



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 31.03.2021
DELIVERED ON : 21.05.2021
CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.OP(MD)No.5370 of 2017 &
Crl.MP(MD)Nos.3795 and 3796 of 2017

1.Mohamed Iqbal

2.Syed Beevi

3.Ayisha Banu

... Petitioners/Accused 2 to 4
Versus

1.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai. ...1st Respondent/Complainant
(Crime No.769 of 2013)

2.Yasmin Rani ... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the impugned final report of the first respondent dated 14.05.2014 in CC.No.54 of 2016 on the file of the Judicial Magistrate No.I, Sivagangai and quash the same.

For Petitioners :Mr.V.S.Kumara Guru

For Respondents :Mr.M.Ganesan,
Government Advocate (Crl. Side)
for R1
Mr.J.Lawrance for R2

O R D E R

This petition is filed seeking quashment of CC.No.54 of 2016 on the file of the learned Judicial Magistrate No.I, Sivagangai.

2. The case of the prosecution / of the second respondent, who is the defacto complainant is as follows. The second respondent / defacto complainant was married to one Rasha Shajahan, five years



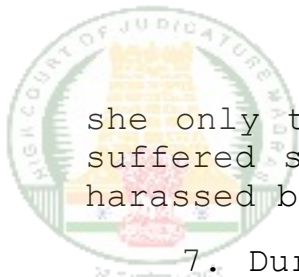
prior to the date of complaint. She got divorce from him and later, on compulsion married the first accused on 18.02.2010. At that time, she was given sufficient sreedhana and household articles. Later, she came to know that the first accused suffered from Paralysis. Whenever, the first accused suffers attack, she used to take him to Hospital for treatment. During that time, she was harassed, demanded settlement of property in her husband's name by the family members of her husband. Her husband also removed the Thali Chain. So, she came to her parental home and continued to live there. At that time, a notice was sent by Sivagangai Jamath for Talaq. However, she was not willing to get divorce. The husband's family also refused to return the sreedhana and other household articles. They also committed criminal intimidation. Therefore, she lodged a complaint before the first respondent Police which was registered in Crime No.769 of 2013 for the offences punishable under Sections 406, 417, 498 (A), 294(b) and 506(i) of IPC and Section 4 of the Dowry Prohibition Act.

3. Based upon this complaint, investigation was undertaken, materials collected, statement of witnesses recorded and finally final report was filed against these petitioners as well as the husband of the second respondent/ defacto complainant, making allegations that they have committed offences punishable under Sections 406, 417, 498(A), 294(b) and 506(i) of IPC and Section 4 of the Dowry Prohibition Act, which was also taken cognizance by the trial court.

4. During the pendency of the trial proceedings, the accused 2 to 4 before the trial court have preferred this criminal original petition, mainly on the ground that the earlier complaint given by the second respondent was closed and this second complaint has been given with some improved version. In the earlier complaint itself, she received all her belongings and moreover, since these petitioners are close relatives of the first accused / husband of the defacto complainant, they are falsely roped in this case. There was no joint living. The second respondent deserted the first accused in August 2010 itself. There was no reunion, inspite of all the efforts made by the elders of the family and Jamath. The second respondent has also filed DVOP claiming compensation and other reliefs.

5. Heard both sides.

6. It is not in dispute that the second respondent was married to the first accused, namely, Abdul Ajeez, who is the son of the second accused, the first petitioner herein. It is second marriage for the second respondent. The specific allegation of the second respondent is that the first accused was suffering from Paralysis which fact was suppressed at the time of marriage and

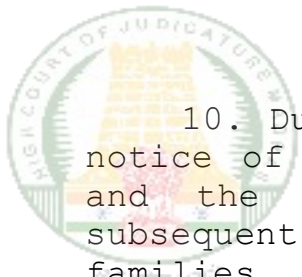


she only took him to treatment and took care of him whenever, he suffered stroke. In spite of that, demanding more dowry, she was harassed by her husband and her in-laws.

7. During the course of investigation, a report was submitted by the Social Welfare Officer stating that there was no harassment or cruelty demanding dowry.

8. A perusal of the records and hearing of the parties shows that difference of opinion arose between the second respondent and her husband for some reason, due to which, they separated within three months from the date of marriage. So, after that, the first accused made a complaint to the Jamath and for the Jamath enquiry, the second respondent did not appear and so, Talaq declared by the first accused was accepted by the Jamath. The second respondent objected the enquiry made by the Jamath. She made a complaint to Sub Inspector of Police, All Women Police Station, Sivagangai stating that her husband and in-laws harassed her demanding dowry and jewels and that her husband moved Sivagangai Valajha Navab Joom-Aa Pallivasal and pronounced Talaq. She wanted Police to take action. So, during the course of investigation, both parties appeared before the Inspector of Police, All Women Police Station, Sivagangai. At the time of enquiry, the second respondent has stated that since Talaq was recognized by the Jamath on 01.05.2013, the first accused wanted her to take away her articles. However, she demanded compensation incurred by her for performing the marriage. But, that was refused by her husband. So, she made a statement that she will take the matter to the Court for proper relief and no further action is required on her complaint. Similarly, the first accused also gave a statement that he was not also willing to give maintenance. So, on that ground, that complaint was closed.

9. Later, the present criminal complaint has been lodged and apart from that, she has also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005, in DVOP.No.5 of 2013 on the file of the learned Judicial Magistrate No.1, Sivagangai, where these petitioners were also added as respondents, apart from her husband. The petitioners herein moved along with the first accused to quash the proceedings in DVA.No.53 of 2013 on the file of the learned Judicial Magistrate No.1, Sivagangai in Crl.OP(MD)No.1092 of 2014, which was partly allowed and proceedings were quashed only against these petitioners and against the husband of the second respondent, the petition was dismissed. The trial court was directed to complete the entire process within a period of three months from the date of receipt of a copy of the said order.



10. During the course of argument, it has been brought to the notice of this Court that the first accused namely, Abdul Ajeez and the second respondent / defacto complaint got married subsequent to the case and are living with their respective families.

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11. It is to be pointed out that the dispute is because of the difference of opinion between husband and wife. These petitioners are only in-laws. No material has been produced by the Investigation Officer to show that these petitioners were also living along with the second respondent and the first accused. Even as per her own statement, whenever, the first accused suffered stroke, she only took him to Hospital and took care of him. The only allegation that is made against these petitioners is that they also came with her husband and abused her in filthy language and snatched her Thali Chain.

12. Mere bald allegations are levelled against these petitioners in the complaint and no specific date or event is mentioned. It is also common that whenever matrimonial dispute arose between the husband and wife, the in-laws are also used to be roped in a criminal case. The facts and circumstances, clearly confirm the above point, which has been pointed out by the Hon'ble Supreme Court in Preeti Gupta vs. State of Jharkhand reported in (2010) 7 SCC 667. So, I am of the considered view that continuing the proceedings against this petitioners will amount to clear abuse of process of law.

13. Reading of the entire complaint clearly shows that the second respondent wanted her articles back as well as maintenance and compensation. However, maintenance and compensation amount was refused by the first accused. The first accused asked the second respondent to take her articles back. The petitioners have produced a copy of the list of articles handed over to the second respondent family members which is dated 26.04.2014. On behalf of the second respondent, one Shajahan has signed as a witness and he received the articles on her behalf. However, this document required to be proved before the trial court. So, no finding can be arrived as to whether the articles were returned to the second respondent or not.

14. It is seen that the main dispute arose between the second respondent and first accused with regard to return of articles. She also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act, 2005 before the learned Judicial Magistrate No.I, Sivagangai in DVOP.No.5 of 2013. So, she can work out her remedy in that case. She sought a compensation amount of Rs.15,00,000/-, return of articles, etc.



15. The second respondent / defacto complainant has to work out her remedy for compensation and return of articles in the pending proceedings, apart from maintenance. Since, serious allegations have been levelled against her husband, namely, Abdul Ajeez, the first accused in the complaint, he has to face the trial and these petitioners are discharged from the criminal case. This petition is liable to be allowed and accordingly allowed. The case in CC.No.54 of 2016 pending on the file of the learned Judicial Magistrate No.I, Sivagangai is quashed in respect of these petitioners alone and trial shall continue to proceed against the first accused, in accordance with law. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

MBI

To

1.The Judicial Magistrate No.I,
Sivagangai.

2.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai.

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

+1 CC to MR.V.S.KUMARAGURU, Advocate (SR-14936[F] dated
31/03/2021)

Order in
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Crl.MP(MD)Nos.3795 and 3796 of 2017
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KM(14.06.2021) 5P 5C

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