



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)**

Date : 24/11/2020

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

CRL OP(MD) . No.19925 of 2016

and

Cr1.M.P(MD) .Nos.10001 and 10002 of 2016

C.Amuthadevi

... Petitioner/Accused No.10

Vs

1. State rep., by the
Inspector of Police,
All Women Police Station,
Virudhunagar.
(Crime No.33 of 2015)

2.Muthulakshmi

... Respondents/Complainants

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet in C.C.No.177 of 2016 on the file of Judicial Magistrate Court No.II, Virudhunagar and quash the same as illegal insofar as the petitioner is concerned.

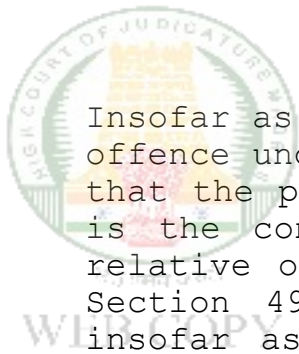
For Petitioner : Mr.R.Gandhi

For Respondents : Mr.KR.Bharathikannan
Government Advocate (Cr1.side)
for R2
Mr.R.Rajamohan for R2

ORDER

This petition has been filed to quash the charge sheet in C.C.No.177 of 2016 on the file of Judicial Magistrate Court No.II, Virudhunagar insofar as the petitioner is concerned.

2.The learned counsel for the petitioner would submit that, on the complaint lodged by the second respondent, the first respondent has registered a case with the allegation that the first accused got married the second respondent on 20.02.2005, at the time of their marriage, the first accused was presented 31 sovereigns of gold jewels and also articles worth about Rs.1 lakh. Thereafter, the second respondent was subjected to harassment for demanding huge dowry and also the first accused abused her with filthy language and threatened her with dire consequences. He further submitted that as far as the petitioner is concerned, she has been arrayed as 10th accused and a false case has been foisted in order to harass her.



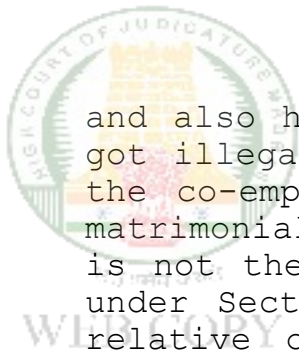
Insofar as the petitioner is concerned, she has been charged for the offence under Section 498 A and 506(i) IPC. It is further submitted that the petitioner, even according to the defacto complainant, she is the concubine of the first accused and as such, she is non-relative of the first accused. When it being so, no charge under Section 498 (A) IPC is made out as against the petitioner and insofar as the offence under Section 506(i) IPC is concerned, in order to substantiate the said charge, two ingredients are necessary. In the case on hand, the prosecution failed to prove two ingredients to attract offence under Section 506(i) IPC in support of his contention. He also relied upon the judgment of this Court, dated 25.10.2019 passed in Crl.O.P(MD).No.13287 of 2019.

3.The learned counsel appearing for the second respondent would submit that the first accused got married the second respondent on 20.02.2005. After the marriage, the first accused along with their family members harassed and tortured the defacto complainant for demanding huge dowry. Though the first accused was presented 31 sovereigns of gold jewels and also articles worth about Rs.1 lakh during the marriage, the first accused has not satisfied and demanded huge dowry. Insofar as the petitioner is concerned, she is the main person, who instigated the first accused to demand huge dowry and also harassed the second respondent. The petitioner spoiled the entire life of the second respondent and the points raised by the petitioner have to be considered only during the trial, since all are disputed question of facts and it cannot be considered before this Court under Section 482 Cr.P.C.

4.The learned Government Advocate (Crl.side) submitted that on the complaint lodged by the second respondent, the first respondent Police has registered the case in Crime No.33 of 2015 for the offence under Sections 498A, 406, 294(b) and 506(i) IPC. After conducting the investigation, final report has been filed and the same was taken into cognizance in C.C.No.177 of 2016 on the file of the learned Judicial Magistrate No.II, Virudhunagar. Insofar as the petitioner is concerned, she arrayed as 10th accused, she has been charged for the offences under Section 498(A) and 506(i) IPC. There are specific allegation against the petitioner to attract under Sections 498(A) and 506(i) IPC. Therefore, she sought for dismissal of the petition.

5.Heard Mr.R.Gandhi, learned counsel for the petitioner, Mr.KR.Bharathikannan, learned Government Advocate (Crl.side) for the first respondent and Mr.R.Rajamohan, learned counsel for the second respondent.

6.There are totally 10 accused in this case, in which, the petitioner has been arrayed as 10th accused. According to the defacto complainant, the first accused got married her on 20.02.2005 and during the marriage, he was presented gold jewels and household items. Then, he demanded huge dowry along with his relative



and also harassed the defacto complainant. The first accused have got illegal intimacy with the petitioner/10th accused, who is being the co-employee and threatened the second respondent to leave the matrimonial home and also harassed her. Admittedly, the petitioner is not the relative of the first accused. Insofar as the offence under Section 498 (A) is concerned, whoever, being the husband or relative of husband of a woman subjecting her to cruelty would attract. In this regard, it is relevant to extract the provisions under Section 498(A):-

'Section 498-A: Husband or relative of husband of a woman subjecting her to cruelty – Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine. '

7. Therefore, the petitioner allegedly is the co-employee of the first accused had illegal intimacy with him, as such, offence under Section 498(A) is not attracted as against the petitioner herein. In this regard, it is relevant to rely upon the judgment reported in **(2009) 6 SCC 757** in the case of **U.Suvetha Vs. State by Inspector of Police and another**, which held as follows:

"10. In the absence of any statutory definition, the term "relative" must be assigned a meaning as is commonly understood. Ordinarily it would include father, mother, husband or wife, son, daughter, brother, sister, nephew or niece, grandson or granddaughter of an individual or the spouse of any person. The meaning of the word "relative" would depend upon the nature of the statute. It principally includes a person related by blood, marriage or adoption.

11. The word "relative" has been defined in *P.Ramanatha Aiyar's Advanced Law Lexicon*, Vol.4, 3rd Edition as under:

"Relative-'Relative' includes any person related by blood, marriage or adoption. (Lunacy Act....)

The expression 'relative' means a husband, wife, ancestor, lineal descendant, brother or sister. (Estate Duty Act....)

'Relative' means in relation to the deceased,

(a) the wife or husband of the deceased,

(b) the father, mother, children, uncles and aunts of the deceased and

(c) any issue of any person falling within either of the preceding sub-clauses and the other party to a marriage with any such person or issue. (Estate Duty Act....)



A person shall be deemed to be a relative of another if, and only if —

(a) they are members of a Hindu undivided family; or
(b) a son, daughter, brother, sister, nephew or niece of the individual, or

(c) a grandson or granddaughter of the individual, or
(d) the spouse of any person referred to in sub-clause

(b) (Income Tax Act...)

'Relative' means —

(1) spouse of the person;

(2) brother or sister of the person;

(3) brother or sister of the spouse of the person;

(4) any lineal ascendant or descendant of the person;

(5) any lineal ascendant or descendant of the spouse of the person;

.....

18. By no stretch of imagination would a girlfriend or even a concubine in an etymological sense be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. If no marriage has taken place, the question of one being relative of another would not arise.

19. We may notice that the Andhra Pradesh High Court in *Rajeti Laxmi Vs. State of A.P.* Held as under : (DMC p 798, para4)

"4. The entire reading of the charge-sheet and the statements of Lws prosecution that A-6 is the relative of husband of LW-1. She is only concubine of A-1 and having illicit intimacy with him. Therefore, in the absence of any averment in the charge-sheet or any statement that she is a relative of A-1, I am of the opinion that the offence under Section 498 (A) IPC does not attract to A-6. Even as per the dictionary meaning 'relative' means a person connected by blood or marriage or 'a species related to another by common origin'. Simply because A-6 is having illicit intimacy with A-1, it cannot be said that she is a relative of A-1. Accordingly, the criminal petition is allowed quashing the proceedings in C.C.No.233 of 2004 for the offence under Section 498 (A) IPC, against the petitioner A-6. Insofar as the other offences are concerned, it may go on."

20. A learned Single Judge of the Bombay High Court, Bench at Aurangabad, in *Swapnaja Vs. State of Maharashtra* opined:

"... Even assuming that due to her extramarital



relation with husband of respondent 2, she is being ill-treated or subjected to harassment by her husband and his relatives, then also it is difficult to say that the applicant is accountable to answer the charge for the offence punishable under Section 489 (a) IPC. Form she is not related to husband of respondent 2 nor can be regarded as the person, who can fall within explanation (a) or (b) of Section 498 (A) IPC."

To the similar effect is the law laid down by the same High Court in *Ranjana Gopalrao Thorat Vs. State of Maharashtra*.

21. A learned Single Judge of the Delhi High Court, however, preferred to follow *Shivcharan Lal Verma* in preference to *Reema Aggarwal* to hold that precedentially the former is binding on the High Court, stating:

"Therefore the decision in *Shivcharan Lal Verma* will clearly take precedence over the decision in *Reema Aggarwal*. That being the case, the arguments advanced by the learned counsel for the petitioners would have to be accepted that the provisions of Section 498 (A) IPC would not be attracted in as much as the marriage between *Mohit Gupta* and *Shalini* was null and void and *Mohit Gupta* could not be construed as a 'husband' for the purposes of Section 498 (A) IPC cannot be framed and the Metropolitan Magistrate had correctly declined to frame any charges under Section 498 (A) IPC."

22. Similar view was taken by a learned Single Judge of the same High Court in *Capt. Rajinder Towari Vs. State (NCT of Delhi)* stating:

"9. As already indicated above, insofar as the charge under Section 498 (A) IPC is concerned, that issue is no longer open for debate. The same has been decided by this Court in *Mohit Gupta* applying the ratio of the Supreme Court decision in *Shivcharan Lal Verma*. Since the marriage between *Rajinder* and *Meenakshi* was a nullity in view of the pendency of *Rajinder's* divorce proceedings qua his first wife, the offence under Section 498-A, which is specific to 'husband', would not be maintainable, therefore, the impugned order needs to be corrected on this ground also."

23. We are, however, not oblivious of the fact that a learned Single Judge of the Kerala High Court in *John Idiculla Vs. State of Kerala* relying on *Reema Aggarwal* gave a wider meaning to the word "second wife" to hold:

"25. The test under Section 498-A IPC is whether in the facts of each case, it is probable that a woman is treated by friends, relatives, husband or society as 'wife' or as a mere 'mistress'. If from the pleadings



and evidence the Court finds that the woman concerned is regarded as wife and not as a mere mistress, she can be considered to be a 'wife' and consequently, as 'the relative of the husband' for the purpose of Section 498-A IPC. Proof of a legal marriage in the rigid sense as required under Civil law is unnecessary for establishing an offence under Section 498-A IPC. If she inflicts cruelty on the legally wedded wife of Section 498-A IPC will not lie against her."

24. Applying the principles laid down in various decisions referred to above, we have no doubt in our mind, that the appellant is not a relative of the husband of the first informant. For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The appeal is allowed."

13. The Hon'ble Supreme Court of India held that by no stretch of imagination would girlfriend or even a concubine in an etymological sense be a "relative". The word "relative" brings within its purview a status. Such a status must be conferred either by blood or marriage or adoption. "

8. It is also seen that the petitioner is being a co-employee and also alleged to have illegal intimacy with the first accused. She would not come under the purview of relative of the first accused. Therefore, the above judgment is squarely applicable to the case on hand and no charge for the offence under Section 498(A) is not made out as against the petitioner. Insofar as the offence under Section 506(i) IPC is concerned, to prove the said charge, the following two ingredients are necessary :

(i) there must be a threat on the side of the accused.

(ii) in the first time of such threat as such punishment under Section 506(i) IPC would not attract as against the petitioner.

9. It is relevant to rely upon the judgment of this Court in **Crl.O.P. (MD) No.11030 of 2014 (Abdul Agis Vs. State through the Inspector of Police)**, which reads as follows:-

"7. It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant.



The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 506(i) of I.P.C. is not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings."

10. Therefore, in view of the above discussion, the entire proceedings is vitiated against the petitioner and it is nothing but abuse of process of law and it cannot be sustained as against the petitioner. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.177 of 2016 on the file of Judicial Magistrate Court No.II, Virudhunagar is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)

rmk

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 Court No.II,
Virudhunagar.

2. The Inspector of Police,
All Women Police Station,
Virudhunagar.



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

+1 cc to Mr.R.Rajamohan, Advocate SR.No.22822

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ORDER
IN
CRL OP(MD) No.19925 of 2016
Date : 24/11/2020

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