

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.20689 of 2021

and

Crl.M.P.No.11276 of 2021

1.S.Thaslima Farvin

2.Mohammed Shafiyullah

3.Kathija Natchiyal

4.Mohamed Saleem

...

Petitioners

/vs/

A.R.Mariyambeevee

...

Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the records in S.T.C.No.501 of 2021 pending on the file of the learned Judicial Magistrate No.1, Panruti, Cuddalore and quash the same.

For Petitioners

...

Mr.S.Ashok Kumar

Senior Counsel

for Mr.P.Palaninathan

For Respondent

...

Mr.V.V.Sairam

ORDER

Challenging the case in S.T.C.No.501 of 2021 pending on the file of the learned Judicial Magistrate No.1, Panruti, Cuddalore, this criminal original petition has been filed.

2.The learned counsel appearing for the petitioners submitted that the petitioners are accused in S.T.C.No.501 of 2021 on the file of the Judicial Magistrate Court No.I, Panruti. The respondent/complainant filed a complaint under Section 200 Cr.P.C for the offences under Sections 211 r/w 120(b) IPC. He further submitted that the first petitioner married one A.R.Salaudeen Abdul Razhak on 19.04.2015. After marriage, the first petitioner went to Dubai along with her husband and her mother-in-law. Thereafter, her husband and mother-in-law demanded for a Talaq to give the passport of the first petitioner. Then, the first petitioner's husband gave three Talaq. Thereafter, the first petitioner lodged a police complaint before the All Women Police Station, on 05.01.2017. Further, in pursuance of this Court direction in CrI.O.P.No.4601 of 2018, All Women Police Panruti registered a case against the respondent/ complainant and 7 other accused persons in Crime No.6 of 2018 for the offences under Sections 406, 294(b), 506(i) IPC and under Section 6(2) of Dowry Prohibition Act,1961 on 16.03.2018. After investigation, final report has been filed in C.C.No.619 of 2019, which was quashed by the Supreme Court in

Crl.A.No.103 of 2021 dated 03.02.2021. Thereafter, they are living separately. After quashing C.C.No.619 of 2019, the respondent/complainant filed a private complaint for the offences under Sections 211 r/w 120 (b) IPC against the petitioners.

3.Further, the learned counsel for the petitioners contended that Sections 195(1)(b) Cr.P.C would be applicable to the fact of this case. It is a proceedings of the Court. Therefore, the offence under Section 211 IPC must be regarded as one committed in relation to those proceedings in view of the bar under Section 195 Cr.P.C., the private complaint would not be taken into cognizance which is unsustainable and liable to be quashed. To support of his argument, he relied the decisions of the Hon'ble Supreme Court in *State of Punjab Vs. Brij Lal Palta* reported in *AIR 1969 SC 355* and in *Kamlapati Trivedi Vs. State of West Bengal* reported in *(1980) 2 Supreme Court Cases 91*.

4.The learned counsel appearing for the respondent submitted that only in pursuance of the complaint given by the first petitioner, a case has

been registered by the All Women Police, Panruti. Since the petitioners gave a false complaint, the case has been registered. Therefore, the private complaint given by the respondent/complainant is maintainable and pleaded to dismiss the criminal original petition.

5.I have considered the matter in the light of the submissions made by the learned counsel for the petitioners as well as the learned counsel for the respondent.

6.On perusal of the records, the fact reveals that the first petitioner lodged a police complaint before the All women Police Station initially on 05.01.2017, however, the same was kept without any action. Therefore, the 1st petitioner approached this Court in Crl.O.P.No.4601 of 2018 and this Court by its order dated 16.02.2018 allowed the direction petition and based on that order, the All Women Police Station, Panruti, Cuddalore registered the case against the respondent/complainant and 7 other accused persons in Crime No.6 of 2018 for the offences under Sections 406, 294(b), 506(1) IPC and under Section 6(2) of Dowry Prohibition Act, 1961

on 16.03.2018. Thereafter, the respondent/complainant and other accused approached this Court in Crl.O.P.No.9795 of 2018 to quash the F.I.R. However, this Court dismissed the quash petition on 22.03.2019. Then, after investigation, the All Women Police Station, Panruti, Cuddalore, filed a charge sheet in Crime No.6 of 2018 before the Additional Mahila Court, Cuddalore, for the offences punishable under Sections 406, 294(b), 506(1), 498(A) IPC r/w under Section 6(2) and 4 of Dowry Prohibition Act and the same was taken on file in C.C.No.619 of 2019.

7.Further, it reveals that the respondent/complainant and other accused except the 1st petitioner's husband approached this Court in Crl.O.P.No.27646 of 2019 to quash the proceeding in C.C.No.619 of 2019 and the same was dismissed by this Court by its order dated 17.03.2020. Aggrieved by that order, the respondent/complainant and other accused approached the Hon'ble Supreme Court in Crl.A.No.103 of 2021 against the dismissal order of this Court to quash the proceedings in C.C.No.619 of 2019. The Hon'ble Apex Court by its order dated 03.02.2021 quashed the proceedings as against the respondent/complainant/sister-in-law citing

that after the 1st petitioner's marriage, they were living separately and there was no specific allegation about the harassment caused by the respondent/complainant/sister-in-law to the 1st petitioner and allowed the proceeding to be continued against the husband and mother-in-law of the 1st petitioner. The respondent /complainant, after obtaining the order of quash from the Hon'ble Supreme Court, filed the present private complaint for the offences under Section 211 r/w 120(b) IPC as against the petitioners herein. The above complaint was taken on file in STC No.501 of 2021 by the Judicial Magistrate No.1, Panruti. Section 195 Cr.P.C runs as follows:

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence,

or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that

no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term" Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

8.The present case is filed in consequence of quashing of the final report filed by the police in crime No.6 of 2018 in C.C.No.619 of 2019 on the file of the Additional Mahila Court, Cuddalore. Therefore, the Court alone should decide whether the complaint would be given for an offence committed before it. A private complaint filed by the private party is not maintainable. The principle stated by the Hon'ble Supreme Court in ***State of Punjab Vs. Brij Lal Palta*** reported in ***AIR 1969 SC 355*** and in ***Kamlapati Trivedi Vs. State of West Bengal*** reported in ***(1980) 2 Supreme Court Cases 91*** is applicable to the facts of this case. Therefore, in view of the bar under Section 195 Cr.P.C. the private complaint filed by the private party is unsustainable and it is liable to be quashed.

9.Accordingly, the criminal proceedings in S.T.C.No.501 of 2021 on the file of the Judicial Magistrate No.I, Panruti, is hereby quashed and the criminal original petition is allowed and the respondent is at liberty to workout his remedy before the trial Court in accordance with law. Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
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10.07.2023

To

The learned Judicial Magistrate No.1,
Panruti, Cuddalore.

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V.SIVAGNANAM,J.

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