

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.12.2020

PRONOUNCED ON : 07.01.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.15936 of 2015  
AND M.P.Nos.1 & 2 of 2015

1.Natarajan  
2.Jeyakanthi ... Petitioners

Vs.

1.State rep. by its  
The Inspector of Police  
All Women Police Station  
Neyveli

2.K.Swathika ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.194 of 2011 pending on the file of the learned District Munsif-cum-Judicial Magistrate, Neyveli for the offence under Sections 498-A and Section 4 of the Dowry Prohibition Act, 1963 and quash the same.

For Petitioners : Mr.V.Subramanian

For 1<sup>st</sup> Respondent : Mrs.P.Kritika Kamal  
Govt. Advocate (Crl. Side)

For 2<sup>nd</sup> Respondent : Mr.A.Sivakumar  
Legal Aid Counsel

O R D E R

For the sake of convenience, the parties will be referred to by their names.

2. Natarajan and Swathika were divorcees. It is the case of Swathika that, she came to know about Natarajan through a matrimonial website and they both got married on 25.02.2008; after marriage, the couple went to Kuwait, where both of them were employed; she was subjected to cruelty by Natarajan, who left her in Kuwait and returned to India on

23.02.2011, after abandoning her there; she came to India and went to the house of Natarajan on 16.03.2011, where she was inflicted further harassment by Natarajan and his mother Jeyakanthi. On these allegations, she lodged a complaint, based on which, the police registered a case in Crime No.3 of 2011 and after completing the investigation, have filed a charge sheet in C.C.No.194 of 2011 in the Court of the District Munsif-cum-Judicial Magistrate, Neyveli against Natarajan (A1) and his mother Jeyakanthi (A2) for the offences under Sections 498-A, 406 IPC and Section 4 of the Dowry Prohibition Act, 1961, for quashing which, Natarajan (A1) and Jeyakanthi (A2) have filed the present petition under Section 482 Cr.P.C.

3. Since notice was not served on Swathika, this Court passed the following order on 10.12.2020 :

"The first respondent/police is directed to produce K.Swathika, second respondent herein, before this Court by video conferencing from the police station on 16.12.2020.

Post the matter on 16.12.2020 in video conferencing."

Again on 16.12.2020, this Court passed the following order :

"This case is taken up through video conferencing.

2.Today, Mrs.Jayadevi, Inspector of Police, All Women Police Station, Neyveli and K.Swathika (Mobile No.9789892810), second respondent/de facto complainant, are present before this Court by video conferencing from All Women Police Station, Neyveli.

3.Report called for from the trial Court shows that the trial has begun in C.C.No.194 of 2011 and four witnesses have been examined, which has been suppressed by the petitioner.

4.However, the learned counsel for the petitioner requested this Court to adjourn this case to 21.12.2020.

5.K.Swathika, de facto complainant, stated that she has no means to engage an Advocate.

6.Therefore, this Court appoints Mr.Sivakumar (Enrolment No.2299 of 2013, Mobile No.9176770750) as Legal Aid counsel for K.Swathika.

Post the matter on 21.12.2020 finally."

4. Heard Mr.V.Subramanian, learned counsel for Natarajan and Jeyakanthi; Mrs.P.Kritika Kamal, learned Govt. Advocate (Crl. Side) appearing for the State and Mr.A.Sivakumar, learned counsel for Swathika.

5. This petition deserves to be dismissed on the short ground that, the trial has already begun and three witnesses (and not four witnesses as alluded to in paragraph 3 of the order dated 16.12.2020) have been examined by the trial Court. However, Mr.Subramanian contended that, the allegations of cruelty were perpetrated in Kuwait and hence, the accused cannot be tried for those acts, in the absence of a sanction under Section 188 Cr.P.C. In support of this contention, strong reliance was placed on the judgment of the Supreme Court in Thota Venkateswarlu Vs. State of Andhra Pradesh and Another [(2011) 9 SCC 527] and the judgment of this Court in Dr.S.Karthikeyan Vs. E.Vadavanam and Another [(2015) 1 MWN (Cri) 373].

6. Mr.Subramanian also drew the attention of this Court to the decree passed by the Sub Court, Neyveli in A.S.No.4 of 2013 holding that there was no valid marriage of Natarajan and Swathika. He placed strong reliance on Section 41 of the Evidence Act, 1872 and contended that, in the teeth of the finding of the Sub Court that there was no valid marriage, Natarajan cannot be prosecuted under Section 498-A IPC.

7. Per contra, Mrs.P.Kritika Kamal and Mr.A.Sivakumar submitted that sanction under Section 188 Cr.P.C. can be obtained at any time.

8. Whether a valid decree was obtained in A.S.No.4 of 2013, is once again a question of fact that has to be decided only by the trial Court, especially, when the prosecution has examined three witnesses in the trial Court. There appears to be sufficient substance in the contention of the respondents. There are also sufficient materials to establish the occurrence that took place on 16.03.2011, inasmuch as one Thanikachalam, a BSNL lineman, one Vanitha, a neighbour of the accused and one Saraswathy, in their statements to the police have spoken about the said incident. In such view of the matter, the prosecution cannot be quashed on the grounds canvassed by Mr.Subramanian.

In the result, this Criminal Original Petition is dismissed. Connected Miscellaneous Petitions are closed. If Jeyakanthi (A2) files an affidavit in the trial Court that, she has engaged a counsel; she would not dispute her identity and the counsel engaged by her would cross-examine the witnesses on the day they are examined in-chief, as held by the Supreme Court in Vinod Kumar Vs. State of Punjab [(2015) 3

SCC 220], the trial Court may liberally consider the petition filed under Section 317 Cr.P.C. and dispense with her presence. However, she should be physically present for questioning under Section 313 Cr.P.C. and on the date of judgment.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The District Munsif-cum-Judicial Magistrate  
Neyveli

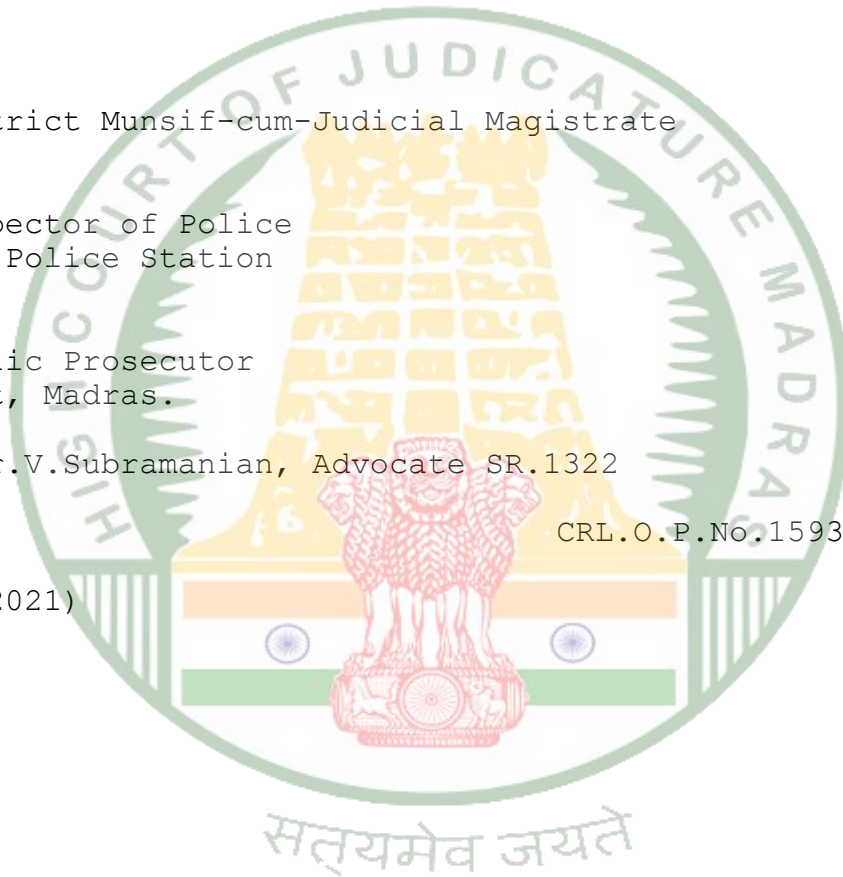
2.The Inspector of Police  
All Women Police Station  
Neyveli

3.The Public Prosecutor  
High Court, Madras.

+1cc to Mr.V.Subramanian, Advocate SR.1322

CRL.O.P.No.15936 of 2015

RGN(CO)  
CB(02/02/2021)



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