

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.9329 of 2015 and
Crl.M.P.No.1 of 2015

1.Sai Mrithun

2.Maragatham

... Petitioners

Vs.

1.State rep. by,
Inspector of Police,
Thudiyalur Police Station,
Coimbatore.

2.Rekha

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the charge sheet in S.T.C.No.1240 of 2014 on the file of the Judicial Magistrate No.I, Coimbatore and quash the same.

For Petitioners: K. Balasubramaniam

For R1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

For R2 : Mr.R.Nandha Kumar,
Legal Aid Counsel

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.1240 of 2014, pending on the file of the Judicial Magistrate Court No.I, Coimbatore, for offence under Sections 294(b), 323 and 506(i) of IPC.

2.The case of the prosecution is that on 16.08.2013, at about 06.00 p.m., the 2nd respondent lodged a complaint that the 2nd respondent's younger sister Divya was given in marriage to the 1st petitioner on 11.11.2012 in Coimbatore. After the marriage, her sister Divya was living with her husband/1st petitioner. During the marriage, 'Sridhana' articles were

given. Thereafter, the demand of dowry was made by the petitioners with her sister Divya. In pursuant to which, she was subjected to cruelty, harassment and torture and on 12.01.2013, she was chased away from the matrimonial home and she started living together with her parents for few months. On 16.08.2013, at about 06.00 p.m., the 2nd respondent along with her sister Divya and her parents had gone to the petitioners' house to question about her sister's Divya marriage life. At that time, the petitioners pushed the 2nd respondent and her sister Divya and kicked them and also they caught hold her sister Divya by her hair and dashed on the wall and further, abused and threatened them to do away her sister Divya. By then, the neighbours gathered and the 2nd respondent, her sister Divya and her parents left the scene. Thereafter, the 2nd respondent got admitted in Venugopal Hospital, Thudiyalur and took treatment as in patient. On 08.09.2013, the 2nd respondent approached the 1st respondent Police and lodged the complaint. On receipt of the complaint, an FIR in Crime No.797 of 2013 came to be registered, for offence under Sections 294(b), 323 and 506 (i) of IPC. On completion of investigation, charge sheet came to be filed before the trial Court, against which the present quash petition.

3.The learned counsel for the petitioners submitted that the arranged marriage between the 1st petitioner and the 2nd respondent's younger sister Divya took place on 11.11.2012. The marriage expense shared by bride and bridegroom. During the marriage, the family of the 2nd respondent presented 'Sridhana' articles. Likewise, the petitioners family also presented jewels and sarees to the bride. After the marriage, the 1st petitioner estranged wife Divya started exerting pressure to the 1st petitioner to live as joint family with her parents, which was resisted by the 1st petitioner. The learned counsel further submitted that the 1st petitioner is the only son of his mother/2nd petitioner and he is taking care. This fact was known to the 2nd respondent and her family members even before the marriage. Knowing all these facts, the marriage was accepted by the 2nd respondent and her families.

4.During the marriage life, the 1st petitioner estrange wife Divya was usually comparing the 1st petitioner with her sister/2nd respondent's husband, who is a Doctor and the 2nd respondent was also pursuing medical course. There was compatibility issues between 1st petitioner and his wife Divya. Further, the 1st petitioner's estranged wife on her own will take the car to meet her friends and parents, she failed to discharge her duties as a dutiful wife and she was not inclined to live with the petitioners. Hence, she created trouble and finally, when she was called to visit family temple by the petitioners, she refused to join them. On 12.01.2013, when the petitioners went

to the temple, she left the matrimonial house, took away all her belonging in the car and went to her parents house. Thereafter, she was unable to be contacted.

5.The learned counsel for the petitioners further submitted that the 1st petitioner, on 01.08.2013, issued legal notice, calling the estranged wife Divya to join with him. On receipt of the same, she sent a reply on 10.08.2013, in which, she alleged the demand and harassment made by the petitioners, in the end she expressed her wish to join the 1st petitioner. This reply was made only for the purpose of such notice. Since the reply was unacceptable, a rejoinder dated 19.08.2013 was sent. This being the case, on 16.08.2018, the 2nd respondent along with her sister Divya, her parents and four others came to the house of the petitioners and started abusing and assaulted them with chapels and threatened them that they would do away, the assailants were pushed out from the house and the door was closed. For four hours till 08.00 p.m., the 2nd respondent's family members and others were abusing the petitioners with filthy language and thereby, insulted them before their neighbours. Later, at about 08.00 p.m, they left the scene of occurrence. The 1st petitioner immediately went to the 1st respondent Police for lodging a complaint. Since there was a protest in Tamil Nadu on Cauvery Board issue, no police were available. Therefore, the 1st petitioner advised to come four days later. On 20.08.2013, the 1st petitioner again went to the 1st respondent Police and lodged the complaint against the 2nd respondent, her parents and younger sister Divya and four others, for which, a case in Crime No.709 of 2013 came to be registered for offence under Sections 147, 294(b), 355 and 506 (ii) IPC.

6.Thereafter, the petitioners were not aware what has happened for the complaint given on 20.08.2013. A notice dated 19.08.2013 was sent by the 1st petitioner to his estranged wife Divya stating that on 16.08.2013, she along with her parents and the 2nd respondent came to the petitioners' house in the guise of settling the dispute. At that time, the 1st petitioner is said to have slapped her and the 2nd petitioner slipped her. Thereafter, they were pushed out and the door was locked inside. Since the 1st petitioner used abusive language and the neighbours gathered, her estranged wife Divya and her parents, the 2nd respondent left the place. Following the notice a false complaint came to be lodged on 08.07.2013. Based on which, an FIR in Crime No.797 of 2013 filed.

7.It is further submitted that from the exchange of notice, it is seen that the petitioners are not cause for the 2nd respondent's sister Divya leaving the matrimonial home and it is on her own will. Further, the 2nd respondent's sister Divya

lodged a Domestic Violence Complaint in D.V.A.No.20 of 2013 before the learned Judicial Magistrate No.I, Tirupur and Maintenance Case in M.C.No.33 of 2013 before the learned Chief Judicial Magistrate, Tirupur. In the notice dated 19.08.2013, it is stated that on 16.08.2013 till 08.00 p.m., the 2nd respondent her parents and her sister Divya were standing outside the house of the petitioners. In the Domestic Violence Petition and in the Maintenance Case, it is stated that they were present till 11.00 p.m and in the wound certificate, filed along with the charge sheet, it is seen that the 2nd respondent got admitted and took treatment as in patient in V.G Hospital, Coimbatore, the time of admission is at 07.45 p.m on 16.08.2013. In the case sheet, it is recorded that she was assaulted by known persons with hand at about 06.30 p.m on 16.08.2013. The wound certificate of the 2nd respondent is highly doubtful, since the 2nd respondent's husband visiting the said hospital as Consultant and they are known to the hospital staffs and the 2nd respondent is a medical student. Hence, the falsity of the wound certificate is exposed. The witnesses, which are cited in the charge sheet is are follows:-

- LW1-Divya is the estranged wife of the 1st petitioner.
- LW2-Sathish Kumar is the husband of the 2nd respondent.
- LW3/2nd respondent-Rekha is the sister of LW1.
- LW4-Murugesh and LW5-Sarghunam are the witnesses to the Observation Mahazar.
- LW6-Dr.Kala is the Doctor in Venugopal Hospital, Coimbatore, who gave Wound Certificate to the 2nd respondent.
- LW7-Mr.Mahindiran is the Head Constable, who received the complaint dated 08.07.2013 and registered an FIR in Crime No.797 of 2013. LW8-Tmt.Hemalatha is the Investigating Officer.

8.In this case, the FIR in Crime No.797 of 2013 was filed after 23 days of the occurrence, for which no explanation is given. Within 2 months from the date of registration of FIR, the charge sheet was filed before the trial Court. Earlier, the 1st petitioner's estranged wife Divya gave complaint for the same issue, which was registered in Crime No.52 of 2013 by the Inspector of Police, All Women Police Station, Thirupur, for offence under Section 406, 498(A) IPC r/w Section 4(1) of the Dowry Prohibition Act. Later, the FIR in Crime No.52 of 2013 was transferred to the file of the Inspector of Police, All Women Police Station, Thudiyalur. After completion of investigation, the charge sheet was filed before the concerned Court against the 1st petitioner and his father. This Court in CrI.O.P.NO.6214 of 2015 quashed the same. The above case is also similar in nature. Hence, this Court may invoke Section 482 Cr.P.C to quash the proceedings in S.T.C.No.1240 of 2014.

9.The learned counsel for the petitioner further submitted that in this case, the 1st respondent Police has violated the Tamil Nadu Police Standing Orders 566. In the charge sheet filed before the trial Court, there is no mention about the counter case. Hence, the 1st respondent Police acted in a partisan manner and the coloured investigation is ought to be quashed.

10.Further, the learned Additional Principal Family Judge, Coimbatore in H.M.O.P.No.1260 of 2013, granted divorce by judgment dated 16.03.2017 to the 1st petitioner from the 2nd respondent's sister Divya. In the proceedings, LW1-Divya herein and her father Subramani were examined. The learned Judge analysed their evidence and gave a reasons for registration of Crime No.709 of 2013 against them on 20.08.2013 and the reason for the delay in lodging the complaint. The learned Family Judge gave a finding that the evidence of LW1 and her father are contradictory to each other, the contention and the allegation found in FIR in Crime No.797 of 2013 are found to be false. Assailing the above grounds, he prayed for quashing the proceedings in S.T.C.No.1240 of 2014.

11.The learned counsel for the 2nd respondent submitted that the marriage between the 2nd respondent's sister Divya and the 1st petitioner took place on 11.11.2012. During the marriage, the petitioners demanded 75 sovereigns jewels and a car viz., Nissan Sunny value around Rs.10 lakhs and cash of Rs.5 lakhs, which the 2nd respondent family were forced to give. The demand of dowry continued, due to which, the 2nd respondent's sister Divya was subjected to cruelty. There have been exchange of notice between the petitioners and the 2nd respondent. The 1st petitioner filed a divorce petition in H.M.O.P.No.1260 of 2013 before the learned Additional Principal Family Judge, Coimbatore, the 2nd respondent's sister Divya filed a Maintenance Case in M.C.No.33 of 2013 as well as the Domestic Violence Petition in D.V.A.No.20 of 2013 and also lodged a complaint to the Inspector of Police, All Women Police Station, Thirupur, which came to be registered in Crime No.52 of 2013.

12.It is further submitted that the 1st petitioner, who is a business man, having greed for money. The 2nd petitioner used to insult the 2nd respondent's sister Divya stating that they have chosen a bride from poor family. The petitioners family is a wealthy family, the 1st petitioner's father was Tahsildar and one of the family member was an IAS officer with their support no action could be taken against them, the 2nd respondent's sister Divya undergone all sufferings. Unable to bear any further, she left the matrimonial house and joined her parents. Immediately, the 1st petitioner sent a notice as though he is willing to continue the matrimonial life with her estranged wife Divya. On

the other hand, in the notice, he made wild allegations against his wife Divya. Believing the notice of the 1st petitioner, on 16.08.2013, the 2nd respondent along with her parents and sister Divya had gone to the petitioners' house reunion the said Divya with the 1st petitioner, when they entered the house, the petitioners slapped and slippered her sister and they pushed her out from the house. At that time, the petitioners abused them with filthy language and threatened them to do away and the neighbours were assembled. Unable to bear the ignominy any further, they left the place. Thereafter, the 2nd respondent got admitted in Venugopal Hospital, Thudiyalur and took treatment as in patient. The 1st respondent Police on receipt of the complaint, registered a case, examined the witnesses and filed the charge sheet in this case. The contention of the petitioner are to be raised during the trial. Hence, he prayed to quash the proceedings.

13.The Additional Public Prosecutor appearing for the 1st respondent submitted that on receipt of the complaint from the 2nd respondent, a case came to be registered. The 2nd respondent gave reason for delay in lodging the complaint. He further submitted that the 2nd respondent took treatment as in patient in Venugopal Hospital, Thudiyalur and the Doctor, who gave treatment were examined and the wound certificate collected. The witnesses to the occurrence LW1, LW2, LW3 were examined and their statements were recorded. LW4 and LW5 are the witnesses to the Observation Mahazar. LW6 is the Doctor, who treated LW3. LW7 is the Head Constable, who registered FIR. LW8 is the Investigating Officer. On conclusion of investigation, charge sheet filed before the learned Judicial Magistrate No.I, Coimbatore. Now the case is taken on file as S.T.C.No.1240 of 2014. Thus, the contention of the petitioner are disputed, which are to be decided only during the trial.

14.This Court considered the rival submissions and perused the materials available on record.

15.It is seen that the estranged wife of the 1st petitioner Divya for the same occurrence, lodged a complaint before the Inspector of Police, All Women Police Station, Thudiyalur, which was registered in Crime No.52 of 2013. The FIR in Crime No.52 of 2013 was quashed by this Court in Crl.O.P.No.6214 of 2015. It is seen that there have been a delay of 23 days in lodging the complaint dated 08.09.2013 and the alleged occurrence is said to have taken place on 16.08.2013. For the same occurrence, second complaint is lodged by the 2nd respondent and the earlier complaint filed by the said Divya for the same occurrence is suppressed.

16.It is also seen that the learned Additional Principal Family Judge, Coimbatore in H.M.O.P.No.1260 of 2013, by judgment dated 16.03.2017, gave a finding that the occurrence dated 16.08.2013 projected by the 2nd respondent is false. On the other hand, the finding of the learned Judge for the occurrence on 16.08.2020, a case in Crime No.709 of 2013 was registered on 20.08.2013.

17.In this case, the 1st respondent Police though registered two FIR in Crime Nos.797 and 709 of 2013, should have followed the Tamil Nadu Police Standing Order 566 and investigated both the cases simultaneously. It is seen that for the same occurrence, earlier a complaint was lodged by Divya/sister of the 2nd respondent, which came to be quashed by this Court.

18.In view of the above, the continuation of the trial against the petitioners would amount to abuse of process of law. Hence, the proceedings in S.T.C.No.1240 of 2014, on the file of the Judicial Magistrate Court No.I, Coimbatore is, hereby, quashed. This Criminal Original Petition is, accordingly, allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

19.This Court places its appreciation to the Legal Aid Counsel Mr.R.Nandhakumar for making thorough preparation and putting forth his arguments strenuously.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate Court No.I,
Coimbatore.

2.Do Thro The Chief Judicial Magistrate
Coimbatore

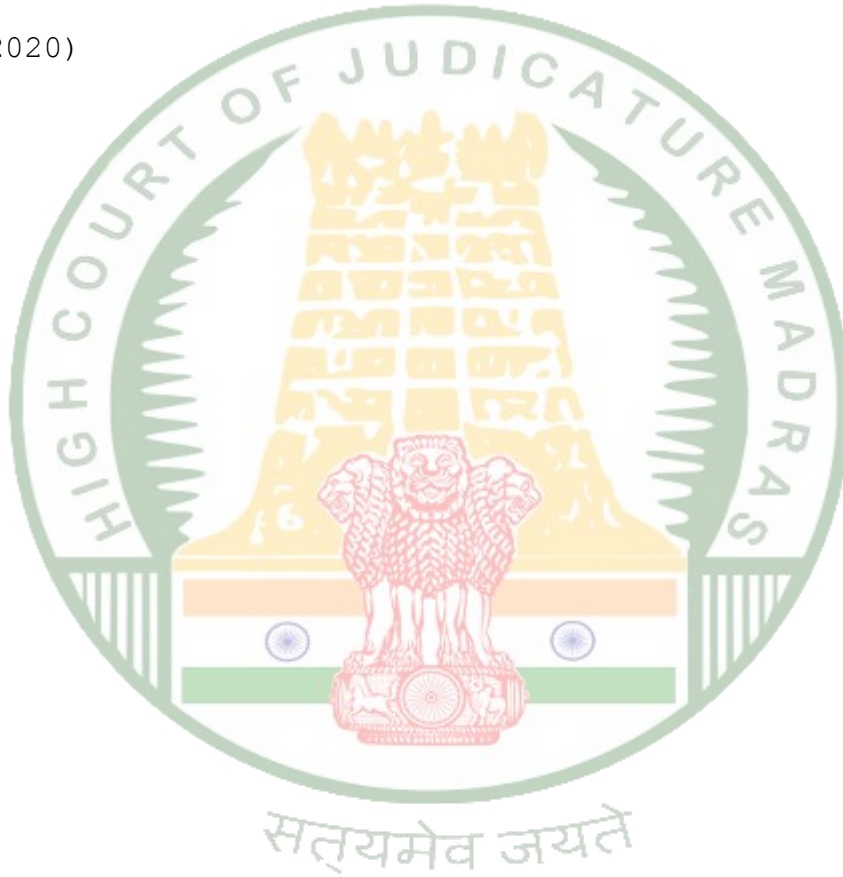
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3.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore.

4.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.9329 of 2015

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