



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Cr1.OP(MD)No.10932 of 2017

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1.M.Tamilselvam
2.M.Periyakka
3.M.Tamilarasan
4.M.Ponnuchamy
5.M.Suresh
6.Valarmathi

: Petitioners/Accused No.1,3 to 7

Vs.

1.State Rep. by
Inspector of Police,
Vadamadurai All Women Police Station,
Natham,
Dindigul District.

:1st Respondent/Complainant

2.Rajeswari

:2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records in C.C.No.49 of 2016 on the file of the District Munsif cum Judicial Magistrate, Natham and quash the same.

For Petitioners : Mr.C.Anand

for Mr.D.Vijayaragavan

For Respondents : Mr.S.Ravi,

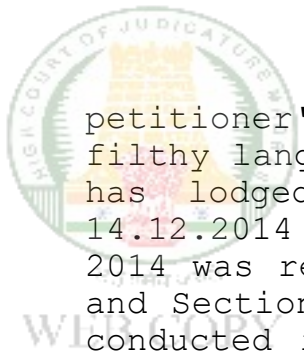
Standing Counsel for the State
for R.1

Mr.S.Sarvagan Prabhu for R.2

ORDER

This criminal original petition is filed by the accused nos.1, 3 to 7 in C.C.No.49 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Natham, to quash the proceedings pending against them.

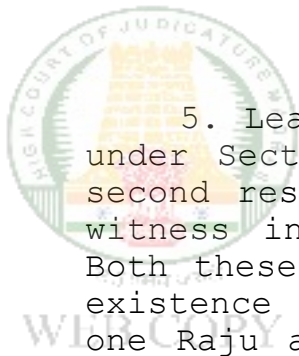
2. The second respondent / defacto complainant lodged a complaint in Crime No.29 of 2014 that she married the first petitioner on 11.03.2011 and at the time of marriage, 20 Sovereigns of gold jewel, Rs.80,000/- in cash, apart from a two wheeler, was given as sreethana articles. Out of the wedlock, she also gave birth to a child on 14.05.2012 and thereafter, the petitioners have harassed the second respondent for want of additional dowry and jewels and also intimidated that they would arrange marriage to the first petitioner, if she fails to satisfy their demands. The second respondent was also driven out of the matrimonial home on 15.08.2013 and thereafter, neither the first petitioner nor the family members have visited her. When the second respondent and her parents attempted to solve the dispute amicably and went to the first



petitioner's house on 10.10.2014, the petitioners abused them with filthy language and also criminally intimidated them. Therefore, she has lodged a complaint before the first respondent police on 14.12.2014 and based on that complaint, a case in Crime No.29 of 2014 was registered for the offence under Sections 498A, 506(i) IPC and Section 4 of Dowry Prohibition Act. The first respondent police conducted investigation, examined nine witnesses and filed a final report as against the petitioners on 07.05.2015 and the learned Judicial Magistrate, Natham, has taken the final report on file in C.C.No.49 of 2016. Aggrieved over the same, the petitioners have preferred this quash petition.

3. Mr.C.Anand, learned Counsel appearing for the petitioners submitted that there is no marriage at all between the first petitioner and the second respondent. The second respondent, in her complaint, has stated that she was already married to one Raju and her marriage with the said Raju was dissolved on 10.03.2011 and thereafter, she married the first petitioner on 11.03.2011. However, there no valid documents were produced that her marriage with the said Raju was dissolved in the manner known to law. When the earlier marriage was in existence, the alleged marriage said to have taken place on 11.03.2011 between the second respondent and the first petitioner is of nullity and when there is no marriage at all, the offence under Section 498A IPC and Section 4 of Dowry Prohibition Act would not attracted. He further submitted that for the criminal intimidation said to have been taken place on 10.10.2014, the complaint was lodged only on 14.12.2014, after a delay of two months. Therefore, the offence under Section 506(i) IPC is also not attracted.

4. Learned Counsel has relied upon the order passed by the learned District Munsif cum Judicial Magistrate, Natham, in M.C.No.4 of 2015, dated 10.06.2019 as well as the order passed by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Crl.R.C.No.21 of 2019, dated 21.11.2020 and submitted that the proceedings initiated as against the first petitioner for maintenance under Section 125 Cr.P.C., was rejected by the Courts below, after a well considered trial, that there is no material to substantiate that there was any marriage solemnized between the first petitioner and the second respondent. The learned Counsel has also referred to the relevant portions of the orders, wherein, the Courts have categorically held that the earlier marriage of the second respondent / defacto complainant with one Raju was not dissolved in the manner known to law and no documents have been placed before it to substantiate that there was any marriage taken place between the first petitioner and the second respondent. The Courts have held that there was no proof of any invitation or any photograph or any other materials placed before it to substantiate that there was any marriage solemnized between the first petitioner and the second respondent.



5. Learned Counsel has also referred to the statements recorded under Section 161(3) Cr.P.C., of one Nagaraj [LW2], father of the second respondent and one Muthaiah [LW5], who was also cited as a witness in the maintenance proceedings by the second respondent. Both these witnesses have also stated that there was a marriage in existence between the second respondent / defacto complainant and one Raju and after dissolving the marriage, the second respondent has married the first petitioner on 11.03.2011. However, both the Courts below have elaborately discussed with regard to the possibility of any marriage solemnized between the first petitioner and the second respondent and rejected the claim of the second respondent for maintenance that there was no marriage between the first petitioner and the second respondent.

6. As per Section 498A IPC, if the husband or the relative of the husband subjects such woman to cruelty, he or they are liable for punishment. For better appreciation, Section 498A IPC is extracted as follows:

"498A. 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. But, in this case, it appears that there is no material to substantiate that there was any marriage between the first petitioner and the second respondent. In the earlier proceedings, which were also referred to by the petitioners' Counsel, wherein the first petitioner and the second respondent were parties, there is a clear finding to the effect that there was no material, no invitation, no photograph, nothing, to substantiate that there was any marriage solemnized between the first petitioner and the second respondent. Moreover, it is an admitted case that the second respondent was married to one Raju and though she claimed that the said marriage was dissolved, there is no document to substantiate that the marriage between the second respondent and Raju was dissolved in the manner known to law. In the absence of any material, the alleged marriage between the first petitioner and the second respondent is void, as such, the second respondent cannot maintain a case as against the petitioners for the offence under Section 498A IPC.

8. The demand of dowry as alleged in the complaint as well as in the final report is that after one year from the date of marriage, dated 11.03.2011, the petitioners demanded some dowry from the second respondent. Therefore, a charge has been levelled under Section 4 of the Dowry Prohibition Act. But the allegation raised by the second respondent is vague without any material particulars. Since there is no material that there was any marriage between the



first petitioner and the second respondent; and that the second respondent was already married to one Raju and that marriage was also in existence, this Court, in the absence of any material particulars, is not inclined to accept the vague allegation of dowry demand.

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9. Insofar as the offence of criminal intimidation is concerned, the alleged intimidation was said to have been taken place on 10.10.2014, whereas, the complaint was lodged only on 14.12.2014. In order to attract the offence under Section 506(i) IPC, the complainant should have felt the intimidation. Admittedly, the complaint was lodged after a period of two months and therefore, it cannot be termed that the complainant felt the intimidation alleged to have made by the accused and as such, the offence under Section 506(i) IPC is not made out.

10. In view of the foregoing discussions, this Court is inclined to quash the impugned charge sheet and accordingly, the charge sheet in C.C.No.49 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Natham, is quashed insofar as the petitioners are concerned.

11. In fine, this criminal original petition stands allowed. Pending miscellaneous petitions, if any, shall stand closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The District Munsif cum Judicial Magistrate,
Natham.

2.The Inspector of Police,
Vadamadurai All Women Police Station,
Natham,
Dindigul District.

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

+1 CC to M/s.J.PRAVEEN, Advocate (SR-20868[F] dated 01/07/2021)

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