

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.RC.No.1202 of 2020

and CRL.M.P.No.8355 of 2020

Aarathi

D/o.Mahaveerchand Katariya

.. Petitioner/Accused

/versus/

Station House Officer,
All Women Police Station,
Villupuram,
Crime No.10 of 2006

.. Respondent/Complainant

Prayer: Criminal Revision Case filed under Sections 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment and order passed in C.M.P.No.42 of 2019 in C.C.No.02 of 2019 dated 19.02.2020 on the file of the learned Judicial Magistrate, Additional Mahila Court, Villupuram.

For Petitioner : Mr.P.Magesh

For Respondent : Mr.C.Iyyappa Raj

Additional Government Pleader

ORDER

This Civil Revision Petition has been filed to set aside the judgment and order passed in C.M.P.No.42 of 2019 in C.C.No.02 of 2019 dated 19.02.2020 on the file of the learned Judicial Magistrate, Additional Mahila Court, Villupuram.

2. The petitioner/accused in C.C.No.02 of 2019, who is facing trial for the offence under Sections 498(A) and 4 of Dowry Prohibition Act before the Judicial Magistrate, Additional Mahila Court, Villupuram, has filed a petition under Section 45 of the Indian Evidence Act in C.M.P.No.42 of 2019 to compare the signature of disputed documents in Exs.P8 to P10 with the specimen signature and admitted signature to be produced by A5. But the Trial Court, by order dated 19.02.2020, dismissed the petition. Against which, the present revision petition has been filed.

3. The petitioner and the respondent agreed to dispose of the main revision, since the point involved is on a short compass. Hence, the Criminal Revision case is taken up for trial hearing.

4. The case of the prosecution is that on 30.09.2006, the defacto complainant/Rajakumari lodged a complaint to the respondent police against A.K.Mahavir @ Ajithkumar, who is the estranged husband of the defacto complainant, Mahavirsanth Kattariya, who is the father-in-law of the defacto complainant, Gowsalya, who is the mother-in-law of the defacto complainant, Narendra Kumar and Ashokumar, who are the brothers-in-law of the defacto complainant, stating that the accused demanded dowry, subjecting the defacto complainant to harass and cruelty. Thereafter, F.I.R came to be registered in Crime No.10 of 2006 and on completion of investigation, charge sheet filed which was taken on file in C.C.No.39 of 2007. Thereafter, during the trial, the petitioner was arrayed as accused in C.M.P.No.2331 of 2009 by order dated 19.09.2017 by invoking powers under Section 319 of the Code of Criminal Procedure. .

4. The learned counsel for the petitioner would submit that the petitioner is said to have gone along with her mother for purchase of diamond jewels from P.W.3 on 26.04.2005. The delivery challans have been marked as Exs.P8 to P10 through P.W.3. The specific stand of the petitioner is that the signature found in the delivery challans, marked as Exs.P8 to P10 is not that of the petitioner and the same has been challenged by way of cross-examination of P.W.1 to P.W.3. The genuineness and veracity of the challans are disputed. In view of the same, the petitioner has filed the above petition questioning the genuineness of Exs.P8 to P10. Further, the petitioner got married in the year 2005 and she is living with her-in-laws at Tirupatti. To prove her innocence and defence, she prayed for subjecting Exs.P8 to P10, to the Handwriting Expert, that is the only material, projected against her. The Trial Court, without considering the material and evidence, had dismissed the petition on the ground that the application has been filed after two years belatedly. On a demurrer, he submitted that filing a petition belatedly, does not take away the right of the petitioner/accused. Further the case involves in the matrimonial dispute. To clear and disprove the allegations that the petitioner had not signed the delivery challans and received the gold jewels from P.W.3, failed to make payment, it is imperative to examine Exs.P8 to P10 by the Handwriting Expert. Further, according to the petitioner, Exs.P8 to P10 is a created document.

5. The learned Additional Public Prosecutor would submit that the Trial Court had rightly dismissed the petition for the reason the petition has been filed belatedly after two years. He would further submit that the examination of P.W.1 to P.W.3 was completed on 28.09.2019 and the petitioner was arrayed as an accused. This

petition has been filed to drag on the proceedings and protract the trial.

6. Considering the rival submissions and on perusal of the materials, it is seen that the occurrence in this case took place in the year 2006. At that time, the petitioner was not shown as accused in this case, even on completion of investigation, in the charge sheet and in the year 2017, the petitioner had been arrayed as an accused with the aid of Section 319 of Cr.P.C., and thereafter, the petitioner had recalled the witnesses and cross-examined P.W.1 to P.W.3 on 23.09.2019. During the cross-examination, the signature found in Exs.P8 to P10 is confronted with the witnesses and the documents. There is a specific suggestion that the signature is not that of the petitioner and the document itself is forged. Thereafter, the petitioner filed a petition in C.M.P.No.42 of 2019. In view of the same, there is no inordinate delay. Further, for arriving at a just decision, sufficient opportunity to be given and best evidence is to be received. The case against the petitioner hinges on Exs.P8 to P10. Hence, this Court is inclined to set aside the order of the Trial Court in C.M.P.No.42 of 2019 in C.C.No.02 of 2019 dated 19.02.2020 and direct the petitioner to file a petition under Section 311(A) and the learned Magistrate to obtain specimen signature as required, thereafter, forward the specimen as well as the admitted signature to be produced by the petitioner to the Handwriting Expert to obtain expert opinion. The learned Magistrate to examine the expert as a witness and proceed further, till the receipt of the expert opinion and report. Status quo to be maintained in C.C.No.2 of 2019 till then.

7. Accordingly, the Criminal Revision Petition is allowed. Consequently, connected miscellaneous petition is also closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1.Station House Officer,
All Women Police Station,
Villupuram.

2.The learned Judicial Magistrate, Additional Mahila Court,
Villupuram.

+1cc to Mr.P.Magesh, Advocate, S.R.No.42667

CRL.RC.No.1202 of 2020
and CRL.M.P.No.8355 of 2020

RSI (CO)
GSP (30/12/2020)



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