



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.08.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

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Crl.O.P.(MD)Nos. 15334 and 19339 of 2016

and

Crl.M.P(MD) Nos.7239, 7240, 9703 and 9704 of 2016

Shoba .. Petitioner in Crl.O.P(MD) No.15334 of 2016

1.Joseph Kennedy

2. Soosaiammal

3. Arokiasamy

.. Petitioners in

Crl.O.P(MD) No.19339 of 2016/Accused 1,3 & 4

Vs.

1.The Inspector of Police

All Women Police Station

Alangudi,

Pudukottai District

... 1st Respondent/Complainant

2.Leema Rose

... 2nd Respondent in both petitions/

Defacto Complainant

Common Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the charge sheet No. 26 of 2016 on the file of the learned Judicial Magistrate, Alangudi and quash the same in so far as it relates to the petitioners herein.

(In both petitions)

For Petitioners

: Mr.ARL. Sunderasan, Senior Counsel
for M/s.AL.Gandhimathi

For Respondent No.1

: Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

For Respondent No.2

: Mr.B. Jameel Arasu

ORDER

The petition in Crl.O.P(MD) No. 15332 of 2016 has been filed by A2 and the petition in Crl.O.P(MD) No.19339 of 2016 has been filed by A1, A3 and A4. These petitions have been filed to quash the criminal proceedings in C.C.No.26 of 2015 pending on the file of the learned Judicial Magistrate Alangudi.



2. Totally, there are four accused in this case and the petitioners are arrayed as Accused Nos.1 to 4. A1 stood charge for offences under Sections 498(A), 494 of IPC and Section 4 of Dowry Prohibition Act, A2 stood charge for offence under Section 506(i) of IPC, A3 stood charge for offence under Sections 498(A) of IPC and Section 4 of D.P.Act and A4 stood charge for offences under Sections 498(A) of IPC, 4 of D.P.Act r/w, 109 of IPC.

3. The brief facts leading to the filing of the present quash petition are as follows:

3.1. The defacto complainant is the wife of the first accused. The marriage between them took place on 21.02.2001 and out of their wedlock they are blessed with one male child and a female child. At the time of marriage the defacto complainant family members have given 78 sovereigns of gold jewels , Rs.5 lakhs worth household articles and a two wheeler given as dowry. The first accused took the jewels of the defacto complainant and failed to return the same and there was a quarrel between the parties. Thereafter A1 demanded his father -in law to purchase one acre of land in his name. However the father of the defacto complainant purchased the property in the name of son of the defacto complainant. Hence A1 assaulted the defacto complainant and driven her out of the matrimonial home. After some time they re-united . Subsequently A1 received a sum of Rs. 3 lakhs from the father of the defacto complainant and started to harass the defacto complainant demanding more dowry. Finally in the year 2015, he demanded Rs. 3 lakhs cash as dowry and driven the defacto complainant to her parental house. A3 who is the mother of A1, A4 who is the brother-in-law of A1 supported A1 and asked the defacto complainant to get dowry from her parents. It is further alleged that for the past six years A1 had illicit intimacy with A2 and he is living with her. At the instigation of A2, A1 is harassing the defacto complainant. Hence the complaint.

3.2. After completing the investigation the respondent police filed the final report before the learned Judicial Magistrate, Alangudi and it was taken cognizance in C.C. 26 of 2015 and the same is pending. Now, to quash the criminal proceedings, the present petitions have been filed under Section 482 of the Code of Criminal Procedure.

4. The learned counsel for the petitioners A1, A3 and A4 would submit that the marriage between the defacto complainant and A1 took place in the year 2001 and they are having two childrens at the age of 13 and 14 respectively. After fourteen years of marriage the present complaint has been filed with *malafide* intention to harass the petitioners. From the perusal of



materials no *prima facie* case has been made out against the petitioners. Due to some family dispute, the defacto complainant left the matrimonial home along with the children and filed the present complaint to harass the petitioners. Sofar as A3 and A4 are concerned they are only mother and brother-in-law of the A1 and absolutely there is no allegation against them for demand of dowry and the petition filed is totally abuse of process of law, with the intention to harass the petitioners.

5. The learned Senior Counsel appearing for A2 would submit that the only allegation against the petitioner is that she had illicit intimacy with A1 and only at the instigation of her, A1 is harassing the defacto complainant. Except these vague allegations absolutely no material available on record to implicate the petitioner herein for the offence under Section 506 (i) of IPC and there are no materials available on record to show that the second petitioner herein criminally intimidated defacto complainant. Even for the offence under Section 494 of IPC there is no whisper in the complaint that the petitioner got married to A1. Hence the complaint against A2 is nothing but a clear abuse of process of law and it is liable to be set aside.

6. The learned Government Advocate(Crl.Side) opposing the same submitted that the materials available on record *prima facie* make out the offence against the petitioners and there is no reason available to quash the proceedings.

7. I have considered the rival submissions and also perused the records carefully.

8. The Law is well settled that, the power vested under Section 482 of the Code of Criminal Procedure is to be used sparingly in quashing the criminal proceedings. At this preliminary stage, the Court cannot appreciate the evidence or materials collected during investigation to find out as to whether the charges levelled against the accused stand proved. The Court can only see whether uncontroverted allegations made in the complaint *prima facie* establish the offence against the accused.

9. Before going into the merits of the case, it is useful to refer to the judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Suppl (1) SCC 335**, wherein, the Hon'ble Supreme Court has laid down broad guidelines for quashing a criminal proceedings, which are as follows:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie*



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constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(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.

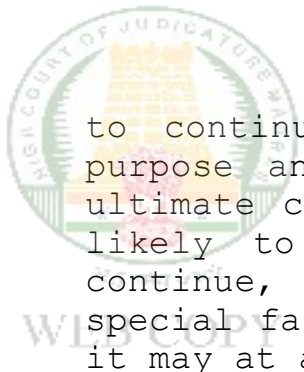
(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

10. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is in the interest of justice to permit a prosecution



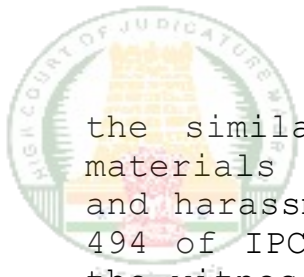
to continue. The Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction is bleak and therefore no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of the case also quash the proceedings even though it may be at an initial stage.

11. Further in the judgment of the Honourable Supreme Court in the case of **Rashmi Chopra -vs. State of Uttar Pradesh and connected case** reported in **(2019) 15 SCC 357** it is held as follows:

"21. The Criminal prosecution can be allowed to proceed only when a prima facie offence is disclosed. This Court has observed that judicial process is a solemn proceedings which cannot be allowed to be converted into an instrument of oppression or harassment. If the High Court finds that the proceedings deserve to be quashed as per the parameters as laid down by this Court in State of Haryana v. Bhajan Lal the High Court shall not hesitate in exercise of its jurisdiction under Section 482 of Cr.P.C to quash the proceedings.

12. Keeping the above principles in mind let us consider the instant case on hand. From the perusal of the materials collected during the investigation the statement of the defacto complainant, father of the defacto complainant and one of her close relative statements were recorded by the respondent police. From the perusal of the statements it could be seen that the entire allegations are against A1/husband in this case. Marriage said to have taken place in the year 2001 and they have two children aged 14 and 13. Immediately after marriage A1 said to have demanded the defacto complainant to purchase the property in his name ultimately the property has been purchased by her father in the name of the children. It seems to be the initial reason from where harassment said to have started and A1 said to have driven the defacto complainant to her parental house. Then after mediation there was re-union once again A1 demanded 3 lakhs and pledged jewels of the defacto complainant which was redeemed by the father of the defacto complainant on 15.02.2015. A1 said to have again demanded Rs. 3 lakhs as dowry and also cash Worth about Rs.10 lakhs and also harassed her.

13. So far as A3 and A4 is concerned allegation is that they only supported A1 and all of them asked the defacto complainant to get money as demanded by A1. In respect of A2, allegation was that A1 had illicit intimacy with her and living with her and only at her instigation A1 is harassing the defacto complainant. It is



the similar statements of the all the witnesses. From these materials it seen that the entire allegations of dowry demand and harassment is made against A1. So far as offence under Section 494 of IPC is concerned, there is no whisper in the statement of the witness that A1 got married to A2 and only allegation is that he had illicit intimacy with her. Even though A2 was charged for offence under Section 506(i) of IPC there is allegation that she criminally intimidated the defacto complainant.

14. So far as the A3 and A4 the mother and brother-in-law of A1, are concerned except very bald and vague allegation that they have supported A1 there is no materials available to *prima facie* make out the case indicating they are involved in the above said crime. Hence continuing the proceedings against them only amount to abuse or process of law.

15. The Honourable Supreme Court in number of cases held that the relatives of the husband should not be unnecessarily harassed and made as accused in the criminal cases it ultimately spoil the entire prosecution case. The Honourable Supreme Court in the case of ***Kans Raj v. State of Punjan and others*** reported in **2000(5) SCC 207**, wherein it is held as follows:

"5. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matter of dowry deaths, which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.

16. Further the Honourable Supreme Court in the case of ***K. Subba Roa -v. State of Telengana*** reported in **2018 (14) SCC 452**, wherein it is held as follows:

"6. Criminal Proceedings are not normally interdicted by us at the interlocutory stage unless there is an abuse of the process of a court. This Court at the same time, does not hesitate to interfere to secure the ends of justice. The Courts should be careful in proceeding against the distant relative in crimes pending pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific instances of their involvement in the crime are made out".



17. Sofar as A2 is concerned the only allegation against her is that she had illicit intimacy with A1 and at her instigation A1 is harassing the defacto complainant. Absolutely there is no whisper about the second marriage to attract the provision of Section 494 of IPC and also there is no allegation that A2 criminally intimidated the defacto complainant. In the absence of any such materials proceedings against A2 needs to be quashed

18. Considering the above allegations as *prima facie* case has been made out against A1, this Court finds that there is no reason to quash the proceedings against as A1 and sofar as other accused persons are concerned no *prima facie* has been made out against the accused persons, hence it is necessarily to be quashed.

19. In the result :

i) Crl.O.P(MD) No. 15334 of 2016 is allowed and the proceedings against the petitioner/A2 is quashed.

ii) Crl.O.P(MD) No.19339 of 2016 is partly allowed and the Criminal Original Petition stands dismissed against A1 and insofar as the other accused persons namely A3 and A4 are concerned the Petition is allowed and the Criminal Proceedings against them stand quashed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar(CS)

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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,
Alangudi.

2. The Inspector of Police
All Women Police Station
Alangudi,
Pudukottai District

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
Crl.O.P.(MD)Nos. 15334 and
19339 of 2016
Dated: 18.08.2020

AVS (CO)
TR(16.09.2020) 8P 4C