



Crl.OP.No.2839 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.12.2022
Pronounced on	10.01.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

CRL.O.P.No2839 of 2021

AND

CRL.MP.Nos.1579, 1580 & 6774 of 2021

1.Saroja

2.M.Kanjana ... Petitioners/Accused No.2 & 3

Vs.

1. State rep.by

The Inspector of Police,
All Women Police Station,
Pollachi, Coimbatore,
(Crime No.18/2019)

... 1st Respondent / Complainant

2.M.Suganthi ... 2nd Respondent / de facto complainant

PRAYER :- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.232 of 2020 on the file of the learned Judicial Magistrate No.1, Pollachi and quash the same as illegal.



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For Petitioners : Mr.S.M.A.Jinnah
For Respondent-1 : Mr. A.Damodaran
Additional Public Prosecutor
For Respondent-2 : Mr.C.Mutharasan

ORDER

The Criminal Original Petition has been preferred to quash the proceedings in C.C.No.232 of 2020 pending on the file of the learned Judicial Magistrate No.1, Pollachi.

2. The petitioners are the accused 2 and 3 in Crime No.18 of 2019 on the file of the first respondent Police. The first accused is the husband of the second respondent/*de-facto* complainant. The second accused is the mother of the first accused and the third accused is the sister of the first accused. The second and third accused have filed this petition to quash the proceedings.

3.The case of the prosecution as it appears from the complaint of the second respondent is that she was married to the first accused on 07.04.2008 at Karaikudi. At the time of marriage the second respondent was working at Sydney, as an Operation Manager in Appco Group of Companies. The first



accused was working as a machinist in a private company at Singapore. Even though it was told that the first accused was an engineering graduate, he is actually a diploma holder. Shortly after the marriage the second respondent and the first accused went to Sydney and was staying at the house of the second respondent. After three weeks, the first accused went back to Singapore to resume his job. With the efforts of the second respondent, a job was secured for the first accused at Liverpool and he came to Australia on spouse visa. The second respondent had also facilitated to obtain permanent visa for the first accused.

3.1.At some point of time, the first accused had given up his job and was depending on the second respondent. The second respondent has invested her own money of 20,000 Australian Dollars and set a company for the first accused in the name and style JK Fright Pty Ltd. Though the first accused assured to give back the said amount, he did not give the same. The defacto complainant has also invested 2,200 Australian dollars for taking driving license and Rifle shooting club membership for the first accused. She had also paid substantial money towards the fine amount imposed against the



first accused for violating the traffic rules at Australia. At the compulsion of the first accused, the second respondent had transferred a sum of Rs.21 lakhs between the period from 2009-2016 to the bank account of the first petitioner/second accused. So far she had given Rs.75 lakhs to the family of the second accused. The petitioners started to harass the second respondent from the date when she started to live at Sydney with her husband. The first accused had developed illegal intimacy with one Shahnuma in Sydney and was torturing the defacto complainant.

3.2. In the year 2017 the second respondent and the first accused had been to the marriage of the 2nd respondent's sister at Pollachi. After marriage the second respondent asked the first accused to arrange tickets to go for Australia but the first accused told that the second respondent and her parents should purchase a house worth about Rs.1 Crore at Devakottai and get it registered for the use of the parents of the first accused and only thereafter he would take her to Australia or otherwise he would marry the other woman with whom he had an intimacy. They also took away 75 sovereigns gold jewels of the second respondent from the house of her parents. Whenever the



first accused came to India, the second respondent took efforts to rejoin him but it was not fructified. On 23.05.2019 the first accused had sent whatsapp messages to the second respondent that he would marry the other woman by name Shahnuma and that he had taken such decision because of the omission on the part of the second respondent in purchasing the house for his parents. On the above complaint a case has been registered in Cr.No.18/2019 for the offences under Sections 498(A), 406 IPC and Sec.4 of the Tamil Nadu Prohibition of Harassment of Women Act against the first accused and third accused.

3.3.It is to be noted that in the FIR, Cloumn No. 2 and 12, there is a clerical error in mentioning the provisions of Section 4 of Dowry Prohibition Act. Instead of mentioning Dowry Prohibition Act, it seems to have got typed in the FIR as Women Harassment Act. The learned Additional Public Prosecutor for the first respondent has admitted the above clerical error.

3.4. After completion of the enquiry, charge sheet has also been filed against the accused 1 to 3 but in which the charges have been mentioned only for the offence under Section 498 (A) IPC.



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4. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

5. The learned counsel for the petitioners submitted that the petitioners who are the mother and sister of the husband of the second respondent has got no overtact; on the face of the FIR no offence under Section 498(A) IPC is made out, even though there are allegations that the 2nd and 3rd accused/petitioners have also demanded to get a house worth of Rs.1 Crore for their use; the second respondent had given a statement to the Social Welfare Officer that she had not given any complaint for dowry demand but her allegations are only with regard to Domestic Violence; even according to the statement of the Social Welfare Officer it is asserted that the second respondent did not wish to make any offence with regard to any allegations of dowry demand. So the case stands only for the offence under Section 498(A) IPC; since the major allegation in the FIR is the allegations that have been taken place at Sydney, the petitioners who are residing at Pollachi do not have any connection.

5.1. Even if the FIR is read wholly that will not make out a case against



the 2nd and 3rd accused/petitioners herein. The second respondent never lived at any point of time along with the petitioners and they have been impleaded in this case just because they are the relatives of the first accused; in matrimonial cases the relatives of the husband have been included unnecessarily even though they have not caused any domestic violence. The proceedings as against the petitioners is purely an abuse of process of law and hence the proceedings against the petitioners should be quashed.

5.2. In support of his above contentions, the learned counsel for the petitioners relied upon the judgement of the Hon'ble Supreme Court held in the case of *Kahkashan Kausar @ Sonam & Ors Vs. State of Bihar & Ors* [reported in **2022 LiveLaw(SC) 141**].

6. The learned Additional Public Prosecutor for the first respondent submitted that the second respondent had stated that the petitioners also joined with the first accused and refused to send her to Sydney to live along with the first accused; they demanded a house to be purchased for them and harassed her by receiving money every now and then; all those facts can be proved only during the trial.



6.1.In support of his above contentions he relied upon the judgement of the Hon'ble Supreme Court held in the case of *State of Uttar Pradesh and another Vs. Akhil Sharda and others* [reported in **2022 SCC OnLine SC 820**] and *Taramani Parakh Vs. State of Madhya pradesh and others* [reported in **2015 SCC OnLine SC 218**].

7.The fact that the second petitioner was working at Sydney at the time of her marriage with the first accused during the year 2008 is not denied. Most of the allegations made in the complaint relates to the events that had taken place when the second respondent was living with the first accused till the year 2017, though it is stated by the second respondent that the first accused had started to develop extra matrimonial affairs with a woman from the year 2013. It is not known from the avernments whether the second respondent continued to live with him in Australia or had come down to India after 2013 or since 2017 and whether she had come to Chennai. The parents of the first accused had attended the marriage of the sister of the second respondent on 02.11.2017 at Pollachi and that time the second respondent was at Pollachi. It seems that the second respondent's family was maintaining



cordial relationship with the family of the accused for inviting them for the marriage. At that time the first accused had come from Sydney. So the second respondent could have come to India and started to live with her parents even prior to November 2017.

8.As per the averments of the FIR, the second respondent had arranged to get a job for the first accused at Australia and she had facilitated for his visa. Under such circumstances, it is difficult to comprehend that the second respondent had requested the first petitioner and the first accused to arrange flight tickets for her journey to Sydney in order to join with the first accused. The second respondent who had adopted well to live at abroad and who alone had secured job and visa for the first accused, need not have depended on any one to arrange for her flight tickets to Sydney. Had she done that no one could have prevented her. In fact during the relevant time she was staying with her parents at their house.

9.The one and only allegation which was made by the second respondent against the petitioners is that they demanded a house to be purchased and registered for their residence purpose at Devakottai and it was



a condition imposed on the second respondent for allowing her to go to Australia.

10.Admittedly, the second respondent was not living with the petitioners 1 & 2 and she was not under their control at any point of time. Even according to her own statement, she did not want to make any allegation with regard to the demand of dowry. In that case the allegations made against the petitioners can not attract any criminal offences.

11.For the occurrence said to have occurred prior to the year 2017, complaint has been given in the year 2019. It is probably because of the whatsapp message sent by the first accused by stating that he had decided to marry Shahnuma.

12. It is needless to state that in matrimonial matters due to frictions and disaffection between the couples, the other members of the husband's family are also dragged in complaints given for domestic violence. The tendency to implicate the relatives of the husband unnecessarily in a case would amount to abuse the process of Court. In the case in hand the materials reveal that the petitioners never exercised any control over the



second respondent, because the second respondent had never lived with the petitioners. The petitioners are living at Devakottai. The second respondent was working at Sydney at the time of her marriage and it is presumably understood that she had been to India at some point of time, due to some domestic issues between herself and the first accused. Excepting an isolated incident that is alleged to have taken place during the month of November 2017, nothing is stated against the petitioners. Even during the said time the petitioners had been to Pollachi at the invitation of the second respondent's parents to attend the marriage of the second respondent's sister.

13. Time and again it has been held in the various judgements of the Hon'ble Supreme Court and the High Courts that the Court should be cautious in dealing with the complaints given about matrimonial dispute and the allegations are required to be scrutinized with great care and caution. In this regard it is relevant to refer the judgement of the Hon'ble Supreme Court held in the case of *K.Subba Rao Vs. The State of Telangana*, [reported in (2018) 14 SCC 452]. In the said case it is held that the relatives of the husband should not be implicated on the basis of omnibus allegations. Takes



specific instances of their involvement in committing the crime are given, they cannot be arrayed as accused.

14.In the recent judgement of the Hon'ble Supreme Court held in **2022 Live Law(SC) 141(Kahkashan Kausa @ Sonam & Ors Vs. State of Bihar & Ors)**, it is observed as under:

“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’.



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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. “

15.As discussed earlier the allegations made by the second respondent in the FIR predominately relate to her days at Sydney. A single event has taken place during November 2017 and that has been diluted by statement of the defacto complainant herself. On the face of the FIR, does not disclose any offence against the petitioners by establishing the prima facie case that they had continuously ill-treated the second respondent and caused domestic violence. The second respondent never lived with the petitioners and they did not play any role for the misunderstanding developed between the second



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respondent and the first accused, when they lived at Australia.

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16. So it is unbelievable that the second respondent who is independent had depended on the petitioners to arrange her travelling arrangement to Australia for living with the first accused. In order to prevent the abuse of process of the Court and serve the ends of the justice, I feel it is appropriate to invoke the power of the Court under Sec.482 Cr.PC to quash the proceedings against the petitioners.

In the result, the Criminal Original Petition is **allowed** and the proceedings in C.C.No.232 of 2020 pending on the file of the learned Judicial Magistrate No.1, Pollachi, is quashed against the petitioners. However the proceedings against the first accused shall go on. Consequently, connected miscellaneous petitions are dismissed.

10.01.2023

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking
Neutral: Yes /No
Jrs



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To

- 1.The Judicial Magistrate No.1, Pollachi
- 2.The Inspector of Police,
All Women Police Station,
Pollachi, Coimbatore.
- 3.The Public Prosecutor
High Court of Madras.



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R.N.MANJULA, J.

jrs

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