IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.03.2022
PRONOUNCED ON : 26.05.2022

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.25797 OF 2014

1.Saravanan Balagurusamy

2.V.Balagurusamy ...Petitioners

Vs.

1.The State Represented by
The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam,
Chennai 600 040.

2.Dr.Pinki Vedavanam
(Impleaded vide order dated 18.06.2015
in M.P.No.1 of 2015) ...Respondents

PRAYER : Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the C.C.No.3792 of 2012 pending on the file of the X Metropolitan Magistrate Court, Egmore, Chennai for offences under Sections 498(A), 406 and 420 IPC as against the petitioners.

For Petitioners : Mr.V.Gopinath Senior Advocate for Mr.P.Vajravelu

For 1st Respondent : Mr.R.Murthi Government Advocate (Crl.side)

For 2nd Respondent : Mr.M.Selvaraj

ORDER

This Criminal Original Petition has been filed to call for the records and quash the C.C.No.3792 of 2012, pending on the file of the X Metropolitan Magistrate Court, Egmore, Chennai, for offences under Sections 498(A), 406 and 420 IPC as against the petitioners.

2.FIR in Crime No.11/11, on the file of the All Women Police Station, Anna Nagar, came to be registered for the offences under Sections 498(A), 406, 420 IPC, on the basis of the complaint given by the second respondent/defacto complainant. The allegations made in the complaint, in brief, are as follows:

The defacto complainant is a Doctor and she was married to Dr.Saravanan Balaguruswamy who is in UK. Their marriage took place on 07.09.2003 at Vijaya Sesha Mahal, Vadapalani, Chennai 26 and was registered on 08.09.2003, before the Sub Registrar, Anna Nagar, Chennai. Since her husband and his family wanted a grand wedding, the second respondent's parents spent Rs.15 lakhs for the celebration of their marriage. Her father in law, second petitioner demanded Rs.1lakh and 50 sovereigns of gold jewels and that were given to them. Few days before the wedding, the second petitioner and his wife came to the house of the second respondent and informed that the dowry paid was not enough and made a demand of Rs.50,000/-. Only after paying Rs.50,000/- second petitioner agreed to proceed with the marriage. After marriage, the first petitioner and second respondent left to UK. The second respondent already passed PLAB I exam while in India and she joined National Health Services in UK in August 2005. Her father in law had incited her husband against her and there have been physical, mental and economic abuse of the worst kind and the earnings of the second respondent in UK have been taken away by the first petitioner. In 2006, the first petitioner told her to transfer 2000GBP to his account stating that he wanted to open an account in the name of their minor child Shreya, who was born on 11.09.2004, however, he did not do so. In December 2006, first petitioner compelled the second respondent to transfer her money into the joint account and when she refused, she was abandoned 200 miles away from the house. In August 2007, first petitioner purchased a residential luxury flat at C12, Gokulam Phase-3, Sriram Nagar Main Road, Nolambur, Mugappair West, Chennai - 600 095. To purchase this property, he forced the second respondent to transfer 30,000GBP to his bank account. Then, he transferred this amount to his father's account in India to purchase the luxury apartment in his name. Her in laws are living in the premises and her husband also stays in this house when he visits India. In October 2007, when first petitioner and second respondent came to Chennai, he brought his parents to second respondent parents house in Chennai and second petitioner supported first petitioner's unacceptable behaviour of physical assault committed against the second respondent. In November 2007, first petitioner drove the second respondent's Car and met with an accident and put the blame on second respondent. In September 2008, when first petitioner's parents came to UK illtreatment of second respondent increased under the influence of his parents. On 10.10.2008, first petitioner deserted her. He did not pay the rent and informed the accommodation authorities that he did not want the premises. Internet, Television and Telephone connections were disconnected. The illtreatment continued in several ways. He deliberately did not sponsor UK Visa to the second respondent and their child. Despite the attempts made by the second respondent to save their marriage, first petitioner initiated divorce proceedings before the Warrington Country Court, Cheshire, UK. On 15.11.2009, her father along with their relatives went to the house of the second petitioner to help reunite his son and the second respondent. Her father and relatives were badly treated. The UK Court granted divorce on 07.01.2010 uncontested. The divorce order is not binding on the second respondent under Indian Law. First petitioner was threatening his daughter to speak with his new girl friend Satya. On 28.01.2011, she was shocked to hear from her daughter Shreya that her husband was threatening her not to tell about Satya's presence in his house in UK. He also threatened that he would put the second respondent and her daughter in jail if she mentions about Satya's presence in the house. Second respondent decided to stay back in India and resigned the Doctors job in UK. In 2011, she initiated proceedings for custody of minor child before this Court. She now understood that the first petitioner married again in UK in December 2010. Her husband and in laws treated them with physical and mental cruelty, committed criminal breach of trust and misappropriation of her hard earned money to the tune of Rs.50lakhs. Her husband has not provided any maintenance to her and her daughter. Therefore this complaint.

3.On the basis of the complaint, after completion of investigation, for offences under Sections 498(A), 406 and 420, 323 r/w 34 IPC, the first respondent filed a final report. The learned trial Judge on going through the records and after having prima facie satisfied, took cognizance of the case in C.C.No.3792 of 2012. Challenging the said taking cognizance of this case, this petition is filed for quashing the proceedings.

4.The learned counsel for the petitioners submitted that the marriage between the first petitioner and the second respondent was celebrated on 07.09.2003. Immediately after the marriage, they proceeded to UK and lived there. A girl child namely Shreya was born on 11.09.2004. All the allegations against the first petitioner was said to have been happened in UK. The allegations are without any truth and not supported by any material. On the basis of the complaint given by the second respondent, an enquiry was conducted by the General Medical Council and it gave a report that the allegations are not supported by any material on the ground that, (1) Allegations were given after a long delay and the Police and social services in UK were not contacted in relation to the alleged incidents of abuse. (2)The allegations of insurance, fraud, lying to the Courts and 'financial abuse' are not supported by corroborative evidence. Therefore, the case was ordered to be closed with no further action.

5.For the same allegation, the present complaint is given on 22.11.2011, FIR was registered on 18.12.2011. The delay in giving the complaint itself shows that the allegations made in the complaint are all false. The second respondent had initiated several legal proceedings and it is nothing but legal terrorism against the petitioners. The reality is that the first petitioner is the person who suffered a lot at the hands of the second respondent while in UK. Unable to bear her torture, first petitioner initiated divorce proceedings against her. Despite receiving notice, second respondent had not contested the divorce proceedings and that resulted in Decree in Nisi followed by a grant of order of divorce and thereafter, he legally married again. Since most of the allegations were against him in the complaint had happened in UK, the prosecution launched without seeking a sanction under section 188 Cr.P.C is not legal. For all these reasons, the learned counsel for the petitioners prayed for quashing the proceedings.

6.In support of his submission he relied on the judgments reported in 1) 2014 - 1- LW crl 614 Karthick Theodre Vs. State rep by Inspector of Police, All Women Police Station Cantonment, Trichy 2) Crl.O.P.No.(MD) Nos. 13767 of 2013 and 19756 of 2013 1.Mumtaz Basha 2. Aneez Aktar Vs. Dr.Farhana Sulthana for the proportion that without obtaining sanction under section 188 Cr.P.C., petitioners cannot be prosecuted for the offences committed outside India. He also relied the order of this Court in Crl.O.P.No. 75 and 21245 of 2013 M.Rajalakshmi Vs.B.Ramathilagam for the proposition that there is a recent trend of harassing the husband and in laws on various allegations of cruelty and dowry harassment and the Courts have to be very careful in dealing with such offences. The relevant portion of the judgment in Crl.O.P.No.(MD) Nos. 13767 of 2013 and 19756 of 2013 1.Mumtaz Basha 2. Aneez Aktar Vs. Dr.Farhana Sulthana is extracted hereunder:

> 8. The learned Senior counsel appearing for the accused primarily contended that the cause of action for initiating the complaint took place outside India. He further contended that in view of Section 188 of the Criminal Procedure Code, the Court below could not have taken cognizance of the complaint.
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> 9.Section 188 of Cr.P.C. Reads that when an offence is committed outside India, such an

> offence shall not be inquired into or tried in India except ;with the previous sanction of the Central Government. In this case, the complainant had returned to India only on 28.03.2011. Till then, she was in Dubai on UAE. She has alleged acts of cruelty on the part of the first accused. Obviously, they had taken place outside India. Therefore, this Court is of the view that Section 188 of Cr.P.C.will come into play and since no previous sanction has been obtained from the Central Government, the impugned complaint could not have been taken on file by the Court below.

7.In response, the learned counsel for the second respondent submitted that it is seen from the counter filed by the first petitioner in O.P.No.140 of 2011 that he admitted the receipt of money from the second respondent. The offences against the second respondent have been committed not only in UK but also in India. The offences are continuing offences for the reasons that the entrustment of her money with first petitioner was converted as an immovable property in the name of first petitioner by criminal misappropriation and breach of trust. The second petitioner committed offences of dowry harassment prior to and after marriage. Thus, there are prima facie materials available to proceed against the petitioners for the offences indicated in the final report. The disputed questions cannot be considered by conducting a roving enquiry. That job is left to the trial court in the course of the trial. Thus, the learned counsel for the second respondent submitted that this petition is liable to be dismissed. In support of his submissions, he relied on the judgment reported in AIR 2012 SCC 1007 Asok Kumar Ganguly and Jagdish Singh Khehar.

8.Considered the rival submissions and perused the records.

9.The learned counsel for the petitioners produced the copies of the order passed in the Warrington Country Court on 12.11.2009 for the grant of Decree in Nisi on the ground of irretrievable break of marriage between the first petitioner and the second respondent and the decree of divorce granted on 07.01.2010. He also produced the order of the Court at UK regarding custody of child dated 18.02.2011. Certificate of naturalization is produced to show that he has become the Citizen of UK from 24.07.2011 and therefore, he cannot be prosecuted under the Indian law. The learned counsel for the petitioners submitted that the proceedings against A3 and A4 were quashed, as per the orders of this Court in Crl.O.P.No. 75 and 21245 of 2013.

10.A perusal of the decree of divorce granted by the Warrington Country Court shows that the second respondent had not contested this matter. Under section 13 of the Code of Civil Procedure A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except -

a)Where it has not been pronounced by a Court of competent jurisdiction;

b) Where it has not been given on the merits of the case;

c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable.

d) Where the proceedings in which the judgment was obtained are opposed to natural justice;

e) Where it has been obtained by fraud;

f) Where it sustains a claim founded on a breach of any law in force in India.

11.In the case beforehand, it appears that there are other proceedings pending touching upon the validity of the divorce granted by UK Court. In the present case we are concerned about the allegations of the cruelty, criminal misappropriation and criminal breach of trust. Therefore, it is not necessary to go deep into the merits of the divorce order granted by the Warrington Country Court for deciding the allegations involved in this case.

12.There is no dispute with regard to the fact that the first petitioner and the second respondent were married on 07.09.2003 and thereafter, they went to UK for pursuing their Doctor profession. A girl child was born to them on 11.9.2004. A reading of the complaint allegations shows that most of the acts of cruelty by the first petitioner were committed in UK. There are allegations of acts of cruelty, demand of dowry etc., in India as well. For the purpose of maintainability of this complaint in India, we are concerned about the acts committed in India by the petitioners, especially the first petitioner.

13.From the complaint allegations and the statement of witnesses, it is evident that the following instances of demand of dowry and cruelty are alleged by the second respondent against the petitioners:

1.Demand of 50 sovereigns of gold jewels to the second respondent and 10 sovereigns of gold to the first petitioner and Rs.1lakh as Fixed Deposit in the name of the second respondent/defacto complainant. Prior to marriage, demand of an additional amount of Rs.50,000/- as fixed deposit, else marriage would be stopped.

2.At the instance of the second petitioner, first petitioner harassed the second respondent to deposit her salary amount into the account of the first petitioner.

3.Harassment given to open a joint account in the name of the first petitioner and the second respondent.

4.Forced the second respondent to transfer 30,000GBP to the account of first petitioner and purchase a luxury flat at Chennai.

5.Compelled the second respondent to give her salary amount to first petitioner, otherwise she would be divorced.

6.When first petitioner and second respondent came to India, an attempt was made to physically assault the second respondent.

7.In September 2008, accused harassed the second respondent to stop going to work, else agree for divorce.

8.Suspecting the fidelity of the second respondent, the first petitioner had beaten the second respondent and all the accused had scolded her in filthy language.

9.Abandoning the second respondent and her child by the first petitioner on 10.10.2008.

10.Disconnection of the Internet, Television, Telephone connections.

11.Deliberate avoiding of renewal of Visa to the second respondent and her child.

12.Illtreatment of the second respondent's parents when first petitioner filed a divorce proceedings and when second respondent's parents questioned his parents about this.

14. From the allegations pointed out, it is clear that the allegations of cruelty, harassment, demand of dowry, entrustment of the property, compulsion to transfer money had taken place in England and in India. Whether these allegations are true or false cannot be considered by conducting a roving enquiry. It is a matter for trial, the trial Court only after recording the evidence would be in a position to find out the truth or falsity of the allegations. As rightly pointed out by the learned counsel for the second respondent that first petitioner admitted the receipt of certain amounts from the second respondent. However, he claimed that those amounts had been transferred voluntarily for the family expenses. When there are contrary claim as to the purpose for which the amount was transferred by the second respondent to the first petitioner, this has to be elicited only in the course of trial. But the fact remains that the second respondent had transferred certain amounts to the first petitioner and a residential flat had been purchased in the name of the first petitioner in Chennai.

15.One of the main allegations against the first petitioner is that he forced the second respondent to deposit the amount into his account, transferred the amount to his father's account and purchased a property in the name of the first petitioner. The amount was transferred to UK and the property was purchased in India. The amount was transferred by the second respondent due to harassment. By converting the amount transferred as a residential flat, it is alleged that the first petitioner committed breach of trust, misappropriation of amount and cheating. Apart from the harassment and cruelty as as indicated above, there are several allegations against the petitioners with regard to demand of dowry prior to marriage. It is also alleged that during her visit to Chennai, first petitioner also alleged to have attempted to physically assault the second respondent.

16.The first petitioner had become UK Citizen only from 24.07.2011. Prior to that he was a citizen of India working in UK. Most of the offences alleged against him had taken place prior to 24.07.2011. Recently the Hon'ble Supreme Court in 2022 live law (SC) 321 observed that when the part of the offences was committed on the soil of this country, going by the normal principles the offence could be looked into and tried by Indian Courts. If the offence was committed in its entirety, outside India, the matter would come within the scope of Section 188 of the Code. As aforestated, there are allegations made in the complaint and there are materials in support of the allegations made in the complaint in the form of statement of witnesses and other materials to show that the offences alleged in the complaint had been committed in India and in UK. Therefore, this Court is of the considered view that the sanction under Section 188 of the Code is not necessary for proceeding further in this case.

17.As already stated, the truth or falsity of the allegations made in the complaint and in the final report have to enquired to find out the real fact. As of now, this Court finds that there are prima facie materials available to proceed further against the petitioners by framing appropriate charges and conduct a trial. Quashing a proceedings against one of the accused is not a sole ground for quashing the proceedings against the co-accused. The case of the each and every accused has to be assessed independently and a decision has to be taken. As already stated there are materials to proceed further against these petitioners and the petitioners cannot seek parity with other accused A3 and A4 on the ground that proceedings against them are quashed.

18.In this view of the matter, this Court finds that this petition has no merits and is liable to be dismissed and accordingly dismissed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

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To

1.The X Metropolitan Magistrate Court,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.25797 of 2014

SKM(CO)
RVM(10/06/2022)