



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.10754 of 2018

and

Crl.MP(MD)Nos.4842 and 4843 of 2018

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1.Kirubakar Ramalingam
2.R.Sivaram Yadav
3.S.Seetha

: Petitioners/A1 to A3

Vs.

1.The State rep. By
its Inspector of Police,
All Women Police Station,
Tallakulam, Madurai.
(Crime No.47 of 2017)

: R1/Complainant

2.P.L.Saranya

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records in the proceedings in CC No.10 of 2018 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai and quash the same.

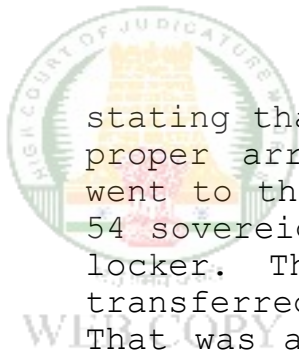
For Petitioner : Mr.I.Robert Chandrakumar
For 1st Respondent : Mr.SS.Madhavan
Government Advocate (Crl. Side)
For 2nd Respondent : Mr.K.Baalasundharam

O R D E R

This petition has been filed by the petitioners seeking quashment of the case in CC No.10 of 2018 on the file of the Judicial Magistrate/Additional Mahila Court, Madurai.

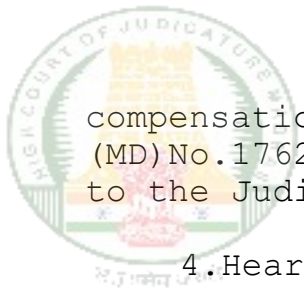
2.The case of the prosecution in brief:-

The marriage between the de-facto complainant and A1 took place on 20.05.2015 at Gomathipuram, Madurai and it was registered on 06/07/2015 on the file of the Sub Registrar, Registrar of Marriage, Theppakulam. During the above said marriage, the de-facto complainant was given sufficient sridhana, jewels etc. Immediately after the marriage, trouble has been created by the accused persons



stating that the marriage was not conducted in a grand manner and no proper arrangement was also made. Later the de-facto complainant went to the matrimonial house in Chennai. At that time, A2 received 54 sovereigns of gold jewels stating that, that will be kept in the locker. They also demanded that Rs.75,000/- per month must be transferred to the account of the first accused from her salary. That was also agreed and done. The 2nd accused has scolded the de-facto complainant in filthy language and also continuously ill-treated her. On 21/08/2015, when her parents came to her house, A1 abused them. When that was questioned, she was assaulted by the first accused and also tried to strangulate her. Later, she went to Gomathipuram, Madurai and from there, she was attending her work. On a compromise made between the parties, again she went to Chennai. At that time, the accused persons demanded Rs.1,45,000/-, which was deposited by her. A3 demanded the money to be paid to A2. On 28/01/2016, A2 scolded her and abused in filthy language and also demanded money. When that was intimated to her maternal uncle, she was taken to Madurai. When compromise talk was arranged, A2 imposed 10 conditions stating that only if all the conditions are satisfied, then only A1 will take her to the matrimonial home. They also demanded consent for mutual divorce. Coming to know that A1 to A3 were in the habit and intention of grabbing money and jewels, she tried to return back to her parental home with gold jewels and articles. At that time, all the accused persons criminally intimidated her stating that she will be done to death. On the basis of the complaint given by the de-facto complainant, the case in Crime No.47 of 2017 was registered for the offences under sections 498(A), 406 and 506(1) IPC by the 1st respondent police. After completing the formalities of investigation, final report was also filed before the Additional Mahila Court at Magisterial Level and it was taken cognizance in CC No.10 of 2018.

3. Seeking quashment of the above said proceedings, this petition came to be filed by all the accused on the ground that the first respondent police has no jurisdiction to entertain the complaint, investigate the matter and file final report. Consequently, the Additional Mahila Court at Magisterial Level is not competent to try the offence, since that court lacks territorial jurisdiction. So apart from the above said jurisdictional issue, other factual grounds have also been raised in the grounds. After the marriage, they went to Chennai and lived there and attending their work and within seven months from the date of marriage, the 2nd respondent left the matrimonial home, due to misunderstanding with A1 and thereafter, returned to the house of A1 on 12/05/2016 and took away her belongings and articles. In spite of best efforts made by the petitioners, the 2nd respondent did not agree for reunion. So, on 21/07/2017, the first petitioner issued a legal notice for mutual divorce. After receiving the above said notice, a false complaint has been given on 28/09/2017. After that, the 2nd respondent has also filed Cr.MP No.3702 of 2017 under the Domestic Violence Act before the Magistrate/Additional Mahila Court, Madurai, seeking



compensation of Rs.50,00,000/-. Later the petitioners moved Crl.OP (MD)No.17626 of 2017 seeking to transfer the above said proceedings to the Judicial Magistrate No.2, Tambaram, Chennai.

4.Heard both sides.

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5.It is very unfortunate to note that within 7 months from the date of marriage between the 2nd respondent and A1, relationship between them got strained. Now they are living separately. They have no children also.

6.The main ground, which was alleged by the petitioners at the time of argument is that as mentioned above, not only the first respondent, but also the Additional Mahila Court at Magisterial Level, Madurai, have no jurisdiction to entertain the complaint and try the offence. According to the petitioners, even as per the allegations made in the FIR, the offence said to have taken place only at Chennai. So the first respondent, who is in Madurai and the concerned court located in Madurai, lacks territorial jurisdiction. Since this is a legal issue, this must be taken into consideration and with regard to other factual issues, the court cannot make a decision as to whether the 2nd respondent, after receiving her belongings, due to misunderstanding, left the matrimonial home and whether the complaint has been given after receiving divorce notice cannot be considered.

7.The learned counsel appearing for the 2nd respondent/de-facto complainant would straightaway draw the attention of this court with regard to the dates and events, which are mentioned in the typed set of papers. From the dates and events, more or less that was mentioned in the FIR, the marriage took place on 20/05/2015 and they started to work in Chennai. On 29/01/2016, the 2nd respondent alleged to have left the matrimonial home. On 28/02/2017, steps were made by the petitioners to make a compromise. That failed. On 12/05/2016, the 2nd respondent came to the house of A1 and took away of her articles and on 22/07/2017, A1 issued legal notice demanding mutual divorce. Reply was also sent by the second respondent on 11/09/2017. After receiving the notice, she filed Crl.MP No.3702 of 2017 before the the Additional Mahila Court at Magisterial Level, Madurai under the provisions of Domestic Violence Act, seeking compensation of Rs.50,00,000/-. On 28/09/2017, the present complaint has been given. On 21/12/2017, the proceedings under the Prevention of Domestic Violence Act was transferred to the Judicial Magistrate No.2, Tambaram in Crl.OP(MD)No.17626 of 2017. In 2018, the first petitioner filed divorce petition in HMOP No.259 of 2018 before the Sub Court, Tambaram. Transfer CMP(MD)No.400 of 2018 was filed and the same was dismissed, on 10/01/2019. Subsequently, HMOP was allowed and no appeal was preferred. So, these are the dates of events.



8. Within seven months of marriage, trouble arose between the parties only at Chennai. They were also living in Chennai. It is also not disputed by both sides. In the light of the factual position, the learned counsel appearing for the petitioners straightaway relied upon the judgments viz., Y. Abraham Ajith & others Vs. Inspector of Police, Chennai & another (2004)8 SCC 100; Ramesh and others Vs. State of Tamil Nadu (2005)3 SCC 507; Manish Ratan & others Vs. State of M.P and another (2007)1 SCC 262; Balchand & Poonam Chand Chhaparwal Vs. State (2008)3 MLJ (Crl)792 and Rajesh Sharma & others Vs. State of U.P & another (2018-1-L.W (Crl.)456) and contended that the first respondent police is not having jurisdiction, so also the Additional Mahila Court at Magisterial Level.

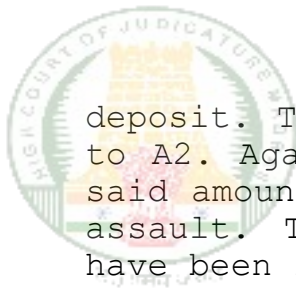
9. Similarly the learned counsel appearing for the 2nd respondent relied upon the judgments reported in the case of Sunita Kumari Kashyap Vs. State of Bihar (SC)2011 AIR (SUPREME COURT) 1674; Priti Kumari Vs. State of (SC) ([2020(1) MWN (Crl.) 159; and Nitika Vs. Yadwinder Singh and others [2019(5) CTC 957] for the purpose of argument that in case of matrimonial dispute, not only the original place where the trouble arose between the husband and wife got jurisdiction, but also the place where the subsequent trouble arose is also competent to investigate and try the offence.

10. So in the light of the above said rival submissions, we will go to the statutory provisions in this regard.

11. Section 177 Cr.P.C says that ordinary place of inquiry and trial. Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction, it was committed.

12. Section 178 Cr.P.C deals about the sudden events. Section 179 Cr.P.C deals about where the offences have been committed and subsequently follow.

13. So on going through the provisions, the general principle is that ordinary place of inquiry and the trial is place where the cause of action arose. So also the place where the subsequent events has ensued or followed is the place of competent court. In a case of matrimonial issue, the cause of action arises only in the matrimonial home. Here it is an admitted fact that both the parties, after the marriage living in Chennai and also attending their work. It is also stated in the FIR to the effect that even on the date of marriage, trouble has arisen with regard to some sort of petty issue over arrangement of marriage. Except this, this court is not going into the issue as to the place where the above said occurrence took place. But thereafter, there was a problem between them. They went to Chennai and lived there. During that time, it appears that trouble arose between them, not only on one occasion, but also more than twice. It is also stated in the FIR that when the de-facto



deposit. That amount was also demanded by A3 to hand over the same to A2. Again on 28/01/2016, trouble arose with regard to the above said amount and she was driven out of the house by causing physical assault. Thereafter, as mentioned above, some sort of conditions have been imposed. This is the last occurrence stated in the FIR.

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14. According to the learned counsel appearing for the petitioners, the entire cause of action arose only in Chennai and not even a single cause of action or trouble arose within the jurisdiction of Madurai.

15. In the light of the above factual situation and statutory provisions, now we will go to the judgments cited on either side.

16. We can straightaway go to the latest judgment of the Hon'ble Supreme Court on that point. In Priti Kumari Vs. State of Bihar and others [2020(1)MWN (Cri) 153], the Hon'ble Supreme Court, by following the judgment in the case of Rupali Devi State of U.P & others [(2019)5 SCC 384], has observed like this.

"10. The question that has posed for an answer has nothing to do with the provisions of Section 178 (b) or (c). What has to be really determined is whether the exception carved out by Section 179 would have any application to confer jurisdiction in the courts situated in the local area where the parental house of the wife is located.

11. To answer the above question, one will have to look into the Statement of Objects and Reasons of the Criminal Law [2nd Amendment Act, 1983 (Act 46 of 1983)] by which Section 498A was inserted in the Indian Penal Code. The section itself may be noticed in the first instance:

"498A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, "cruelty" means -

(a) any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life,



limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

16. We, therefore, hold that the courts at the place where the wife takes shelter after leaving or driven away from the matrimonial home on account of acts of cruelty committed by the husband or his relatives, would, dependent on the factual situation, also have jurisdiction to entertain a complaint alleging commission of offences under Section 498A of the Indian Penal Code."

17.The judgment of the Hon'ble Supreme court in the case of Rupali Devi Vs. State of U.P & Others, has been followed in the case of Nitika Vs. Yadwinder Singh [2019(5) CTC 957].

18.So from the observation of the Hon'ble Supreme court, it is seen that as mentioned earlier, the ordinary place of trial with regard to the matrimonial issue will be in the matrimonial house. But after that, the wife will shift either to the parental home or some other place. The place where the wife stays after the matrimonial issue or driven out of the house is also having jurisdiction to make enquiry and try the offence. This is the settled position of law.

19.Per contra, the learned counsel appearing for the petitioners would submit that those judgments does not apply to the facts and circumstances. Because after the matrimonial issue, she came to Madurai and later, went back to Chennai and now she is residing there. When the matrimonial proceedings that was initiated by the de-facto complainant in DVOP No.17 of 2018 on the file of the Additional Mahila Court, Madurai, it was also transferred to the Judicial Magistrate, Tambaram, noting the fact that both of them residing in Chennai and worked in IT Companies. So for the sake of convenience of the parties, that was allowed. Similarly HMOP No.259 of 2018, which was filed by the first petitioner before the Sub Court, Tambaram was sought to be transferred to Madurai or any other court within the Madurai District. That came to be dismissed by this court in Transfer CMP(MD)No.400 of 2018. Subsequently HMOP No.259 of 2018 was also allowed by the Sub Court, Chengalpattu, by order, dated 18/11/2019. Now against the above said order, CMA



appears to be pending. So even though, it appears that the de-facto complainant took shelter, after the above said matrimonial issue in Madurai, subsequent development shows that the matrimonial proceedings have been initiated one in Madurai and another in Thambaram.

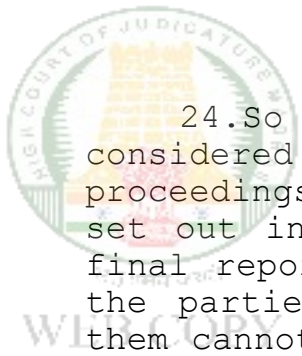
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20. Now as mentioned above, the DVOP has been transferred to Thambaram and HMOP was also dismissed and now the CMA is pending. The attempt made on the part of the de-facto complainant to get HMOP transferred to Madurai also failed. So the simple point that has been raised by the learned counsel appearing for the petitioners is that Mahila Magistrate Court at Magisterial Level has no jurisdiction to try the offence, so also the first respondent police to make the investigation. So on that ground, he wants the entire proceedings to be quashed. For that purpose, he would straightaway rely up the judgment of the Hon'ble Supreme Court reported in the case of *Y.Abraham Ajith & others Vs. Inspector of Police, Chennai* and another Appeal (Crl.) No.904 of 2004, dated 17/08/2004, wherein it has been stated that naturally the offence where it was committed is the jurisdiction place to try the offence.

21. The Hon'ble Supreme Court went in detail about the term 'cause of action' and that judgment was followed in ***P.Venkatarama Reddi Vs. A.K.Mathur (Appeal (Crl.) No.372 of 2005, dated 03/03/2005*** by the Hon'ble Supreme Court, even though, in the order, it has been referred and it was also followed. A similar view has been taken by the Hon'ble Supreme Court in the case of ***Manish Ratan & Others Vs. State of M.P & another (Appeal (Crl.) 210 of 2000, dated 01/11/2006)***, which was also followed by this court in the case of ***Balchand & Poonam Chand Vs. State of Tamil Nadu*** in Crl.OP No.18774 of 2005, dated 20/08/2008. Now the judgment of the Hon'ble Supreme Court in ***Y.Abraham Ajith and others Vs. Inspector of Police, Chennai and another***, has been referred and distinguished in the case of ***Sunita Kumari Kashyap Vs. State of Bihar and another (2011 AIR (Supreme Court) 1674***. To answer this point only, the learned counsel appearing for the petitioners would submit that only for a short time, she was living in Madurai in her parental home and later she went to Chennai.

22. Now the question revolves around narrow issue, whether on this point the entire criminal proceedings can be quashed.

23. The Hon'ble Supreme Court, while entertaining such a sort of trouble by exercising power under section 142 Cr.P.C, thought it fit to transfer the trial to the court before which the cause of action arose, the parties were residing. So that judgment was rendered on the point, whether the criminal offence can be construed as a continuous one. On that point, the case was decided and as mentioned above, it was transferred to Jabalpur where the cause of action arose.



24. So in the facts and circumstances of the case, I am of the considered view that this cannot be a ground on which the entire proceedings can be quashed. If we look into the factual aspects, as set out in the FIR, statement of the witnesses as well as in the final report, it appears that there was continuous trouble between the parties. At whose fault, the matrimonial issue arose between them cannot be a matter for consideration in this petition. So I am of considered opinion that I am not going to express any opinion, at whose fault, the matrimonial issue arose between them. It is for the competent court to decide. So, the petition can be dismissed, of course with liberty to the petitioners to file appropriate petition seeking transfer of the case to the Judicial Magistrate, Tambaram, Chennai.

25. With the above said liberty, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

26. After passing the order, the learned counsel appearing for the petitioners would submit that the 1st petitioner is working in Chennai and the petitioners 2 and 3 are his aged parents, so on that ground, he wants to dispense with his personal appearance before the concerned trial court.

27. The said request is considered. Considering the profession of the 1st petitioner and his parents, their personal appearance is dispensed with. Within 15 days from the date of receipt of a copy of this order, the petitioners must appear before the trial court and file an undertaking affidavit that they will appear as and when required by the court, the attested photograph must be attached in the affidavit and they must ensure that they are properly represented by an Advocate. Accordingly, CMP(MD)No.4843 of 2018 is allowed.

Sd/-

Assistant Registrar (Records)

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Sub Assistant Registrar(CS)

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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.

<https://hcservices.ecourts.gov.in/hcservices/>



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

CrI.O.P. (MD) No.10754 of 2018
17.02.2022

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