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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.03.2021

DELIVERED ON : 19.04.2021

CORAM

The Hon'ble Mr. Justice **G.ILANGO VAN**

Crl.O.P.(MD).No.13666 of 2017

and Crl.M.P.(MD).Nos.9193 & 9194 of 2017

1.G.Thamaraikannan

2.Gopalakrishnan

3.Hemalatha

... Petitioners/Accused Nos.1 to 3

Vs.

1.The State represented by

The Inspector of Police,
All Women Police Station,
Ramanathapuram,
Ramanathapuram.

... Respondent No.1/Complainant

2.M.Umamaheswari

...Respondent No.2/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertains to C.C.No.234 of 2017, on the file of the Judicial Magistrate Court No.I, Ramanathapuram and quash the same.

For Petitioner :Mr.M.AjmalKhan
Senior Counsel for Mr.T.Sakthi Kumaran

For Respondents : Mr.M.Ganesan for R1
Government Advocate (Crl. Side)
Mr.R.Gandhi for R2

ORDER

This petition has been filed to quash the C.C.No.234 of 2017, on the file of the learned Judicial Magistrate No.I, Ramanathapuram.

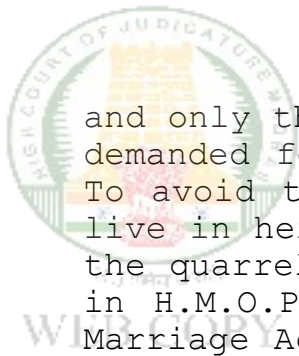


2.The brief facts are as follows:

2.1.The second respondent is the wife of the first petitioner herein and lodging a complaint before the first respondent stating the following facts and circumstances.

2.2.The marriage between the defacto complainant, who is the second respondent herein and the first petitioner took place on 01.09.2011 at Thangam Thirumana Mahal, Ramanathapuram as per their communal rites. At the time of their marriage, she was gifted with 85 sovereigns of gold jewels and 15 soverings of gold jewels to the first respondent, apart from Silver and house hold artiles and two wheeler. After the marriage, they started their matrimonial life in their house along with the first petitioner and parents. During that time, second and third petitioners abused her and demanded more dowry, which was refused by the second respondent. They also refused to provide food to her. During that time, the first petitioner was working as a Marine Engineer and he returned to India on 16.10.2012. At that time, he left the defacto complainant in her parental home. He returned back after six months and took up her. After some time, the first petitioner started making quarrel with her on filmsy reasons at the institution of second and third petitioners. They also started to criticise her, stating that she is not fit to conceive. On 31.05.2015, the first petitioner demanded Rs.15,00,000/- for starting a business and kept 20 sovereigns of gold jewels belonging to her and refused to return. This was informed by her to her parents. At that occassion, the second and third petitioners took the cell phone of the defacto complainant on noticing her phone conversation with her parents. A compromise talk was arranged in the presence of one Ramachandran and Ramamoorthy and at that time, she demanded a separate residence. So, they started to live in a separate house from 14.06.2016. During that time also, the second and third petitioners spoke over phone to her and visited her frequently and instigated the first petitioner to beet her. Again they criticised her, stating that she is not fit to become pregnant. At the advice of the second and third petitioners, the first petitioner left her in her parental home and so she was left in her parental home on 13.09.2016, promising that he would return back after two days. Even after calling by her, the first petitioner did not take any care to take her along with him. He also informed that he is not willing to live with her.

3. Based upon the complaint, a case in Cr.No.1 of 2017 was registered on the file of the first respondent, investigation was undertaken and after completing the investigation, a final report was also filed, which was taken on file in C.C.No.234 of 2017 by the learned Judicial Magistrate No.I, Ramanathapuram. Seeking quashment of the final report, this petition has been filed, mainly on the ground that there was no demand of dowry as stated in the complaint



and only the second respondent behaved in adamant manner, since they demanded for medical treatment, so that they can get a grandchild. To avoid the medical treatment, the defacto complainant started to live in her parental home in most of the time. The main reason for the quarrel is the attitude of the defacto complainant. A petition in H.M.O.P.No.134 of 2016 under Sections 13(1)(i)(a) of the Hindu Marriage Act before the Family Court, Paramakudi, was filed seeking divorce. To wreck vengeance, the present complaint has been filed.

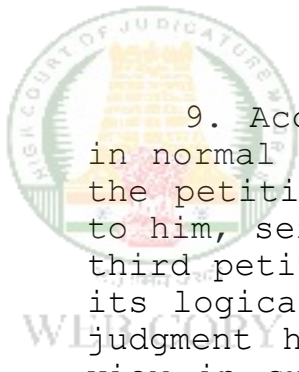
4. The second respondent has filed a petition for restitution of conjugal rights in H.M.O.P.No.5 of 2017 before the Sub Judge, Ramanathapuram. Similarly, filed a petition in M.C.No.8 of 2017 before the Principal District Judge, Ramanathapuram, claiming maintenance amount of Rs.75,000/- per month. None of the offences mentioned in the final report attracted any of the ingredients of the offences as defined in the respective sections to the facts and circumstances of the case.

5. It is a matrimonial dispute between the defacto complainant and her husband, who is the first respondent herein. Since it is so, an effort was made by this Court to settle the matter by referring the same to mediation. Mediation Report was received on 08.01.2021, stating that no agreement was reached between the parties. So, the matter was heard and also adjourned. To make another second attempt, the matter was reopened for clarification and I requested the parties to settle the matter, since it appears that dispute arose between them after the absence of issues.

6. The Court was informed by the learned counsel for the parties that the first petitioner namely, the husband got married and so, the possibility of settlement is not available. So, the matter is to be decided on merits.

7. The learned counsel for the petitioner would submit that the first petitioner may be directed to face the trial and insofar as the second and third petitioners, who are aged in-laws of the defacto complainant and the parents of the first petitioner may be let off from the criminal prosecution on the ground that when the dispute arose between the first accused and his wife, the in-laws have been unnecessarily roped in and no such occurrence took place as stated by the defacto complainant.

8. It is also further submitted that a vague allegation is made in the complaint about her physical assault by the second and third petitioners. He would straight away rely upon the judgment of **the Hon'ble Supreme Court reported in Preeti Gupta and Another Vs. State of Jharkhand and Another (2010) 7 SCC 667** for the purpose of argument that in a case of matrimonial dispute, it is always possible, probable and normal for the wife to rope in-laws into the criminal complaint and this trend and normality of the behavior of the wife, must be taken into account, while deciding the matter.



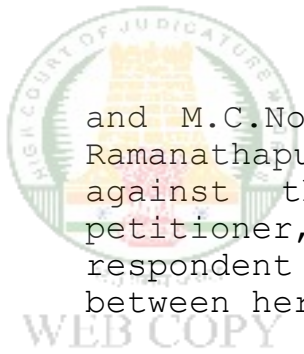
9. According to the learned counsel for the second respondent, in normal circumstances, he may not have any objection for allowing the petition insofar as the in-laws are concerned, but, according to him, serious allegations have been leveled against the second and third petitioners herein and so, the trial must be allowed to go to its logical conclusion. The Hon'ble Supreme Court in the above said judgment has taken a holistick, reasonable and natural, practical view in such matters. In paragraphs 32, 33 & 34, observation runs like this:-

" 32. It is a matter of common experience that most of these complaints under Section 498-A IPC are filed in the heat of the moment over trivial issues without proper deliberations. We come across a large number of such complaints which are not even bona fide and are filed with oblique motive. At the same time, rapid increase in the number of genuine cases of dowry harassment is also a matter of serious concern.

33.The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not be reflected in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious endeavour to help the parties in arriving at an amicable resolution of that human problem. They must discharge their duties to the best of their abilities to ensure that social fibre, peace and tranquility of the society remains intact. The members of the Bar should also ensure that one complaint should not lead to multiple cases.

34.Unfortunately, at the time of filing of the complaint the implications and consequences are not properly visualized by the complainant that such complaint can lead to insurmountable harassment, agony and pain to the complainant, accused and his close relations."

10. So, keeping this in mind, the allegations leveled against the petitioners 2 and 3 can be discussed. Right from the beginning, throughout the matrimonial proceedings in the forum of H.M.O.P.No.136 of 2016 on the file of the Family Court, Paramakudi, which was filed by the first petitioner for divorce and H.M.O.P.No.5 of 2017 on the file of the Sub Judge, Ramanathapuram



and M.C.No.8 of 2017 on the file the Principal District Judge, Ramanathapuram. I find that allegations have been leveled not only against the first petitioner, but, also against the third petitioner, who is the mother-in-law. It is the case of the third respondent that the third petitioner is reason for the whole problem between herself and her husband.

11.The reading of the complaint and the statement before the investigating officer recorded under section 161 of Criminal Procedure Code shows that she was making allegations against the third petitioner as I mentioned earlier. But nowhere in the pleadings filed by her for restitution of conjugal rights in H.M.O.P.No.5 of 2017 or in M.C.No.8 of 2017 mentioned anything about the second petitioner i.e the father-in-law. So for the first time same a delegation against the second respondent's second petitioner also to the effect that he and along with the third petitioner assaulted her by caught hold of her with her hair pushed her to the wall and pulled her saree chased out of the house and was abused in the public place. But the date and time is not mentioned. As I mentioned earlier, because of the compromise made between the parties, they started living separately in Ramanathapuram. That too also only for three months. According to her on 13.09.2016 she was taken by the first the petitioner to her parental home, left promising that he will return back and take. Reading of the complaint shows that even after a lapse of two days he did not turn up; she telephoned her and at the time he told her that she is not willing to live with her. Reading of the pleadings in H.M.O.P.No.5 of 2017 shows that major problem arose between the husband and wife over the procreations of a child. According to her, only due the physical condition of the petitioner she was unable to conceive. But according to the first the petitioner in the Hindu Marriage Original Petition for divorce in H.M.O.P.No.134 of 2016, due to the non-cooperation of the second respondent they could not beget a child. But whatever may be, the fact remains that only because of the non-procreation of a child problem arose between the parties. In such circumstances, the allegation made by the second respondent that second and third petitioner physically assaulted her chased out of the house, in the absence of any specific time and date, it can be considered only an exaggeration as has been pointed out by the honourable Supreme Court in the judgement. So I am the considered view that, no material is available against the second and third petitioners in the criminal proceedings and in my considered view that continuation of the proceedings against petitioners 2 and 3 will amount to abuse the process of the court and so they are liable to be quashed.

12.Accordingly, the Criminal Original Petition is partly allowed with regard to the petitioners 2 and 3 are concerned and the criminal proceedings pending against them in C.C.No.234 of 2017 on the file of the learned Judicial Magistrate Court No.I, stands



quashed. The petition filed by the first petitioner is dismissed. The trial court shall proceed with the trial against the first the petitioner herein in accordance with law, without being influenced by any of the observations made by this court in the petition. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

To

1.The learned Judicial Magistrate No.I, Ramanathapuram.

2.The Cheif Judicial Magistrate,Ramanathapuram.

3.The Inspector of Police,

All Women Police Station,Ramanathapuram.

4.The Additional Public Prosecutor,

Madurai Bench of Madras High Court,

Madurai.

+1 CC to M/s. R.GANDHI, Advocate (SR-16773[F] dated 21/04/2021)

+3 CC to M/s.T.SAKTHI KUMARAN, Advocate (SR-16646[F] dated 20/04/2021)

Crl.O.P. (MD) .No.13666 of 2017

19.04.2021

MR(11.05.2021) 6P 9C