



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 26.11.2021

Delivered On : 03.12.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.647 of 2021

Noorul Hithayabeevi .. Petitioner/Defacto Complainant - PW1

Vs.

1.State represented through,
The Inspector of Police,
All Women Police Station,
Sivakasi,
Virudhunagar District.

(In Crime No.10 of 2009)

... Respondent/Complainant

2.N.Anarkali

3.Shajitha Praveen

..2nd Respondent/Proposed Accused

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records from the lower Courts and to set aside the order passed by the learned Judicial Magistrate No.I, Sivakasi in C.M.P.No.8340 of 2019 in C.C.No.54 of 2018 dated 22.07.2021.

For Petitioner : Mr.S.M.A.Jinnah

For 1st Respondent : Mrs.K.Asha

Government Advocate

For Respondents 2 & 3 : Mr.S.Muniyandi

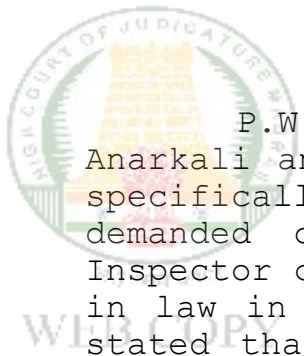
ORDER

This petition has been filed to set aside the order passed in Cr.M.P.No.8340 of 2021 in C.C.No.54 of 2018 dated 22.07.2021, on the file of the learned Judicial Magistrate No.I, Sivakasi.

2.The petitioner has filed a petition in Cr.M.P.No.8340 of 2021 under Section 319 of Cr.P.C., before the learned Judicial Magistrate No.I, Sivakasi. That petition was dismissed by the trial Court. Against the same, the petitioner has preferred this Criminal Revision case.

3.Brief substance of the petition in Cr.M.P.No.8340 of 2021 is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>



P.W.1 in her complaint has specifically stated that one Anarkali and Shajitha demanded dowry. Even in the complaint, it is specifically stated that the mother in law and sister in law demanded dowry and they assaulted the complainant. But the Inspector of Police removed the name of the mother in law and sister in law in the chargesheet. Even in the evidence of P.W.1, it was stated that the mother in law, sister in law and brother in law resided under the same roof and they demanded dowry and drove away the complainant from the matrimonial home. The evidence of P.W.2 and P.W.3 also elicited the dowry harassment done by the mother in law and sister in law. Hence, both the mother in law and sister in law are to be impleaded as accused in the case.

4.A brief substance of the counter filed by the respondent herein is as follows:

Living in a joint family is not proof of demand of dowry. The complaint was filed on 16.06.2009. The enquiry was conducted on 14.09.2009. Only after ten years, the petitioner has come forward with this petition. Since no *prima facie* case is made out against the sister in law and mother in law, the chargesheet was not laid against them. The first accused and the complainant lived together separately from 18.08.2008 till 16.06.2009 and on 13.06.2009, Thalak was pronounced and a demand draft for a sum of Rs.3,000/- (Rupees Three Thousand only) was sent to the complainant through register post for the period of Maher. Notice of Thalak was sent to the President of the Jamath, namely Kanar Mohammed under the Muslim Law. There is no necessity for any further document. There is contradiction in the evidence of P.W.1 to P.W.3 and there is no necessity to implead two additional accused in the case.

5.After hearing both sides, the trial Court dismissed the petition. Against which, the revision petitioner has come forward with this Criminal Revision Case.

6.On the side of the revision petitioner, it is stated that the trial Court has failed to consider that the petitioner is the victim and she is having the right to establish her case. The petitioner has fair opportunity to prove her case. Under Section 319 of Cr.P.C., the Court is having the right to proceed against other persons against whom a offence is made out. The trial Court failed to consider the materials available against the proposed accused 2 and 3. Once an offence is made out, the learned Magistrate has to take cognizance of the offence and proceed against those person involved in the offence. There is a chance of acquittal of A1 and A2, if the proposed A3 and A4 were not included in the chargesheet. The trial Court failed to consider the provisions under Sections 227, 228, 239, 240, 241, 242 and 245 of Cr.P.C., at the stage of framing of charges. The involvement of respondents 2 and 3 was clearly mentioned in the complaint, Ex.P1 and in the statement recorded under Section 161 of Cr.P.C.



7. On the side of the petitioner, it is stated that though the name of respondents 2 and 3 were mentioned in the complaint, the police failed to file chargesheet against them. There is specific overt act against the respondents 2 and 3. The evidence of P.W.1 and P.W.3 support the contention mentioned in the complaint and there is *prima facie* case made out against the respondents 2 and 3. The dismissal of petition under Section 319 of Cr.P.C., is wrong and prayed the impugned order to be set aside.

8. On the side of the first respondent, it is stated that the alleged offence is against Section 498(A) of IPC and Section 4 of DV Act. The complaint was filed on 16.06.2009 and the chargesheet was taken on file on 15.09.2009. The trial commenced on 07.01.2019. P.W.1 to P.W.3 were examined and cross examined. Only at this stage, the complainant has filed this petition. Since there was no evidence against the respondents 2 and 3, the chargesheet was not filed against them and for the same reason, the trial Court has dismissed the petition.

9. On the side of the respondents 2 and 3, it is stated that the chargesheet was filed in the year 2009. The name of the respondents 2 and 3 was not mentioned in the chargesheet. The petitioner failed to file a protest petition against the chargesheet at the time of filing of the chargesheet. P.W.1 to P.W.3 were examined in the year 2019. There was no whisper in the evidence against the respondents 2 and 3. The evidence is that they demanded money for promoting the business of the first accused. There was no specific overt act against the respondents 2 and 3 in the evidence of P.W.1 to P.W.3. The complaint was filed after three years from the date of marriage. The date of occurrence was not specifically stated in the complaint or in the evidence of the witness. All the witnesses were examined and were cross examined. Now the stage of the case is 313 statement. Only to drag on the matter and to harass the respondents 2 and 3, the petitioner has come forward with this petition.

10. A perusal of the records reveals that there was another case in C.C.No.200 of 2010 and the accused in that case were all convicted. A vague allegation against the respondents 2 and 3 was made in the complaint. There was no specific overt act against the respondents 2 and 3 in the complaint. The evidence of P.W.1 to P.W.3 was not sufficient enough to prove a *prima facie* case against the respondents 2 and 3. The complaint was filed in the year 2009 and the case was taken on file in the year 2018. No protest petition was filed against the chargesheet. This petition was filed only in the year 2019. Since no *prima facie* case is made out against the respondents 2 and 3, there is no necessity to interfere in the order passed in the trial Court.



11. In the above circumstances, this Criminal Revision Case is dismissed. The order passed in Cr.M.P.No.8340 of 2021 in C.C.No.54 of 2018 dated 22.07.2021, on the file of the learned Judicial Magistrate No.I, Sivakasi is confirmed.

WEB COPY

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 No.I, Sivakasi.

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

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

Copy to
The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

Crl. R.C.(MD)No.647 of 2021
03.12.2021

SJ(CO)
TR(14.12.2021) 4P 6C