women Harassment Act are concerned. Considering the age of the petitioners 2 & 3, their personal appearance before the trial Court is dispensed with, provided they filing an affidavit before the trial Court undertaking to appear as and when their personal appearance is required by the trial Court. Considering the age of the proceedings, the learned Judicial Magistrate,



Valliyoor, is directed to proceed with the trial and dispose of the same, as expeditiously as possible. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar (CS)

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To

- 1.The Judicial Magistrate,
Valliyoor.
- 2.The Inspector of Police,
All Women Police Station,
Valliyoor.

Order made in

Crl.O.P. (MD) No.3283 of 2016

and

Crl.M.P. (MD) Nos.1674 & 1675 of 2016

28.06.2019

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