



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P (MD) No.5956 of 2016

and

Cr1.M.P. (MD) No.2938 and 2939 of 2016

1.R.Sarkarai

2.C.Raja

3.Pinniammal

4.Chinna Thevar

5.Mayakkal

6.C.Chinnasamy

7.Seelavathi

8.C.Chellam

9.Pradeep

10.Muthulakshmi

... Petitioners/Accused

Vs

1.The Inspector of Police,
All Women Police Station,
Usilampatti,
Madurai District.
In Cr.No.45/2013

... 1st Respondent/Complainant

2.Saranya

...2nd Respondent/Defacto complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in C.C.No.166 of 2014 on the file of the learned Judicial Magistrate No.I, Usilampatti, Madurai District and quash the charge sheet.

For Petitioners

: Mr.M.Gururaj

For R1

: Mr.A.Robinson

Government Advocate (Cr1.side)

For R2

: Mr.G.Sundaram



The petitioners are facing trial in C.C.No.166 of 2014 on the file of the Judicial Magistrate No.1, Usilampatti. The second respondent herein is the defacto complainant. The defacto complainant got married to the first petitioner on 25.03.2013 and a girl child was also born through the wedlock. Alleging commission of marital cruelty, criminal intimidation and dowry demand, the second petitioner lodged a complaint before the All Women Police Station, Usilampatti. The case was registered as Crime No.45 of 2013. It was investigated and the final report was filed before the Judicial Magistrate No.1, Usilampatti. The learned Magistrate took cognizance of the offences under Sections 498(A), 406 and 506(i) of IPC r/w Section 4 of Dowry Prohibition Act. The case itself was taken on file in C.C.No.166 of 2014. To quash the same, this criminal original petition has been filed.

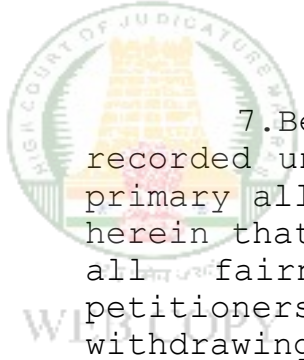
2.The learned counsel appearing for the petitioners reiterated the contentions set out in the memorandum of grounds and wanted this Court to quash the impugned proceedings.

3.Per contra, the learned Government Advocate (Crl.side) appearing for the respondent submitted that the period of residing together is not decisive of the issue and what has to be seen is whether any prima facie has been made out or not. He contended that a mere reading of the statement recorded under Section 161 of Cr.P.C., would show that there is enough and more prima facie material making out an offence in question. He submitted that even this Court, while exercising its jurisdiction under Section 482 of Cr.P.C., will not be justified in appreciating the materials relied on by the prosecution and that it should rather relegate the parties to work out their rights before the Court below in a regular trial. He contended that all the contentions urged by the petitioner's counsel are rather factual in nature and that, therefore, this Court will not be justified in quashing the impugned proceedings.

4.I carefully considered the rival contentions.

5.The first petitioner is the husband of the defacto complainant. The second and third petitioners are the parents-in-law of the defacto complainant. The fourth and fifth petitioners are the grand parents of the first petitioner. The sixth petitioner is the paternal uncle of the first petitioner. The seventh petitioner is the wife of the sixth petitioner. The eighth petitioner is the son of the sixth and seventh petitioners. The ninth petitioner interestingly is the cousin of the defacto complainant. The tenth petitioner is the wife of the ninth petitioner.

6.The petitioners' counsel would make a claim that the petitioners 2 to 10 are residing at Kerala and at no point of time, they were part of the shared household. But then, there is no material to substantiate this submission.



7. Be that as it may, on a careful reading of the statement recorded under Section 161 of Cr.P.C., I am able to note that the primary allegations have been made only against the first petitioner herein that is the husband of the defacto complainant. In fact, in all fairness to the petitioner's counsel, I must say that the petitioners' counsel, in fact, even at the outset, states that he is withdrawing the petition as regards the first petitioner and that the first petitioner would rather face the trial before the Court below and establish his innocence there. The defacto complainant, in her statement, stated that the first petitioner made a specific demand that unless the defacto complainant brought an additional dowry of 50 sovereigns of gold, he would contract a second marriage. She also would point out that at the time of marriage, her parents had gifted about 35 sovereigns of gold.

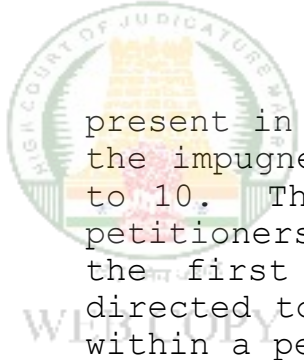
8. According to the defacto complainant, all the articles are lying with her husband. Interestingly, she would also state that the grand father of her husband had executed a joint settlement deed in her favour and in favour of the first petitioner herein. The allegations made against the other petitioners is that they have joined together and criminally intimidated the defacto complainant and her parents and they also proclaimed that they would arrange second marriage for the first petitioner herein. Except the allegation that the petitioners 2 to 10 threatened her, there is no other allegation against them.

9. As already pointed out, even according to the defacto complainant, it was the first petitioner/husband who made the dowry demand and is possessing the articles brought in by the defacto complainant at the time of marriage. Therefore, the offence under Section 4 of Dowry Prohibition Act as well as Section 406 of IPC will be attracted only against the first petitioner herein. Likewise, the only allegation made against the petitioners herein that they criminally intimidated her. It has been consistently held that to attract the offence under Section 506(i) of IPC, there must be a real and substantial one.

10. In this case, I am able to note that except making omnibus and sweeping allegations against the petitioners 2 to 10, the second respondent has not been able to point out that she was subjected to any kind of intimidation. It has not been brought out that the threat said to have been held out by the petitioners 2 to 10 was a real and substantial one.

11. The Hon'ble Supreme Court, in the **State of Haryana Vs. Bhajanlal (1992 Supp(1) SCC 335)**, has held that if the Court comes to the conclusion that the complainant was instituted the prosecution with an intention to wreak vengeance, then the proceedings can be quashed.

12. Applying the ratio laid down by the Bhajanlal Case, I hold that none of the ingredients set out in the offence in question are



present in this case as regards the petitioners 2 to 10. Therefore, the impugned proceedings stand quashed as regards the petitioners 2 to 10. This criminal original petition is allowed as far as the petitioners 2 to 10 are concerned. It stands dismissed as regards the first petitioner herein. The learned trial Magistrate is directed to conclude the trial on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

Rmi

To

- 1.The Judicial Magistrate No.I, Usilampatti, Madurai District.
- 2.The Inspector of Police,
All Women Police Station,
Usilampatti,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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