

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on	08.09.2020
Orders Pronounced on	21.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

Crl.O.P.[MD]No.16029 of 2018

and

CRL MP(MD)Nos.7102 & 7103 of 2018

Neela @ S.Thengiriammal ... Petitioner / Accused No.4

Vs.

1.The State Rep. by
The Inspector of Police,
All Women Police Station,
Kanyakumari,
Kanyakumari District. ... 1st Respondent / Complainant
(Crime No.3 of 2016)

2.Meenakshiammal ... 2nd Respondent /
Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in connection with C.C.No.138 of 2017, on the file of the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District in relation to Crime No.3 of 2016, on the file of the Inspector of Police, All Women Police Station, Kanyakumari, Kanyakumari District and quash the same as against the petitioner as devoid of merits and illegal.

For Petitioner : Mr.S.Palani Velayutham

For Respondent-1 : Mr.M.Chandrasekaran
Additional Public Prosecutor

For Respondent-2 : M/s.M.Karthikeya Venkitachalapathy

O R D E R

This Criminal Original Petition has been filed for the relief to call for the records in connection with C.C.No.138 of 2017 pending on the file of the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District in relation to Crime No.3 of 2016, on the file of the Inspector of Police, All Women Police Station, Kanyakumari, Kanyakumari District and quash the same as illegal, as far as the petitioner is concerned.

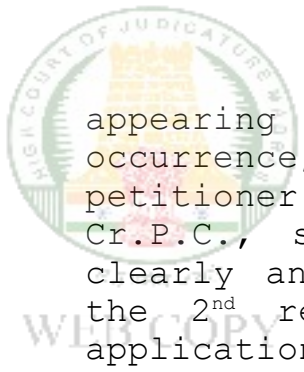


2. The case of the prosecution before the trial Court is that one Sivathanu is the husband of the 2nd respondent herein. On 10.02.2014, the betrothal in respect to the marriage of the 2nd respondent with Sivathanu was solemnized. When at that time the present petitioner and others, who are all related to each other, demanded the parents of the 2nd respondent to pay Rs.7,00,000/- and thereafter, the said amount has been given by the parents of the 2nd respondent. Subsequently, on 25.05.2014, the marriage between the Sivathanu and the 2nd respondent was solemnized, as per the Hindu Rites and Customs. After the marriage, both of them have lead their matrimonial life in Kulasekarapuram Village. However, in the month of June, 2014, all the accused in C.C.No.138 of 2017 harassed the 2nd respondent to bring additional dowry. In this regard, in the presence of the 1st accused, who is the husband of the 2nd respondent, all other accused insulted the 2nd respondent and demanded to bring Rs.1,00,000/- from her parents' house. Further, on 11.08.2014, at about 7.00 p.m., when the neighbouring house owners questioned about the harassment made by the accused, all the accused instructed the neighbouring house owners for not entering into the house in which the 2nd respondent is residing. Therefore, all the 6 accused in the above referred Calender Case committed an offence punishable under Sections 498(A) and 506(i) of IPC and Section 4 of Dowry Prohibition Act.

3. Further, In the above referred Calender Case, the petitioner is arrayed as 4th accused. As per the prosecution, she committed an offence under Section 498A, 324 and 506(i) of IPC and Section 4 of Dowry Prohibition Act. In fact, the petitioner is the cousin to the husband of 2nd respondent. After the marriage, the petitioner was residing with her husband in a far of place. Only in order to harass the petitioner, the 1st respondent police foisted a false case, without conducting any proper enquiry. The 161 Cr.P.C., statement recorded by the 1st respondent Police would clearly reveal the fact that at the time of occurrence, the petitioner herein is not present in the occurrence place, as narrated by the 2nd respondent. Therefore, the charge sheet filed against the petitioner is liable to be quashed. The learned counsel appearing for the petitioner accordingly, prayed to allow this application.

4. In this regard, learned Additional Public Prosecutor appearing for the 1st respondent police, on instructions, would submit that only upon considering the averments found in the 161 Cr.P.C., statement, the investigation officer came to a positive conclusion that the petitioner has also committed an offence, as stated in the charge sheet.

5. In respect to the 2nd respondent, the learned counsel



appearing for her made a submission that during the time of occurrence, in order to receive more money as dowry, the petitioner and others harassed the 2nd respondent. The 161 Cr.P.C., statement recorded by the 1st respondent Police would clearly and categorically prove the occurrence, as narrated by the 2nd respondent. Accordingly, he prayed to dismiss this application.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. Upon considering the arguments advanced by either side, now it is not in dispute that the petitioner Neela @ Thengiriammal is the cousin to one Sivathanu, who is the husband of the 2nd respondent. According to the petitioner, she was residing in Kulasekarapuram, Myladi, Kanyakumri District, which is a far off place from the place in which the 2nd respondent and her husband were residing. In respect to the overt act attributed, it was alleged that all the accused in the above referred Calender Case demanded the 2nd respondent to bring Rs.1,00,000/-, from her parents' house, as additional dowry. In other words, there is no specific overt act against the petitioner.

8. One another interesting thing in this case is that during the time when the 2nd respondent gave the 161 Cr.P.C., statement before the Investigating Officer, she specifically stated that on 09.06.2015, when at the time the petitioners and others made a demand to bring Rs.1,00,000/-, as additional dowry, one Vijaya, who is the Aunt to the 2nd respondent was present. In the said circumstances, during the time of giving statement before the Investigating Officer, the said Vijaya had stated that she is not present at the time when all the accused demanded the 2nd respondent to bring more money. The said contradiction is very clear that the 2nd respondent herein foisted the false case against the present petitioner.

9. Further, in the charge sheet filed by the 1st respondent in respect to the petitioner, there is no specific allegation in respect to the offence under Sections 498(A) and 506(i) of IPC and Section 4 of Dowry Prohibition Act. Moreover, it is not necessary for the petitioner to come from his house, which is situated in a far off place and made a demand to the 2nd respondent repeatedly. Accordingly, the un-controverted allegation made in the FIR is not supported through the evidence collected and also the said allegation does not disclose the commission of any offence. At this juncture, it is relevant and useful to see the Judgment of our Hon'ble Apex Court in **K.L.E.Society and others Vs. Siddalingesh** reported in **(2008 (4) SCC 541)**, wherein in paragraph No.7, it has

been held as follows:-
<https://hlservices.ecourts.gov.in/hlservices/>



"7. ... In R. P. Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

10. Further, in the case of **State of Haryana and Ors Vs. Bhajan Lal** reported in **(1992 Supp (1) SCC 335)**, the Hon'ble Apex Court has held that for quashing the FIR, one of the illustrative category reads as follows:-

"3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused."

11. Therefore, the case in our hand is also falls under the same category. On go through the evidence collected to prove the uncontroverted allegations in support of the case do not disclose the commission of any offence and therefore, the continuance of proceedings against the petitioner is an abuse of process of law and therefore the same is liable to be quashed.

12. In result, this Criminal Original Petition is allowed and the proceedings in C.C.No.138 of 2017, on the file of the learned Judicial Magistrate No.III, Nagercoil, Kanyakumari District, in relation to Crime No.3 of 2016, on the file of the Inspector of Police, All Women Police Station, Kanyakumari, Kanyakumari District, is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



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

**Order made in
Crl.O.P. [MD]No.16029 of 2018
21.09.2020**

SJ(CO)
KM (30.09.2020) 5P 4C