



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 25.03.2021

DATE ON WHICH PRONOUNCED : 30.04.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.14384 of 2017

and

Crl.MP(MD)No.9604 of 2017

1.Marithangam
2.Subbaiah
3.Ramachandran
4.Babu @ Ganesh Babu

... Petitioners/Accused Nos.3 to 6
Vs.

1.The State rep. By
The Inspector of Police,
All Women Police Station,
Srivaikundam,
Thoothukudi District.
(Crime No.19 of 2016)

... Respondent No.1/Complainant

2.Megala

... Respondent No.2/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.88 of 2017 pending before the learned Judicial Magistrate, Srivaikundam, Thoothukudi District and quash the same as illegal.

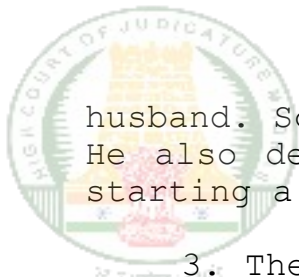
For Petitioners : Mr.M.Maran
For Respondents : Mr.M.Ganesan for R1
Government Advocate (Crl. Side)
For R2 No Appearance

ORDER

This petition has been filed to quash the charge sheet in C.C.No.88 of 2017 pending before the learned Judicial Magistrate, Srivaikundam, Thoothukudi District.

2.The brief facts are as follows:

The second respondent herein is the defacto complainant, she lodged a complaint before the first respondent police with the following allegations. On 27.03.2016, she married the first accused namely Raja. Some 10 years prior to the date of complaint, they got two sons and her husband had developed illegal intimacy with the second accused namely, Ramalakshmi for two years. She contacted her



husband. So he started harassing her by pouring liquor in her mouth. He also demanded 10 sovereigns of gold jewels and Rs.50,000/- for starting a business. He also threatened her.

3. The parents of Ramalakshmi and her relatives and brother are hiding her husband to get him married with Ramalakshmi. The first and second accused also threatened her that they did not release her husband. With these allegations, she made a complaint, which was registered in Cr.No.19 of 2016 under Sections 498 A, 494, 506(ii) IPC and Section 4 of Dowry Prohibition Act. Based on the alleged complaint, the first respondent took up the investigation, recording the statement of witnesses and after that they have filed a final report against the accused persons, alleging that they have committed the offences punishable under Section 498 A, 494, 506(ii) IPC and Section 4 of the Dowry Prohibition Act.

4. Challenging the final report, seeking quashment of the same, the petitioners have filed this petition mainly on the ground that no material was collected by the investigating officer to show that the marriage was performed between the first accused and the second accused. The first petitioner filed a Habeas Corpus petition in H.C.P.(MD).No.795 of 2016 for producing the second accused before the Court and respondent police secured her and produced her before the Court and she explained the Court about her whereabouts. Moreover, at the time of the alleged occurrence, the petitioner No.3 was a juvenile and his date of birth is 03.03.2000, hence, he cannot be tried along with others, which fact was not taken into account by the investigating officer.

5. Heard both sides.

6. The defacto complainant was married to the first accused, namely, Raja. They got two children and in the course of time, according to the defacto complainant, the first accused had developed illegal intimacy with the second accused namely, Ramalakshmi.

7. According to the defacto complainant, the other accused persons, namely, the mother of the first accused, the father, brother and uncle of the second accused, arranged for the second marriage to the first accused and for the purpose of performing the marriage, they hid the second accused.

8. According to the first respondent, who is the Investigating Officer, the accused Nos.3 to 6, who are the petitioners herein, have committed the offences punishable under Sections 494 and 506 (ii) IPC.

9. The learned counsel for the petitioners would rely upon the number of judgments for the purpose of argument that no materials were collected in the course of investigation that the second



accused was married to the first accused and for the purpose of performing the marriage, these petitioners hid the second accused and when that was questioned, they criminally intimidated the defacto complainant.

10. A perusal of the complainant as well as the statement recorded, during the course of investigation, does not reveal where, when and how the second marriage was arranged and was also performed. During the course of investigation, the defacto complainant gave a statement to the effect that with the help of these petitioners, the first accused married the second accused and they settled in some other Village. But, further particulars have not been mentioned by her. So, also, the other witnesses have given only vague statement.

11. It has been observed in **Crl.OP(MD)No.8275 of 2018 dated 10.03.2020**, that purpose of attracting the offence under Section 494 IPC, the particulars with regard to the time, place and the ceremonies of the marriage that took place must be clearly set out either in the complaint or must be brought on record during the course of investigation. But as mentioned earlier, either in the complaint or during the course of investigation, such materials have not been collected. So, there is no material on record to proceed against these petitioners that they also arranged and performed the second marriage between the first and second accused.

12. The next allegation is that offence under Section 506(ii) IPC. It is settled position that for the purpose of attracting the offence under Section 506 (ii) IPC mere vague allegations cannot be taken into account. The threat must be real one and it must create fear in the mind of a person, whom threat has been made. Mere verbal abuse is not enough, and this position has been dealt with in the case of **Noble Mohandass Vs. State reported in (1988) L.W.(Crl) 178**. Keeping this in mind, examining the complaint as well as the statement given during the 161 proceedings, a mere vague and bald allegations are against these petitioners. When she questioned these petitioners about the second marriage, they threatened her. Where, when and how the threat was made has not been set out.

13. It is also been brought to the notice of this Court, the father of the second accused moved Habeas Corpus Petition before the Hon'ble Division Bench of this Court for securing the second accused. The copy of the same is enclosed in typed set of papers. In HCP(MD)Nos.795 of 2016, dated 14.07.2016, the second accused, who was aged 22 was produced by the Police, before the Court and she had expressed that she was staying in Hostel at Coimbatore and willing to go with her father. On that basis, she was set at liberty. So, according to these petitioners, no second marriage is performed between the first and the second accused and so, the question of hiding does not arise. Whether the first accused married the second



accused is a matter for consideration during the trial.

14. But, insofar as these petitioners are concerned, none of the allegations made in the complaint as well as the final report attract any of the ingredients of the alleged offence against these petitioners. So, continuing the criminal prosecution against them will amount to clear abuse of process of the Court. So, the petition is liable to be allowed and the same is allowed. The proceedings in C.C.No.88 of 2017 pending before the learned Judicial Magistrate, Srivaikundam, Thoothukudi District, is quashed, so far as the petitioners are concerned.

15. Considering the fact that the crime is of the year 2016, the Trial Court may conclude the trial against the other accused persons within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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 learned Judicial Magistrate,
Srivaikundam,
Thoothukudi District.

2. The Chief Judicial Magistrate, Tuticorin District.

3.The Inspector of Police,
All Women Police Station, Srivaikundam,
Thoothukudi District.

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

Crl.O.P.(MD)No.14384 of 2017

30.4.2021

SSS(CO)

TR(21.05.2021) 4P 5C

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