



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.7632 of 2020

and

CRL MP(MD)No.3662 of 2020

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- 1.Brown Sundar
- 2.Shyamala
- 3.Easwaran
- 4.Revathi

...Petitioners/Accused Nos.1-4

Vs.

- 1.State represented by
The Inspector of Police,
All Women Police Station,
Kanyakumari
(Crime No.9 of 2019)

...1st Respondent/Complainant

- 2.Kartheebha

...2nd Respondent/Defacto
Complainant

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to Crime No.9 of 2019 on the file of the 1st Respondent Police and quash the same as against the petitioners.

For Petitioners : Mr.K.K.Samy

For Respondent-1 : Mr.S.Chandrasekar

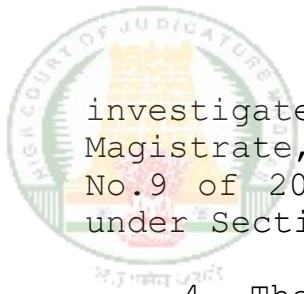
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to quash the FIR registered in Crime No.9 of 2019, on the file of the first respondent Police.

2. The case of the petitioners is that the first petitioner herein is the husband of the defacto complainant. The marriage between the first petitioner and the defacto complainant was solemnized on 03.03.2014. Thereafter, the petitioners 1 to 3 demanded the 2nd respondent to give more money in the form of dowry. Due to the same, dispute was arose between them resultantly, the 2nd respondent / defacto complainant, left the matrimonial home. Later, it came to know to the defacto complainant that the first petitioner married the 4th petitioner on 19.11.2018 and after the said marriage, the 4th petitioner gave birth to one baby.

3. Another allegation levelled by the 2nd respondent against the first petitioner is that the first petitioner made a cruelty towards the defacto complainant. For the allegation levelled against the first petitioner and others, the 2nd respondent herein filed a complaint before the Judicial Magistrate and the same was forwarded to the first respondent police for registering the case and



investigate the same. On receipt of the complaint from the Judicial Magistrate, the first respondent Police registered an FIR in Crime No.9 of 2019 punishable under Sections 494 and 498(A) of IPC and under Section 4 of Dowry Prohibition Act.

4. The learned counsel appearing on behalf of the petitioners would submit that under Section 198 of Cr.P.C., for the offence under Section 494 IPC., the Court can take cognizance only upon the complaint given by the aggrieved party. In otherwise, registering the case for the offence under Section 494 IPC., is a bar under Section 198 of Cr.P.C. Therefore, registering the case against the petitioners in Crime No.9 of 2019 under Sections 494 and 498(A) of IPC., and under Section 4 of Dowry Prohibition Act, is against the provision of Section 198 of Cr.P.C.

5. In this regard, the learned Additional Public Prosecutor appearing for the first respondent would submit that it is true for the offence punishable under Section 494 of IPC., the Court can take cognizance only upon the complaint given by the aggrieved party but, here it is a case the first respondent Police registered a case against the petitioners under Section 494 IPC., along with Section 498(A) of IPC., and therefore, registering the case for the above referred both the offences is not a bar under Section 198 of Cr.P.C;.

6. Upon considering the rival submissions made by the learned counsel appearing on side, it is necessary to see Sections 198 and 198(A) of the Code of Criminal procedure, which reads as follows:-

"Section 198 of the Code pertains to prosecution for offences against marriage. Sub-Section 1 thereof is relevant. It reads as under: "198. Prosecution for offences against marriage.- (1) No court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence." Section 198 (1)(c) of the Code reads as under : "198(1)(c). Where the person aggrieved by an offence punishable under (section 494 or Section 495) of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, (with the leave of the Court) by any other person related to her by blood, marriage or adoption)."

"198-A. Prosecution of offences under Section 498A of the Indian Penal Code. - No Court shall take cognizance of an offence punishable under Section 498A of the Indian Penal Code (45 of 1860) except upon a police report of facts which constitute such



offence or upon a complaint made by the person aggrieved by the offence or by her father, mother, brother, sister or by her father's or mother's brother or sister or, with the leave of the Court, by any other person related to her by blood, marriage or adoption."

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7. So, the above said provisions makes it clear that the complaint under Section 494 of the IPC must be made by the aggrieved person. Section 498(A) of IPC., does not fall in Chapter XX of the IPC. It falls in Chapter XXA. Section 198A Cr.P.C., which we have quoted hereinabove, permits a court to take cognizance of offence punishable under Section 498(A) IPC., upon a police report of facts which constitute offence. However, it must be borne in mind that all these provisions relates to cognizance of the offence by the Court.

8. At this juncture, it is relevant and useful to see the Judgment of our Hon'ble Apex Court in **Ushaben Vs. Kishorbhai Chunilal Talpada and Others** reported in (2012 (3) SCC (Cri) 142) wherein our Hon'ble Apex Court has held as follows:-

"The Upshot of the above discussion is that, no fetters can be put on the police preventing them from investigating the complaint which alleges offence under Section 498A of the IPC and also offence under Section 494 of the IPC. In the circumstances, the appeal must succeed"...

9. Therefore, our Hon'ble Apex Court has already settled the issue now raised before this Court. Herein also for the reasons that the first respondent registered the case for the offence under Sections 494 along 498(A) of IPC., and Section 4 of Dowry Prohibition Act. Therefore, it cannot be said that the Registration of FIR by the first respondent is *per se* illegal

10. Hence, in the light of the above discussions, I am of the view that the petition filed by the petitioners are devoid of merits and therefore, it is liable to be dismissed.

11. In fine, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

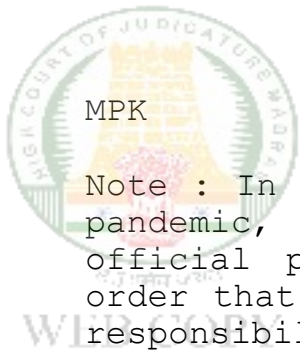
Sd/-

Assistant Registrar (ADII)

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/ /2020

Sub Assistant Registrar(CS)



MPK

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
All Women Police Station,
Kanyakumari
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL OP(MD)No.7632 of 2020
23.07.2020

KB(20.08.2020) 4P 3C