

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.15965 of 2017 and
Crl.O.P.No.3492 of 2017 and Crl.M.P.No.2519 of 2017 and
Crl.O.P.No.16172 of 2017 and Crl.M.P.No.9991 of 2017

1.Dhruva Chadalavada Petitioner in
Crl.O.P.Nos.15965 & 16172 of 2017
2.Uma Maheswara Rao
3.Leela Kumar Petitioners in
Crl.O.P.No.3492 of 2017

Vs.

1.State by,
The Inspector of Police,
All Women Police Station,
Thirumangalam, Anna Nagar,
Chennai.

2.Kavitha Pemmasani Respondents in all cases

PRAYER in Crl.O.P.Nos.3492 & 16172 of 2017: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records on the file of the first respondent in respect of the impugned First Information Report in Crime No.10 of 2016, dated 02.08.2016 and quash the same.

PRAYER in Crl.O.P.No.15965 of 2017: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the respondent to withdraw the lookout circular against the petitioner, in Crime No.10 of 2016, on the file of the respondent Police.

In all cases:

For Petitioners: Mr.Sai Bharath
For R1 : Mr.C.Prabakar,
Additional Public Prosecutor
For R2 : Mr.Om Prakash,
Senior Counsel for
M/s.Ramalingam and Associates

COMMON ORDER

Crl.O.P.Nos.3492 & 16172 of 2017 are filed to quash the FIR in Crime No.10 of 2015, pending on the file of the 1st respondent Police. Crl.O.P.No.15965 of 2017 is filed seeking direction to the 1st respondent to withdraw the Look Out Circular issued against A1 in Crime No.10 of 2016.

2.Since the cases arise out of Crime No.10 of 2017, this Court disposes all the cases by way of a common order. For the sake of convenience and clarity, the petitioners are referred as accused as per FIR.

3.The brief facts of the case is that:-

(i)The 2nd respondent, Kavitha Pemmasani lodged a complaint to the Deputy Commissioner of Police, Anna Nagar, Chennai, which was forwarded to the 1st respondent. The 1st respondent, on receipt of the same, registered an FIR in Crime No.10 of 2016, for offence under Section 498(A), 420 IPC and 4A of the Tamil Nadu Prohibition Act on 02.08.2016. The complaint was made against her estranged husband/A1, father-in-law/A2 and mother-in-law/A3. The 2nd respondent got married to A1 on 08.06.2014 at N.Convention Center, Hyderabad. Before the marriage, A2 and A3 demanded a sum of Rs.10,00,000/- and 150 sovereigns of gold jewels from the parents of the 2nd respondent as dowry and threatened that if it is not made, the marriage will not be performed. Left with no other option, the parents of the 2nd respondent gave a sum of Rs.10,00,000/- and 150 sovereigns of gold jewels during the marriage. After the marriage, A1 asked for air ticket from the 2nd respondent to go America, where he was employed and also demanded additional dowry on various occasions, the father of the 2nd respondent had to fulfill the same. On 24.08.2015, A1 again demanded more money from the father of the 2nd respondent and tortured the 2nd respondent both mentally and physically. When the 2nd respondent stated that she will not get money from her parents, A1 harassed, ill-treated and detained her in a room for 15 days. On 04.09.2015, hearing the cry of the 2nd respondent for help, a security in the apartment, called emergency number 911 in America. Immediately, the police personnels came, secured the 2nd respondent admitted her in hospital for treatment.

(ii)On 16.09.2015, the 2nd respondent came back to Chennai informed her parents about the happenings. The 2nd respondent and her parents went to the house of A2 and A3 at Hyderabad to question the same, but the house was locked. On enquiry, they came to know that they had gone to Vijayawada. The 2nd respondent and her parents went to Vijayawada, informed A2 and A3 about the harassment of A1, for which no remorse was shown.

On the other hand, A2 and A3 supported the act of A1. On 26.09.2015, the 2nd respondent went back to America, found A1 had cancelled the lease for residence and extended it only for a month. Thereafter, she was forced out and she stayed in her friends house.

(iii) On 03.10.2015, A1 called the 2nd respondent to a common place, the 2nd respondent went there and waited for more than three hours. At that time, one unknown person came and gave a summon for divorce petition filed by A1 in Superior Court, USA. The 2nd respondent questioned A1 about the same, A1 replied that after refusal for his demands, there is no question of living with the 2nd respondent. Further, the 2nd respondent was given an option to make a payment of \$50,000/- US dollar, if that is made, the divorce proceedings before the Superior Court, USA would be withdrawn, otherwise, A1 would proceed for a second marriage. The 2nd respondent not willing for divorce, she filed O.P.No.4065 of 2015 and suit in O.S.No.304 of 2015, before the Family Court, Chennai, seeking restitution of conjugal rights and declaring the summons issued by the Superior Court of New Jersey, Chancery Division, Family Part, Hudson Country, USA as null and void and not binding on the 2nd respondent. Further, the 2nd respondent informed the Court in USA about the cases filed against A1 and his parents in India.

(iv) The Sub-Inspector of Police attached to the 1st respondent, on receipt of the complaint, sent summons to the accused on 08.07.2016 and 24.07.2016. Despite the same, the accused failed to respond and gave their explanation. Hence, a case in Crime No.10 of 2016 was registered. Since A1 absconded and failed to cooperate with the investigation in Crime No.10 of 2016, a Look Out Circular was issued by the 1st respondent. On 18.06.2017, A1 along with his passport were produced before the 1st respondent, pursuant to the Look Out Circular. Now, to withdraw the lookout circular against A1 and to quash the FIR in Crime No.10 of 2016, the above petitions are filed by the accused.

4. The learned counsel for the petitioner/A1 in Crl.O.P.Nos.15965 & 16172 of 2017 submitted that the FIR in this case has been registered with non application of mind in a mechanical manner, that is the reason, in the FIR, it is seen that apart from registering IPC offences, Section 4A of Tamil Nadu Prohibition Act is mentioned. On this score alone, the FIR is to be quashed. He further submitted that for demand of dowry of Rs.10,00,000/-, as could be seen from the complaint filed before the Family Court, Chennai, it is admitted by the 2nd respondent that the amount was given towards the marriage expenses and not as dowry. Further, the ingredients for offence under Section 420, are not made out in this case. The marriage

between A1 and the 2nd respondent already dissolved by decree of divorce dated 22.09.2016 granted by the Superior Court of New Jersey, USA. Hence, there is no question of harassment under Section 498(A) IPC. The 1st respondent failed to see that if it is all the allegations are true, then also everything had taken place outside India.

5.He further submitted that the 2nd respondent is a British National. The 2nd respondent and A1 had gone to USA immediately after their marriage in the year 2014. The marriage took place at Hyderabad. Hence, there is no jurisdiction for the 1st respondent to entertain the complaint. While lodging the complaint before the 1st respondent, the 2nd respondent suppressed the vital facts of she being a British National and filing the counter before the Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, USA for divorce proceedings filed by A1. Further, she admitted the filing of matrimonial proceedings before the Family Court, Chennai and in that proceedings, she admitted about the marriage between A1 and the 2nd respondent dissolved by decree of divorce by mutual consent in USA.

6.The 1st respondent is duty bound to first conduct enquiry into the complaint before registering the case. In this case, such procedure are not followed. On these grounds, he had sought quashing of FIR. Further, the learned counsel for the petitioners had filed typed set of papers, annexing the petition and plaint copy filed by the 2nd respondent before the Family Court, Chennai and the decree of divorce granted by the Superior Court of New Jersey, Chancery Division, Family Part, Hudson Country, USA on 22.09.2016. The 2nd respondent had participated in the divorce proceedings before the Superior Court of New Jersey, Chancery Division, Family Part, Hudson Country, USA and got decree of divorce on 22.09.2016. After obtaining divorce, the continuation of the investigation in Crime No.10 of 2016 would amount to abuse of process of law.

7.The learned counsel for the petitioner submitted that the petitioner is employed in USA and he is a green card holder. The presence of petitioner in USA is very much necessary for withholding his job and his citizenship. Hence, he prayed to direct the 1st respondent to withdraw the Look Out Circular against the petitioner in Crime No.10 of 2016.

8.The learned counsel for the petitioners/A2 and A3 assailed similar contentions made in CrI.O.P.Nos.15965 & 16172 of 2017.

9.In order to substantiate his arguments, the learned counsel for the petitioners relied upon the following citations:-

- Sondur Gopal Versus Sondur Rajini reported in (2013) 7 SCC 426.
- Rajesh Sharma & Ors. Versus State of U.P & Anr. in C.A.No.1265 of 2017.

10.The learned Additional Public Prosecutor appearing for the 1st respondent submitted that the 2nd respondent, who is the estranged wife of A1, lodged a complaint to the Deputy Commissioner of Police, Anna Nagar, Chennai, which was forwarded to the 1st respondent. The 1st respondent, on receipt of the same, issued summons to the accused for their appearance as per the guidelines of the Hon'ble Apex Court. Though the accused received the summons, failed to appear for enquiry. Hence, FIR in Crime No.10 of 2016 came to be registered. Since A1 was absconded and failed to cooperate with the investigation, a Look Out Circular was issued to the passport office. After registration of FIR, statement of the 2nd respondent, her mother Rathina, father Venkatarathnam, uncle Malligaarujuna and relative Somasundaram were recorded, which are in conformity to the complaint. The investigation, so far, conducted in a fair and impartial manner, following all the mandatory procedures. Due to the above petitions, the investigation could not be further proceeded with. Further, there are enough materials to proceed against the accused in this case. The emigration officials handed over A1 during June 2017. Thereafter, A1 was enquired, his statement was recorded, sensing A1 would flee the country and would not be available for investigation, his passport was retained. A1 approached this Court and this Court with certain directions, retained his passport, thereafter A1 left India. A1 failed to comply with the conditions imposed by this Court on 11.10.2017. Now, A1 absconding and not available for investigation. A1 parents, A2 and A3 feign ignorance and they are not providing any particulars of contact phone numbers, E-mail address of A1, despite they are in constant touch with him. Only if appropriate orders are issued by this Court, A1 could be secured and the investigation can be completed.

11.He further submitted that A1 obtaining divorce in the Superior Court of New Jersey, Chancery Division, Family Part, Hudson Country, USA on 22.09.2016, will no way affect the investigation in this case. The 2nd respondent had been inflicted physical harm and continuously harassed by A1. There are enough material to prove the demand of dowry and hence, he prays for dismissal of all the petitions.

12.The learned counsel for the 2nd respondent filed his counter and made his submissions that the marriage between the 2nd respondent and A1 was an arranged marriage. The engagement function was held at Jaya Puspam, Chennai on 16.04.2014, the marriage was held at N.Convention Center, Hyderabad on

08.06.2014. The reception was held at Radha Regent Hotel, Arumbakkam, Chennai on 13.06.2014. The 2nd respondent was working in Citi Bank in London and A1 was working in USA. During the marriage, there was a demand of Rs.10,00,000/- and 150 sovereigns of gold jewels. The parents of the 2nd respondent were forced and compelled to meet out the demand of the accused and the demand was fulfilled. After the marriage, the 2nd respondent and A1 left to USA, arranged a house for lease for a period of one year. On 25.11.2014, A1 had sent E-mail to the 2nd respondent that for some reason, his bank account has been closed and requested the 2nd respondent to pay the monthly lease amount. On the request of A1, the 2nd respondent paid the monthly lease amount and other expenses. A1 by citing one reason or other, made the 2nd respondent to make all the payments/expenses from her income and savings. The trust between them became volatile. Thereafter, A1 started abusing and inflicting physical harm to the 2nd respondent. In fact the 2nd respondent was kept in confinement by A1 and thereafter, with the help of emergency police, she was rescued and admitted in the hospital for treatment.

13.The learned counsel for the 2nd respondent further submitted that A1 filed a divorce petition under the laws of New Jersey for the reason of incompatibility. Further, A1 without even informing the 2nd respondent, changed his residence, leaving her in lurch. Hence, she stayed with her friends. On 03.10.2015, one unknown person approached the 2nd respondent, gave summon for divorce petition filed by A1. The 2nd respondent had come to India and met A2 and A3, but they had shown no remorse. On the other hand, it was found that they had abetted A1 in harassing and causing physical harm to the 2nd respondent. The 2nd respondent initiated proceedings before the Family Court, Chennai in O.P.No.4065 of 2015 for restitution of conjugal rights and O.S.No.304 of 2015 to declare the summons issued by Superior Court of New Jersey, Chancery Division, Family Part, Hudson County, USA as null and void not binding on the 2nd respondent. The 2nd respondent was advised that the proceedings in USA is independent, when she had proceedings in India. Further, A1 was served with notice in O.S.No.304 of 2015 and O.P.No.4065 of 2015, A2 as Power of Attorney appearing for A1 before the Family Court, Chennai in India.

14.The Decree of Divorce granted by Superior Court, USA will not affect or nullifies the marriage between the 2nd respondent and A1 held on 08.06.2014 in India under the Hindu Rites and Customs, governed by Hindu Marriage Act. Admittedly, the marriage was performed in India between two Hindus of India origin as per the Hindu Rites and Customs. The place of demand of dowry, inflicting physical harm and causing harassment happened in India. When the part of cause of action had taken

place in India, the complaint lodged by the 2nd respondent is without any legal impediment.

15.Immediately, after lodging the complaint, steps were taken for reconciliation, but the accused herein failed to respond. Thereafter, only FIR came to be registered. During the pendency of the above petitions, the matter was referred to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. Since no settlement could be arrived, the mediation failed and matter was referred back. Further, the investigation, in this case hit a road block, due to the pendency of the above case. A1 after obtaining passport and on lifting of restriction of his travel, failed to adhere to the order of this Court dated 11.10.2017. A2 and A3 are abetting A1 in all his misdeeds. Now, the accused has been successfully evading the justice from the year 2016 onwards, coercive steps to be taken against A1 for violating the undertaking given to this Court. Hence, the learned counsel for the 2nd respondent prayed for dismissal of all the petitioners.

16.In support of his contention, he relied upon the following citations:-

- Kushal Kumar Gupta and another Versus Mala Gupta reported in (2011) 12 SCC 434.
- Rajiv Modi Versus Sanjay Jain and others reported in (2009) 13 SCC 241.
- Anoop Beniwal Versus Dr.Jagbir Singh Beniwal reported in MANU/DE/0044/1990.
- Y.Narasimha Rao and others Versus Y.Venkata Lakshmi and another reported in (1991) 3 SCC 451.
- N.Poongodi and others Versus V.Irulappan reported in 2008 (1) MWN (Cr.) 14.
- Bandi Jagadrakshaka Rao and Ors. Versus The State of Andhra Pradesh and Anr. reported in MANU/SC/0711/2013.
- Geeta Mehrotra and another Versus State of Uttar Pradesh and another reported in (2012) 10 SCC 741.
- Sunita Kumari Kashyap Versus State of Bihar and another reported in (2011) 11 SCC 301.

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

18.The marriage between A1 and the 2nd respondent is not disputed. For the demand of Rs.10,00,000/- and 150 sovereigns of gold jewels, according to A1, it was marriage expense and according to the 2nd respondent, it was dowry, otherwise the marriage would have been aborted. Stoppage of marriage would amount to social stigma to the 2nd respondent, hence the parents of the 2nd respondent accepted the demand of the accused.

19.The explanation of A1 that Rs.10,00,000/- is for marriage expenses, as per admission of the 2nd respondent in the petition filed before the Family Court Chennai, cannot be countenanced. Further, the 2nd respondent has been inflicted physical harm, continuously harassed by A1. The 2nd respondent had taken all steps to reconcile the marriage by meeting A2 and A3. On the other hand, A2 and A3 abetted A1 in causing harassment to the 2nd respondent. The contention of the learned counsel for the petitioner/A1 that USA Court had granted divorce to A1 and the 2nd respondent, itself will not absolve the accused from this case for inflicting physical harm, harassing and ill-treating the 2nd respondent. Further, the 2nd respondent approaching the Family Court, Chennai will no way affect the investigation of the above case. Before the Family Court, Chennai, the 2nd respondent had not suppressed the issuance of summons of the Superior Court, USA. Further, before the Superior Court, USA the 2nd respondent had stated about the pendency of matrimonial proceedings against A1 in India.

20.This Court by order dated 20.06.2017, referred the matter to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. Since no settlement could be arrived, the mediation failed and matter was referred back.

21.The 1st respondent Police after receipt of the complaint had sent summons, following the guidelines of the Hon'ble Apex Court. In this case, the 2nd respondent had stated about physical injury, harassment sustained by her at the hands of A1. For non-cooperation and evading the investigation, the 1st respondent initiated Look Out Circular through concerned authority and retained the passport of A1. Aggrieved over the same, A1 approached this Court seeking return of passport and removal of restriction of his travel to USA. This Court by order dated 11.10.2017 based on the submissions made by the learned counsel for A1 that the petitioner is a Green Card Holder and he has to immediately leave India, go to USA, otherwise his green card might get cancelled, gave an interim stay on the Look Out Circular in Crime No.10 of 2016, until further orders and also gave positive direction that A1 while staying in USA shall furnish all the details to the 1st respondent regarding his residential address, all his contact phone numbers, E-mail address and also file an affidavit before the 1st respondent Police undertaking to appear before them for the purpose of investigation in Crime No.10 of 2016, as and when required. The petitioner should also undertake to appear before the respondent Police at least once, before the expiry of three months from the date of receipt of a copy of that Court. Thereafter, only the passport of A1 was handed over to him and he left the country. This order was passed on 11.10.2017, but till now, A1 did not furnish the details as directed by this

Court and fail to appear before the 1st respondent. On the other hand, absconded himself violating the order of this Court dated 11.10.2011.

22.The learned counsel for the petitioner/A1 submitted that he had sent E-mail to A1 about the pendency of the cases and had taken earnest steps to contact A1 through A2 and A3, which ended in futility. On going through the submissions and materials, this Court finds that there are enough materials to proceed against accused in this case. Hence, Crl.O.P.Nos.3492 & 2519 of 2017 are dismissed.

23.With regard to Crl.O.P.No.15965 of 2017, this Court by order dated 11.10.2011 issued certain direction, A1 failed to comply and obey the order of this Court, despite several opportunities given. Hence, Crl.O.P.No.15965 of 2017 is dismissed.

24.The respondent Police is to take coercive steps to secure the accused, proceed with the investigation and complete the investigation, file a final report within a stipulated time taking into consideration that the FIR is of the year 2016. The respondent Police to take immediate action as per the guidelines issued by the Ministry of Home Affairs, Government of India in issuance of Look Out Circular and in securing A1, who had patently violated the order of this Court dated 11.10.2017. Consequently, the connected miscellaneous petitioners are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
All Women Police Station,
Thirumangalam, Anna Nagar,
Chennai.

2.The Public Prosecutor,
High Court, Madras.

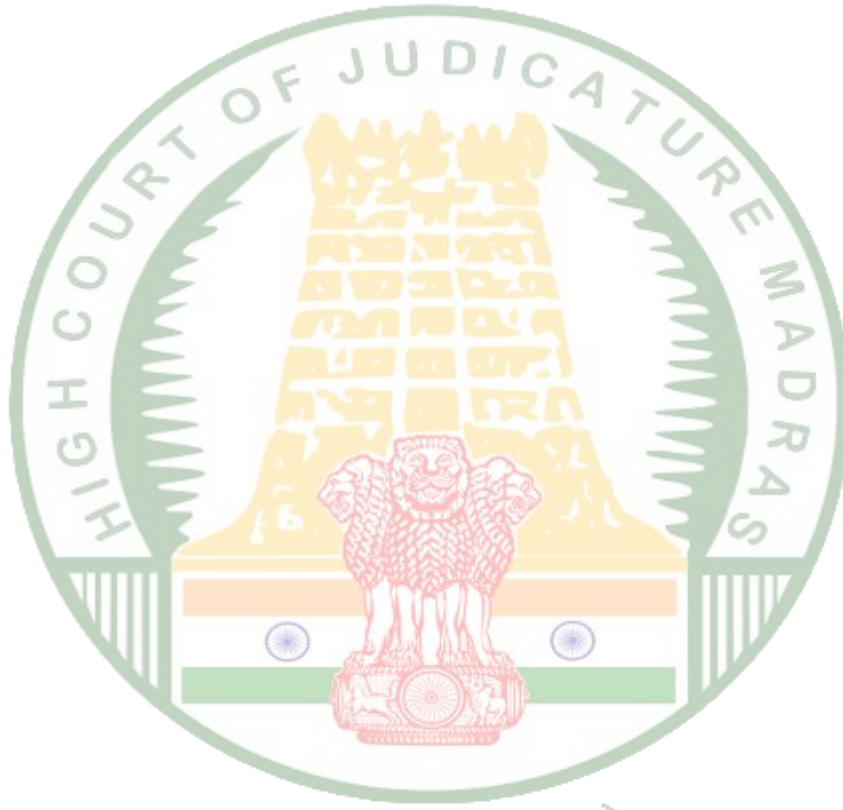
+3ccs to Mr.Ramalingam Associates, Sr no.25704 to 25706

+1cc to M/s.T.Saikrishnan, Advocate, sr no.25659

Crl.O.P.Nos.15965, 3492 & 16172 of 2017

SSI (CO)

RMP (15/09/2020)



सत्यमेव जयते

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