



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.01.2022

Delivered on : 18.04.2022

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CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.6096 of 2018

and

Crl.M.P. (MD)Nos.2902 & 2903 of 2018

1. Balasubramanian
2. Gopalakrishnan
3. Padmavathi
4. Balasubramanian
5. Rajeswari
6. Vijayalakshmi

... Petitioners/Accused 1to6
vs.

- 1.State represented by its
The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
(Crime No.47 of 2013)

...1st Respondent/Complainant

- 2.Revathi

... 2ndRespondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in pursuant to the charge sheet in C.C.No.14 of 2018 before the learned Judicial Magistrate, Ambasamudram, and quash the same.

For Petitioners : Mr.N.Anantha Padmanabhan
for Mr.S.Krishnan

For Respondents : Mr.R.Sivakumar,
Government Advocate (Crl. side) for R1.
Mr.S.Satheesh Kumar
for Mr.H.Arumugam for R2



O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the charge sheet in C.C.No.14 of 2018 pending on the file of the Judicial Magistrate Court, Ambasamudram and quash the same.

2.The petitioners are the accused 1 to 6 in C.C.No.14 of 2018 on the file of the Judicial Magistrate Court, Ambasamudram.

3.On the basis of the complaint lodged by the second respondent / defacto complainant, FIR came to be registered in Crime No.47 of 2013 on 17.04.2013 against the petitioners for the alleged offences under Sections 498(A) and 406 IPC r/w Sections 4 of Dowry Prohibition Act and 4 of Tamilnadu Prohibition of Harassment of Women Act.

4.The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C., dated 02.02.2018 against the petitioners for the alleged offences under Sections 498 (A) and 406 IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act and the case was taken on file in C.C.No.14 of 2018 and the same is pending on the file of the Judicial Magistrate Court, Ambasamudram.

5.Admittedly, the marriage between the first petitioner / first accused and the second respondent / defacto complainant was solemnized on 06.02.2012 and due to their wedlock, the second respondent gave birth to a male child on 26.11.2012.

6.It is not in dispute that the petitioners 2 and 3 are the parents of the first petitioner, that the fourth petitioner is the brother of the second petitioner and that the petitioners 5 and 6 are the daughters of the petitioners 2 and 3 and sisters of the first petitioner.

7.The case of the prosecution is that at the time of marriage, the second respondent's parents gave 45 sovereigns of gold jewels and also home articles to the tune of Rs.1,00,000/-, that since the date of marriage, the first petitioner and other petitioners have demanded more dowry and subjected the second respondent to harassment, that they used to detain the second respondent in dark room and thereby prevented her from talking to her parents, relatives and friends, that whenever the second respondent was talking with her male relative or friend through cell phone, the petitioners used to abuse her and harassed her by asking what was the connection between her and the person, who was talking in the other side that the request of the second respondent to permit her



to go her parents house has been rejected continuously, that the second respondent gave birth to a male child on 26.11.2012, that though the same was informed to them, the first petitioner and his family members have not turned up even to see the child, that the petitioners have invited the second respondent for the naming function for their child and at that time, there was a commotion and the second respondent was subjected to harassment, that the second respondent's request to go to her parents house was rejected at that time also and that since the petitioners have been harassing the second respondent continuously by demanding dowry, she was forced to lodge the above complaint.

8. Admittedly, the first petitioner / husband is an advocate by profession and that the first petitioner along with his parents are in joint family.

9. The learned counsel for the petitioners would submit that the first petitioner has also lodged a complaint against the second respondent and her family members and the FIR came to be registered in Crime No.105 of 2013 on the file of Ambasamudram Police Station, that the petitioners 2 to 6 have filed a petition under Section 482 Cr.P.C., in Crl.O.P.(MD)No.7748 of 2014, for quashing the FIR in Crime No.47 of 2013, that since the learned Government Advocate (Criminal Side) submitted that absconding charge sheet has already been filed in connection with the case in Crime No.47 of 2013, this Court recorded the said submission and ordered to close the criminal original petition vide order dated 30.04.2014, that the first petitioner has then applied for a certified copy of the charge sheet before the Court of the Judicial Magistrate, Ambasamudram, but the same was returned stating that the charge sheet has not been filed, that the prosecution has furnished false particulars as if the absconding charge sheet has already been filed, but they have filed a charge sheet subsequently on 18.03.2017 and that thereafter the learned Magistrate has taken cognizance of the case in the year 2018.

10. The learned counsel for the petitioners would further submit that even according to the defacto complainant, she has taken her male child and left the matrimonial home on 02.01.2013 itself, that thereafter she has lodged the complaint on 17.04.2013 and the first petitioner has also lodged the complaint on 20.04.2013 and on the basis of which, two FIRs came to be registered, that the prosecution ought to have filed the charge sheet within a period of three years, but they have filed the charge sheet only in the year 2018 after the lapse of more than five years and that therefore the charge sheet filed is clearly barred by limitation under Section 468 Cr.P.C.

11. The learned counsel for the intervenor would submit that the offence under Section 498(A) is not a single offence and it is only a continuous offence and as such, the question of applying the bar limitation does not arise at all.



12.The learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in **Arun vyas and another vs. Anita Vyas** dated 14.05.1999 and on perusal of the above ruling, it is evident that the same is not in favour of the petitioners.

13.In the above decision case, complaint was lodged for the offence under Sections 498(A) and 406 IPC r/w Section 6 of Dowry Prohibition Act, that the learned Magistrate after accepting the stand of the accused that the complaint was barred by limitation, discharged the appellants, that when the said order was challenged, the High Court has set aside the order of the Magistrate and directed him to proceed with the case from the stage where he had discharged the accused and decide the same in accordance with law and that when the order of the High Court was challenged before the Hon'ble Supreme Court, the Hon'ble Supreme Court has held that the High Court was not correct insofar as the order of the Magistrate relates to the offence under Section 406 IPC, but in regard to offence under Section 498-A IPC no exception can be taken to the impugned order under appeal as the learned Magistrate did not take note of Section 473 Cr.P.C., while ordering discharge of the appellants and further directed the learned Magistrate to consider the question of limitation taking note of Section 473 Cr.P.C.

14.In the said decision, the Hon'ble Supreme Court has referred to its earlier decision in **Vanka Radhamanohari (Smt) vs. Vanka Venkata Reddy and others** reported in (1983) 3 SCC 4, wherein, the Hon'ble Apex Court has specifically held that while considering the question of limitation for an offence under Section 498-A IPC (i.e.,) subjecting a woman to cruelty by her husband or the relative of her husband, should judge that question, in the light of Section 473 of the Code, which requires the Court, not only to examine as to whether the delay has been properly explained, but as to whether "it is necessary to do so in the interests of justice".

15.Very recently, the Hon'ble Supreme Court in **Amritlal vs. Shantilal Soni and others** reported in **Crl.A.No.301 of 2022** dated 28.02.2022, relying on the judgment of the Constitution Bench of the Hon'ble Supreme Court in **Sarah Mathew vs. Institute of Cardio Vascular Diseases by its Director Dr.K.M.Cherian and others** reported in (2014) 2 SCC 62, has specifically held that for the purposes of computing the period of limitation under Section 468 Cr.P.C. the relevant date is the date of filing of the complaint or the date of institution of the prosecution and not the date of which the Magistrate takes cognizance of the offence. In that decision, since the High Court has assumed that the date of taking cognizance i.e., on 04.12.2012 is decisive of the matter, while ignoring the fact that the written complaint was indeed filed by the appellant on 10.07.2012, well within the period of limitation of three years with reference to the date of commission of offence i.e., on 04.10.2009.



16.The above decision is squarely applicable to the case on hand. Even assuming for arguments sake that the offence was allegedly committed on 02.01.2003 when the defacto complainant was sent out of the matrimonial home as putforth by the petitioners' side, the second respondent/defacto complainant gave a complaint on 17.04.2013 itself within a period of three months from the date of the alleged offence. Hence, the contention of the learned counsel for the petitioners that since the complaint was filed on 17.04.2013, the charge sheet filed in the year 2018 is barred by limitation under Section 468 Cr.P.C. cannot be accepted as the relevant date is the date of filing of the complaint and the three years limitation period is to be computed from the date of the offence alleged till the lodging of the complaint and not to be computed from the date of the complaint till the laying of final report or taking cognizance of the case by the concerned Court.

17.As already pointed out, the defacto complainant has not only impleaded her husband, father-in-law and mother-in-law, but also the other relatives of her husband.

18.The Hon'ble Supreme Court recently in **Kahkashan Kausar @ Sonam and others vs The State Of Bihar and others** in **Crl.A.No.195 of 2022** dated 08.02.2022 has specifically held that the allegations levelled against the relatives of the husband are general and omnibus and the same does not warrant prosecution and the relevant passages are extracted hereunder:-

14. Previously, in the landmark judgment of this court in *Arnesh Kumar Vs. State of Bihar and Anr.*⁵, it was also observed:-

"4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bed-ridden grandfathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested."

15. Further in *Preeti Gupta & Anr. Vs. State of Jharkhand & Anr.*⁶, it has also been observed:-



"32. It is a matter of common experience that most of these complaints under section 498A 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 are also a matter of serious concern.

33. The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fiber 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 498A 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 fiber, 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.

35. The ultimate object of justice is to find out the truth and punish the guilty and protect the innocent. To find out the truth is a herculean task in majority of these complaints. The tendency of implicating husband and all his immediate relations is also not uncommon. At times, even after the conclusion of criminal trial, it is difficult to ascertain the real truth. The courts have to be extremely careful and cautious in dealing with these complaints and must take pragmatic realities



into consideration while dealing with matrimonial cases. The allegations of harassment of husband's close relations who had been living in different cities and never visited or rarely visited the place where the complainant resided would have an entirely different complexion. The allegations of the complaint are required to be scrutinized with great care and circumspection.

36. Experience reveals that long and protracted criminal trials lead to rancour, acrimony and bitterness in the relationship amongst the parties. It is also a matter of common knowledge that in cases filed by the complainant if the husband or the husband's relations had to remain in jail even for a few days, it would ruin the chances of amicable settlement altogether. The process of suffering is extremely long and painful."

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of section 498A IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

19. Coming to the facts of this case, upon a perusal of the contents of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of



the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

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19. In the present case also, on perusing the complaint, the charge sheet and the statements of the witnesses recorded by the Investigating Officer, it is clearly evident that the defacto complainant has raised general and omnibus allegations against her in-laws and other relatives.

20. No doubt, the second respondent has raised serious allegations against her husband and this Court in the exercise of its powers under Section 482 Cr.P.C., cannot go into truth or otherwise of allegations made in the complaint or delve into the disputed question of facts. But, against the in-laws and other relatives, she has not raised any specific allegations, but only levelled general allegations against them.

21. It is pertinent to note that the second respondent has alleged that all the accused had harassed her and committed serious acts, but she has not specified the same.

22. As the allegations raised by the second respondent are general and omnibus in nature and on applying the dictum laid by the Hon'ble Supreme Court in **Kahkashan Kausar @ Sonam's case**, this Court is of the view that permitting the prosecution to proceed against the petitioners 2 to 6 would only amount to abuse of process of law. Hence, this Court concludes that the proceeding in C.C.No.14 of 2018 is liable to be quashed as against the petitioners 2 to 6.

23. In the result, this Criminal Original Petition is partly allowed and the proceedings in C.C.No.14 of 2018, on the file of the Judicial Magistrate Court, Ambasamudram, is hereby quashed as against the petitioners 2 to 6 and the case has to be proceeded with, as against the first petitioner/first accused. Consequently, connected miscellaneous petitions are closed.

Sd/-

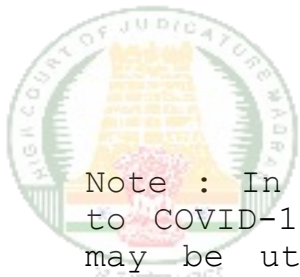
Assistant Registrar (Protocol)

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Sub Assistant Registrar (CS)

CSM



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,
Ambasamudram.
- 2.The Inspector of Police,
All Women Police Station,
Ambasamudram,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.H. ARUMUGAM, Advocate (SR-19892[F] dated 20/04/2022)

Crl.O.P. (MD)No.6096 of 2018

and

Crl.M.P. (MD)Nos.2902 & 2903 of 2018

18.04.2022

MGJ(13.05.2022) 9P 5C