

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1309 of 2019  
and Crl.M.P.No.17689 of 2019

1.Karthikeyan  
2.Jayavel  
3.Rani

... Petitioners/Accused 1 to 3

Vs.

State Rep. by  
The Inspector of Police  
Kaveripattinam Police Station  
Krishnagiri District  
(Crime No.379 of 2016)

... Respondent/Complainant

PRAYER : Criminal Appeal filed under Section 397 read with Sections 401 Cr.P.C., against the judgment dated 30.09.2019 rendered by the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri in Crl.M.P.No.521 of 2019 in S.C.No.80 of 2018 and set aside the order to alter the charge u/s.304B IPC.

For Petitioners : Mr.M.Ravi

For Respondent : Mr.K.Madhan,  
Govt.Advocate (Crl.Side)

O R D E R

The respondent police registered the case against the petitioners for the offence punishable under Section 174 (3) Cr.P.C. Subsequently, after investigation, charge sheet filed for the offence under Section 306 and 498A IPC. The Magistrate, after taking cognizance of the offence committed the case to the Sessions Court. The Sessions Court taken the case on file in S.C.No.80 of 2018. During the trial, the respondent police filed petition under Section 216 Cr.P.C., to alter the charge framed against the accused and that petition was allowed to frame additional charge u/s.304(B) IPC. Challenging the said order, the petitioners/accused are before this court.

2. The learned counsel for the petitioners would submit that no witnesses have spoken about the demand of dowry. The case was referred to RDO to verify whether there is dowry harassment. Though RDO has filed the report, he has not stated on whose statement and material, he came to the conclusion that death is due to dowry harassment. Simply he stated that he presumed that some facts would show that there is dowry harassment, however, it is not established with any materials or substance. Subsequently, the investigating agency filed the application for altering the charge framed against the accused.

3. The learned counsel for the petitioner further submitted that the investigating agency invoked Section 216 Cr.P.C to alter the charge. In this connection, he placed reliance on the decision of Honourable Supreme Court reported in (2017) 3 SCC 347 [P.Kartikalakshmi Vs. Sri Ganesh and another]. In the said decision, the Supreme Court held that "it may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is available, as provided under Section 216 Cr.P., to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced.". Therefore, the order passed by the learned Sessions Judge is perverse and liable to be set aside.

4. The learned Government Advocate (Criminal Side) would submit that Revenue Divisional Officer report clearly reveals that there is dowry demand and the witnesses also spoken about the father of the victim girl who spoken regarding demand of dowry. Therefore, the prosecution can very well file petition under Section 216 Cr.P.C. In the interest of justice, if any addition or omission, prosecution can seek indulgence of the court and in the interest of justice, the court can consider for addition or alteration of any charge. Therefore, the decision referred by the learned counsel for the appellant is not applicable to the present case. It is also stated that the reason for alteration of the charge is stated in the petition and is found to be reasonable and acceptable one. Therefore, considering the said facts, the Sessions Judge, Fast Track Mahila Court, Krishnagiri, allowed the petition filed by the prosecution under Section 216 Cr.P.C.

5. Heard and perused the records.

6. Admittedly, the case was originally registered under Section 174(3) Cr.P.C. Subsequently, FIR itself was altered under Sections 498(A) and 306 IPC. After investigation, the prosecution filed charge sheet. The Sessions Judge also framed the charge for offence punishable under Sections 306 and 498A IPC. During the trial, after examining the witnesses, the

respondent police filed an application under Section 216 Cr.P.C., to alter the charge and the learned Sessions Judge, spoken about the statement of the witnesses and also RDO Report. It is also pointed out by the Sessions Judge that prior to the investigation of the RDO, all the witnesses in their evidence categorically stated about the demand of dowry harassment and ill treating, cruelty of the deceased by the accused. As such, even at the time of filing charge sheet, the prosecution has not taken cognizance of the offence and even thereafter, without alteration, the case was committed to the Sessions Judge. Even the Sessions Judge at the time of framing of charge sheet, has not framed the charges under Section 304(b) IPC.

7. On a reading of the entire materials, it is clearly seen that subsequent materials are brought before the court by the investigating agency or any other parties regarding demand of dowry. But the statement of witnesses have clearly spoken about the harassment but not the dowry harassment or the death is due to harassment of dowry.

8. In view of the above reasonings, the order passed by the Sessions Judge, Fast Track Mahila Court, Krishnagiri, dated 30.09.2019, in CrI.M.P.No.521/2019 in S.C.No.80/2018 is set aside. It is for the Sessions Judge, if found that there are sufficient evidence in the prosecution witnesses and if the Sessions Judge finds that there are materials to alter the charge in the case, the learned Judge can alter the charge and in such case, opportunity should be given to the petitioners to lead their evidence and also the prosecution to lead evidence on the charge.

9. With the above observation, the Criminal Revision stands allowed. The impugned order is set aside with a direction to the trial court to dispose of the case in S.C.No.80 of 2018 within six months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

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Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nvsri

To

1.The Inspector of Police,  
Kaveripattinam Police Station,  
Krishnagiri District,  
(Crime No.379 of 2016)

2.The learned Sessions Judge,  
Fast Track Mahila Court,  
Krishnagiri.

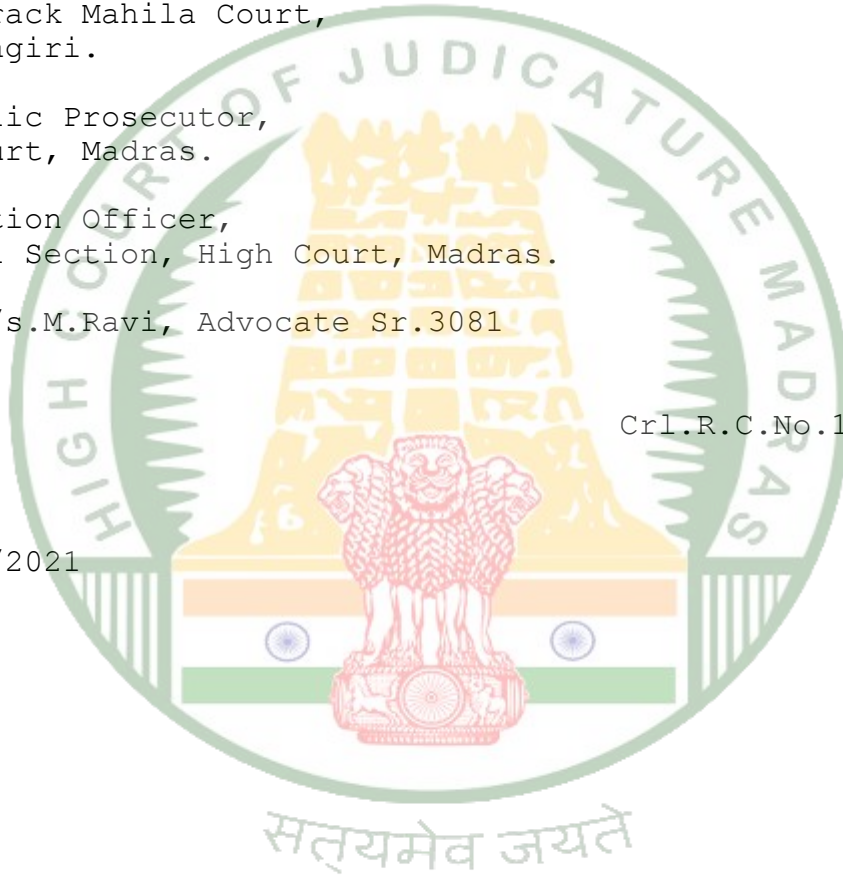
3.The Public Prosecutor,  
High Court, Madras.

4.The Section Officer,  
Criminal Section, High Court, Madras.

+1cc to M/s.M.Ravi, Advocate Sr.3081

Crl.R.C.No.1309 of 2019

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srg 23/02/2021



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