



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.10051 of 2019

and

Crl.MP(MD)Nos.6318 and 6320 of 2019

WEB COPY

1.Kiruba Rubi
2.Shantha
3.Muthuvinayagam : Petitioners/A3, A4 and A6

Vs.

1.State represented by
The Inspector of Police,
All Women Police Station,
Uthamapalayam.
(Crime No.8 of 2012) : R1/Complainant

2.Anitha : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to CC No.246 of 2013 on the file of the Judicial Magistrate, Uthamapalayam and quash the same as illegal as far as the petitioners are concerned.

For Petitioners : Mr.S.Sabbani Karupuraj Jothi

For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal Side)

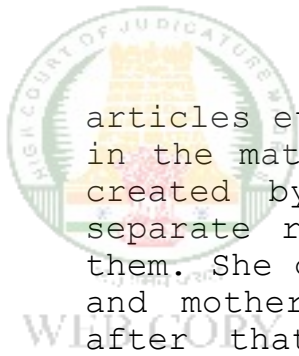
For 2nd Respondent : Mr.N.Marimuthu

O R D E R

This petition has been filed seeking quashment of the case in CC No.246 of 2013 on the file of the Judicial Magistrate, Uthamapalayam.

2.The case of the prosecution in brief:-

It is a matrimonial dispute between the husband and wife. The de-facto complainant is the wife of A1 namely Ram Shanmugam. The de-facto complainant filed a complaint with the following allegation:- The marriage between herself and A1 took place on 24/02/2002. She was provided with sufficient sridhana, gold jewels and house-hold



articles etc. After the marriage, she was living in the joint family in the matrimonial home. Because of some sort of trouble, that was created by the father-in-law and mother-in-law, they put up a separate residence in Varatharajapuram. Two children were born to them. She gave a complaint against her husband and her father-in-law and mother-in-law. Even though, they obtained anticipatory bail, after that the harassment continued. On 03/12/2012, the first accused brought the accused Shanthi, who is the daughter of the brother and her mother-in-law and stated that he is going to marry the above said Shanthi as second wife. At that time, he demanded Rs.25,00,000/-. Demanding the same, she was harassed. On 04/12/2012 at about 7.00 pm, the sister-in-law and her mother-in-law namely Shantha and Santhi came along with her mother-in-law and criminally intimidated and demanded money. On 05/12/2012 at about 7.00 am, the mother-in-law and father-in-law and husband and Santhi put her out of the house and driven out, demanding money and also criminally intimidated. So, on the basis of the complaint given by the de-facto complainant, a case in Crime No.8 of 2012 for the offences under sections 498(A), 323, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act and section 4 of Dowry Prohibition Act was registered and after completing the formalities of investigation, final report was filed in CC No.246 of 2013 on the file of the Judicial Magistrate, Uthamapalayam.

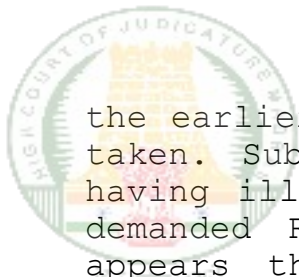
3. Seeking quashment of the same, the accused persons 3, 4 and 6 have preferred this petition mainly on the ground that the first petitioner is the mother-in-law and second petitioner is the cousin and the third petitioner is the neighbour of A1 and they are noway involved in the matrimonial affairs between the husband and wife.

4. Heard both sides.

5. As mentioned in the preamble portion, the first petitioner is the mother of the first accused, second petitioner is the cousin and the third petitioner is the neighbour.

6. According to the learned counsel appearing for the petitioners, no specific allegation has been made against these petitioners in the FIR as well as in the final report. Only bald allegations have been made. It is further submitted that at the time of matrimonial dispute between the husband and wife, the petitioners were not available in the matrimonial house and they were far away and HMOP was also filed.

7. But the learned counsel appearing for the 2nd respondent would submit that there was a demand of Rs.8,00,000/- and in the FIR, it has been stated that the de-facto complainant, after the marriage, was living in the joint family with the mother-in-law and father-in-law and because of the dispute and trouble that has been raised by the in-laws, they put up a separate residence in Varatharajapuram. There were two children born to them there and two children were also begotten. So on



the earlier occasion also, a complaint was given, but no action was taken. Subsequent to that, it is alleged that the first accused having illicit intimacy with the 5th accused by name Santhi, again demanded Rs.25,00,000/- and criminally intimidated them. So, it appears that it is a dispute between the A1 and the de-facto complainant and with regard to the proposed second marriage between the 5th accused and 1st accused, trouble has arisen. Only in pursuance of the above said occurrence, demand was made again, on 04/12/2012 at about 7.00 am and it is alleged that the mother-in-law came along with one Santha and her sister Santhi and criminally intimidated and took away the rice and other things. Again, 15/12/2012 at about 7.00 am, the father-in-law and mother-in-law and the husband and A5-Santhi assaulted her and the driven out of the house.

8. So reading of the FIR as well as the final report shows that only bald allegations have been made against the second petitioner and the third petitioner. But however, it appears that a specific allegation has been made against the first petitioner/A3 not only in the complaint, but also in the final report.

9. As mentioned above, because of the trouble that has been created by the first petitioner and the husband and the father-in-law, they put up a separate residence. So in the matrimonial dispute, how the petitioners 2 and 3 are involved has not clearly stated, either in the complaint or in the final report.

10. The Hon'ble Supreme Court in the case of Preeti Gupta & Another Vs. State of Jharkhand & Another has observed that it is usual for the wife, whenever the matrimonial dispute arises between the husband and wife, by implicating the in-laws. The facts and circumstances of this case clearly shows that the 2nd and 3rd petitioners were not residing along with the husband and wife and they were married and stay away from the matrimonial house of 2nd respondent. Simply because, the 2nd petitioner happened to be the sister of A1 and the 3rd petitioner is a neighbour, they cannot be roped into the allegation of matrimonial dispute between the husband and wife.

11. Another factor, which cannot be taken into account is that the private complaint, that was filed by the de-facto complainant in CC No.222 of 2013 alleging that the first accused has committed the offence under section 494 IPC, by illegally marrying the 5th accused Santhi, as second wife and because of the non-cooperation on the part of the de-facto complainant, the subsequent proceedings have been closed under section 256 Cr.P.C. By order, dated 14/09/2017, the case against the said Santhi has been split up in CC No.183 of 2014. Only subsequent to this case, it appears that CC No.222 of 2013 has been filed by the 2nd respondent. The first accused appears to have married the 5th accused and begotten a child also. The child



proposed second marriage between the 5th accused and the first accused, this complaint has been given much before that date.

12.It appears that the first accused married the 5th accused and the matrimonial proceedings were also initiated and subsequent to the initiation of the matrimonial proceedings only, this complaint has been given and the first accused filed HMOP No.221 of 2012 before the Sub Court, Virudhu Nagar and the second respondent filed HMOP No.142 of 2012 seeking restitution of conjugal rights. After filing of the above said two proceedings only, this complaint has been lodged, on 26/12/2012. So sequence of events, as mentioned earlier, clearly shows that the main dispute is only between the husband and wife and the involvement of the first petitioner is also noticed. So, continuation of the proceedings against the petitioners 2 and 3 will be nothing, but an abuse of process of court and law. As far as the 1st petitioner is concerned, a specific allegation has been made against her, this is not a fittest case to quash the proceedings against her.

13.In view of the above facts, this criminal original petition is **allowed in respect of 2nd and 3rd petitioners** alone and accordingly, the impugned proceedings in CC No.246 of 2013 pending on the file of the Judicial Magistrate, Uthamapalayam, is quashed as against them. In respect of the 1st petitioner, this petition is dismissed. Consequently, connected Crl.MP(MD)No.6318 of 2019 is closed.Considering the age of the first petitioner, her personal appearance is dispensed with before the trial court. Within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that she will appear as and when required by the court and she must ensure that she is properly represented by an Advocate. Accordingly, CMP(MD)No.6320 of 2019 is disposed of.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

er

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 Judicial Magistrate,
Uthamapalayam.

2.The Inspector of Police,
All Women Police Station,
Uthamapalayam.

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

+1 CC to M/s.N.MARIMUTHU, Advocate (SR-13347[F] dated
22/03/2022)

+1 CC to M/s.S.SABBANI KARBURAJOTHI, Advocate (SR-13592[F]
dated 22/03/2022)

Crl.O.P.(MD)No.10051 of 2019
21/03/2022

MGJ(04.05.2022) 5P 6C