



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 22.12.2020

PRESENT

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

CRL OP(MD). No.17742 of 2017

and

CrI.M.P. (MD) Nos.11590 & 11591 of 2017

WEB COPY

1. Raja Chellappan

2. Solai

... Petitioners/Accused No.1 & 2

.Vs.

1.The Inspector of Police,
All Women Police Station,
Thirupathur,
Sivagangai District.

... Respondent/Complainant

2.Muthulakshmi

... Respondent/Defacto Complainant

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet in CC.No.254 of 2016 filed by the first respondent herein on the file of the Judicial Magistrate, Thirupathur and quash the same.

For Petitioners : Mr.A.V.Arun

For Respondents : Mr.K.Suyambulinga Bharathi

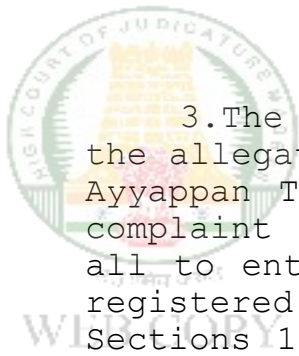
Government Advocate (criminal side) for R1

: No appearance for R2

O R D E R

This Criminal Original Petition is filed to quash the charge sheet in C.C.No.254 of 2016 on the file of the Judicial Magistrate, Thirupathur.

2. The crux of the complaint is that the first accused got married with the second respondent and during their marriage, 32 sovereigns of jewels and other "Sreethana" articles worth about Rs.3,00,000/- (Rupees Three Lakhs only) and also a sum of Rs.4,50,000/- for marriage expenses were presented by the second respondent's family. After their marriage, they lived in Mylapore, Chennai and after one month of the marriage, on the ill advice of family members, the first accused was torturing the second respondent and also demanded more jewels and money from the second respondent. Thereafter, the second respondent and the first accused lived separately at Ayyappan Thangal, Chennai. It is further alleged that due to the marriage, they gave birth to a female child and thereafter, all the accused demanded huge dowry and also demand jewels. When the second respondent could not be able to give more dowry and also jewels, she was driven out from the matrimonial home.



3.The learned counsel for the petitioners would submit that all the allegations made as against the petitioners only at Mylapore and Ayyappan Thangal, Chennai, whereas, the second respondent lodged a complaint before the first respondent, who has no jurisdiction at all to entertain the complaint. The first respondent mechanically registered the complaint without even seeing the procedure under Sections 177 to 179 of Cr.P.C. and also charge sheeted as against the petitioners. He would further submit that while pending investigation, the first petitioner herein filed a petition for divorce before the Family Court, in H.M.O.P.No.4436 of 2016, on the file of the VII Additional Family Court, Chennai, on the ground of cruelty and by judgment, dated 22.08.2019, the marriage solemnized between the first accused and the second respondent was dissolved. In support of the contention, he would rely upon the judgment of the Hon'ble Supreme Court in **Y.Abraham Ajith and others Vs. Inspector of Police, Chennai and another** reported in **2004 (8) SCC 100**.

4.Though notice was served to the second respondent and name was printed, no one appeared on behalf of the second respondent either through counsel or in person.

5.The learned Government Advocate (Criminal Side) for the first respondent would submit that on the complaint lodged by the second respondent, the first respondent registered a case for the offences under Sections 498(A), 406, 506(i) I.P.C and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance in C.C.No.254 of 2016 by the Judicial Magistrate, Thirupathur. He would further submit that the second respondent married the first accused and both were lived at Mylapore and thereafter at Ayyappan Thangal, within the jurisdiction of Chennai District. Thereafter, she was driven out from the matrimonial home and she came to her parents' house and stayed there. In respect of the offence under Section 498(A) I.P.C. is concerned, after having been driven out from the matrimonial home, she had been given shelter by her parents' house at Keelasevalpatty, Sivagangai District and the first respondent has got jurisdiction to register the case for the offence under Section 498(A) I.P.C., since the cruelty defines physical as well as mental cruelty committed by the accused persons. In support of his contention, he also relied upon the judgment in **Crl.Appeal No.71 of 2012, dated 04.01.2019 [Rupila Devi Vs. State of Uttar Pradesh and others]** reported in **2019 (5) SCC 384**, in which, the judgment relied upon by the learned counsel for the petitioner was also discussed and held that the wife has got jurisdiction to lodge a complaint, wherever she resides after driven out from the matrimonial home. Therefore, he further submitted that there are specific allegations to attract as against the petitioners and hence, sought for the dismissal of this petition.



6. Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) for the first respondent.

7. It is seen that totally, there are four accused, of which, the petitioners are arrayed as A1 and A2. Insofar as the fourth accused is concerned, he is the grandfather of the first accused and died. Insofar as the third accused is concerned, he is absconding and hence, absconding charge sheet is filed. The first petitioner herein is the husband and the second petitioner herein is the mother-in-law of the second respondent herein. The first accused got marriage with the second respondent herein and due to their marriage, they gave birth to a female child. According to the defacto complainant, during their marriage, they have presented with 32 sovereigns of jewels and other "Sreethana" articles worth about Rs.3,00,000/- (Rupees Three Lakhs only) and also a sum of Rs.4,50,000/- (Rupees Four Lakhs and Fifty Thousand only) for marriage expenses, were presented by the second respondent's family. After the birth of the female child, they also insisted and demanded more dowry from the second respondent. Therefore, she was tortured by the petitioners and had driven out from the matrimonial home.

8. On a perusal of the statements recorded under Section 161(3) Cr.P.C., it is seen that all the allegations made by the second respondent are bald and frivolous and without stating any specific events with dates. Further, the only ground raised by the learned counsel for the petitioners is that the first respondent has no jurisdiction to register the complaint and without following the procedure contemplated under Sections 177 to 179 Cr.P.C. mechanically registered the case and filed the final report. In support of his contention, he relied upon the judgment in Y. Abraham Ajith and others Vs. Inspector of Police, Chennai and another reported in 2004 (8) SCC 100. The Hon'ble Supreme Court held as follows:

"12. The crucial question is whether any part of the cause of action arose within the jurisdiction of the court concerned. In terms of Section 177 of the Code, it is the place where the offence was committed. In essence it is the cause of action for initiation of the proceedings against the accused.

13. While in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in Section 177 of the Code, reference is to the local jurisdiction where the offence is committed. These variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases.



14.It is settled law that cause of action consists of a bundle of facts, which give cause to enforce the legal inquiry for redress in a court of law. In other words, it is a bundle of facts, which taken within the law applicable to them, gives the allegedly affected party a right to claim relief against the opponent. It must include some act done by the latter since in the absence of such an act no cause of action would possibly accrue or would arise.

15.The expression "cause of action" has acquired a judicially settled meaning. In the restricted sense cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In the wider sense, it means the necessary conditions for the maintenance of infraction coupled with the right itself. Compendiously, the expression means every fact, which it would be necessary for the complainant to prove, if traversed, in order to support his right or grievance to the judgment of the court. Every fact, which is necessary to be proved, as distinguished from every piece of evidence, which is necessary to prove such fact, comprises in "cause of action".

16.The expression "cause of action" has sometimes been employed to convey the restricted idea of facts or circumstances which constitute either the infringement or the basis of a right and no more. In a wider and more comprehensive sense, it has been used to denote the whole bundle of material facts.

17.The expression "cause of action" is generally understood to mean a situation or state of facts that entitles a party to maintain an action in a court or a tribunal: a group of operative facts giving rise to one or more bases for sitting; a factual situation that entitles one person to obtain a remedy in court from another person. In Black's Law Dictionary a "cause of action" is stated to be the entire set of facts that gives rise to an enforceable claim; the phrase comprises every fact, which, if traversed, the plaintiff must prove in order to obtain judgment. In Words and Phrases (4th Edition), the meaning attributed to the phrase "cause of action" in common legal parlance is existence of those facts, which give a party a right to judicial interference on his behalf.



18. In Halsbury's Laws of England (4th Edition), it has been stated as follows:

" 'Cause of action' has been defined as meaning simply a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. 'Cause of action' has also been taken to mean that a particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject-matter of grievance founding the action, not merely the technical cause of action."

9. The Hon'ble Supreme Court held that the execution has also been taken to him that the particular act on the part of the defacto compensation which of the complaint or the subject matter of technically. Further, it is held that the concerned Court had no jurisdiction to deal with the complaint and the complaint was returned and directed to file before the proper jurisdictional Court, whereas, the learned Government Advocate (Criminal Side) cited the judgment reported in 2019 (5) SCC 384[Rupali Devi Vs. State of Uttar Pradesh and others] and the Hon'ble Supreme Court of India held as follows:

"16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498-A of the Penal Code."

10. In the above judgment, it is held that under Section 179 Cr.P.C., if by reason of the consequences emanating from a criminal act an offence is occasioned in another jurisdiction, the court in that jurisdiction would also be competent to take cognizance. Thus, if an offence is committed partly in one place and partly in another; or if the offence is a continuing offence or where the consequences of a criminal act result in an offence being committed at another place, the exception to the "ordinary rule" would be attracted and the courts within whose jurisdiction the criminal act is committed will cease to have exclusive jurisdiction to try the offence.



11. In the case on hand, even according to the second respondent the offence has been committed only in the residence of the first accused viz., in the matrimonial home at Mylapore and Ayyappan Thangal of Chennai District. The second respondent was driven out from the matrimonial home and there is no evidence to show that the petitioners committed the offence of cruelty or any other offence, when the second respondent was residing with her parents' house. Therefore, the above judgment is not applicable to the case on hand. That apart, while pending investigation, the first petitioner filed a petition for dissolution of marriage in H.M.O.P.No.4436 of 2016. In the said proceedings also, the second respondent was absent and the first petitioner obtained an ex parte decree of divorce, by judgment and decree dated 22.08.2019, on the file of the VII Additional Family Court, Chennai.

12. Thus, the first respondent has no jurisdiction to entertain the complaint for the offence under Section 498(A) I.P.C. It is true that it is a settled position of law that the offence under Section 498(A) I.P.C. is a continuous offence and any there can be no quarrel over the same. Whereas, there is no evidence to show that the offence under section 498(A) I.P.C. has been committed even while the second respondent was residing with her parents within the jurisdiction of the first respondent herein, even assuming that there is an allegation to attract the offence under Section 498(A) IPC. Insofar as the other offences are concerned, the first respondent has no jurisdiction to entertain the complaint, since the other allegations are within the jurisdiction of Mylapore and Ayyappan Thangal, Chennai District. The Hon'ble Supreme Court also held that the courts at the place where wife takes shelter after leaving or being driven away from matrimonial home on account of acts of cruelty committed by husband or his relatives, would dependent on factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498(A) I.P.C. In the case on hand, the facts are completely different set of facts and as such, the above judgment is not applicable. Therefore, the entire proceedings are vitiated as against the petitioners and it cannot be sustained as against them.

13. In view of the above discussion, this Criminal Original Petition is allowed and the charge sheet in C.C.No.254 of 2016 on the file of the Judicial Magistrate, Thirupathur, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

/ /2021

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,
Thirupathur.
- 2.The Inspector of Police,
All Women Police Station,
Thirupathur,
Sivagangai District.
3. The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER
IN
CRL OP(MD) No.17742 of 2017
Date : 22.12.2020

VB (16.02.2021) 7P 6C