



Crl.O.P.No.34594 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.01.2023
Pronounced on	23.01.2023

CORAM:

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

Crl.O.P.No.34594 of 2019

E.Betsy

... Petitioner/Accused No.2

Vs.

1.The State Rep.by Inspector of Police,
AWPS, Mylapore Police Station,
Chennai.

2.Rosy Sesuraj.

... Respondents

PRAYER : This Criminal Original Petition has been filed to call for the records of Crime No.12 of 2019 dated 22.11.2019 for the alleged offence under Sections 498(A), 323 of IPC, 66 of I.T.Act and 506(i) of IPC.

For Petitioner : Mr.K.Suresh Babu assisted by
Mr.Aadeish.J.B.

For Respondents : Mr.A.Gopinath,
Government Advocate (Crl. Side) for R1
: Mr.B.Kumarasamy for R2



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ORDER

This Criminal Original Petition has been preferred to call for the records of Crime No.12 of 2019 dated 22.11.2019 pending on the file of the first respondent police for the alleged offence under Sections 498(A), 323 of IPC, 66 of I.T.Act and 506(i) of IPC.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned counsel for the second respondent.

3. The petitioner is the second accused. The first accused is the son of the petitioner / second accused. The defacto complainant's daughter Rufina was married to the petitioner's son Xavier Thomas Pari on 10.07.2016. The marriage was conducted at a Church at Nungambakkam. Even prior to the marriage ceremony held at the above Church, for the purpose of obtaining VISA, the marriage was registered in the month of April 2016 itself. The second respondent and her daughter Rufina were living in the United Kingdom at the time of marriage. The marriage was arranged by the relatives of the parties at Chennai. Both the first accused and Rufina were working in



United Kingdom subsequent to their marriage and lived together as a couple at United Kingdom itself.

3.1. According to the second respondent, the first accused came to United Kingdom during July 2016 and got a job in February 2017, in view of the sponsorship given by the second respondent's daughter. After the marriage was registered in the month of April 2016, Rufina visited the petitioner's house at Chennai. At that time, the first accused was also there. The petitioner served Rufina with tea and locked the house and went outside. At that time, the first accused misbehaved with Rufina and videographed the same. The petitioner came after a while and told her that registration itself was a marriage and hence she need not fret. The second respondent's daughter got bruises on her knees and for which, the petitioner apologized to Rufina and her son threatened her not to tell that to anyone. The next day Rufina left India.

3.2. The second respondent believed that the accused had misused many girls similarly in the past. Subsequent to marriage also, the first accused brought a girl to his house and misbehaved in front of Rufina. When Rufina



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complained this to the petitioner and the aunt of the first accused by name Imma, they ignored it and abused Rufina. Since the occurrence had taken place at India, Rufina could not take legal action at United Kingdom. The second respondent went to United Kingdom to check the mobile phone of the first accused during September 2017, as she was scared about the misuse of the video of her daughter; but she came to know that the mobile phone was disposed by the first accused.

3.3. The second respondent came to India during July 2017 at that time also the petitioner and her son emotionally harassed them. The second respondent came to know that the marriage was convened only for the purpose of getting United Kingdom VISA for the first accused. The petitioner and the aunt of the first accused Imma stopped making any communication with the second respondent's family, after getting the family permit at United Kingdom. The first accused threatened Rufina that he would marry a white woman and desert her. The second respondent's daughter was subjected to emotional and physical harassment. The petitioner never advised the first accused to change his ways. During December 2017, the second respondent's husband's brother went to the petitioner's house and asked them to give



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amicable divorce instead of harassing Rufina. The relatives of the second respondent was also harassed by the petitioner and her relatives. In order to get the property of the Rufina as per the law of United Kingdom, the first accused attempted to kill Rufina. The first and second accused and their relatives have caused physical violence and harassment and attempted to kill Rufina from April 2016. The first accused's passport was cancelled during 2018. Despite, no action has been taken against him, the above complaint was given on 22.11.2019 and on the basis of the same, a case has been registered in Crime No.12 of 2019.

4. The learned counsel for the petitioner submitted that the petitioner who is the mother of the first accused is being harassed by the second respondent unnecessarily by making false complaints; the complaint itself is barred by limitation in view of the one and only allegation made against the petitioner relates to the year 2016; the case has been registered for the offence under Sections 498(A), 323, 506(i) of IPC and Section 66 of Information Technology Act, 2000; among the above penal provisions, the maximum period of punishment is three years and as per Section 468 Cr.P.C., on the date of the complaint itself, it is barred by limitation; in fact, the second



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respondent's daughter and the first accused have got consent divorce between themselves at the Family Court, Bromley; subsequent to that, this complaint has been given just to give mental agony to the petitioner and the first accused; there is no ingredient to constitute an offence under Section 498(A) and the daughter of the second respondent never lived at Chennai subsequent to her marriage with the first accused and the allegations are totally false.

4.1. On the very same allegations, an earlier complaint was given and that was closed as baseless; but the second respondent continues to give repeated complaints and on which no action should be taken; the first accused has given a detailed representation to the earlier complaint given before the Choolaimedu Police Station and that itself would show that it was the first accused who was harassed by the daughter of the second respondent and only after accepting the same, the earlier complaint was closed; since the allegations mainly pertain to the alleged occurrence that had taken place at Foreign soil; without obtaining sanction under Section 188 of Cr.P.C, no action can be taken; so far as the petitioner is concerned, she is a permanent resident of Chennai and the second respondent's daughter had not lived in a joint family along with the petitioner.



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5. The learned Government Advocate (Crl.Side) submitted that only if a detailed investigation is allowed to be done, the real facts would come to light; since the portion of the allegations that has been made against the petitioner was said to have occurred at Chennai, the complaint has been registered; since there are sufficient ingredients to make out a case against this petitioner for the offence under Section 498(A), the investigation should be done; so far as the allegations of matrimonial cruelty is concerned, it is a continuing offence and hence the question of limitation would not arise.

6. The learned counsel for the second respondent submitted that the first accused continues to harass the second respondent's daughter and he has even uploaded the obscene pictures of the second respondent and her daughter; if the FIR is quashed that would embolden the first accused to continue his illegal activities; earlier, on the complaint given against the first accused, his passport was cancelled and all these facts should be allowed to be investigated.

7. The second respondent is the mother of Rufina, who was married to the first accused during the year 2016. So far as this petitioner who is the



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mother of the first accused Xavier Thomas Pari is concerned, it is about certain specific occurrence that was said to have occurred during April 2016.

It is alleged that the second respondent's daughter Rufina went to the house of the petitioner during April 2016 and at that time, the accused were there and after serving Tea to Rufina, the petitioner went outside by locking the door and at that time the first accused misbehaved with her and videographed the same. The second respondent's daughter was not a permanent resident of India, though she might be an Indian citizen / Indian origin. At the time of marriage, the first accused was in India and the marriage is said to have taken place at a Church at Nungambakkam. It is alleged that during April 2016 itself, the marriage was registered for the purpose of VISA. After the registration of the marriage, the second respondent's daughter went to the petitioner's house at Chennai. Barring that one incident, no allegation has been made against the petitioner.

8. Even though a generalised statement has been given in the complaint that the petitioner also joined with her son and other relatives to harass Rufina and caused physical and emotional violence on her, the possibility of the involvement of this petitioner is remote for the very reason that immediately



after marriage, Rufina went back to United Kingdom. In fact even in the complaint it is stated that Rufina left India in the month of April 2016, subsequent to the registration of marriage. The second respondent further alleged that a formal marriage was held in the Church during July 2016.

9. Had the first accused misbehaved with Rufina and that was videographed by the first accused and the second accused facilitated the same, it is not possible for the families to unite and celebrate the marriage at Church during July 2016. The petitioner who is the mother of the first accused did not live along with the first accused and Rufina after their marriage. The marriage had taken place at the Church on 10.07.2016. The first accused went to United Kingdom during the mid of 2016. That would only show that the couple started to live together only at United Kingdom and not at India. The first accused secured a job at United Kingdom for which the second respondent's daughter is said to have given sponsorship. Even though various allegations have been made in the complaint, the fact remains that this petitioner who is the mother of the first accused did not have any role to play in view of the physical distance between herself and the couple who lived in United Kingdom.



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WEB COPY **10.** In matrimonial matters, whenever the couple got estranged and developed bitterness among themselves, that easily spreads on the family members of both families and they started to emit hatred. In extreme cases, the complaints are made by the wife or her relatives by implicating all the relatives of the husband just for the purpose of settling their scores. Even though the Courts should take serious note of matrimonial cruelty, sufficient caution should also be exercised while evaluating the situation and find out whether the relatives of the husband have been implicated in the case just to quench the revenge developed out of strained relationship.

11. It is submitted by the learned Government Advocate (Crl.Side) that the offence of marital cruelty is a continuous offence and for which the limitation contemplated under Section 468 of Cr.P.C., cannot be strictly applied. It has been already stated that so far as this petitioner is concerned, she never lived at United Kingdom and the occurrence which was said to have taken place in the month of April 2016 is unbelievable on the face of it. On the point of limitation, the learned counsel for the petitioner drawn the attention of this Court to the decision of the Hon'ble Supreme Court held in



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the case of ***Amritlal Vs. Shantilal Soni and Others reported in 2022 SCC***

Online SC 266. In the said judgment, it is held as under in paragraph No.10:

“10. Therefore, the enunciations and declaration of law by the Constitution Bench do not admit of any doubt that for the purpose of computing the period of limitation under [Section 468 CrPC](#), the relevant date is the date of filing of the complaint or the date of institution of prosecution and not the date on which the Magistrate takes cognizance of the offence. The High Court has made a fundamental error in assuming that the date of taking cognizance i.e., 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 3 years with reference to the date of commission of offence i.e., 04.10.2009.”

Since the occurrence involving this petitioner is said to have taken place in the year 2016 and for which, the complaint has been given only in the year 2019, no doubt the alleged offence as against this petitioner is barred by limitation.

12. However this petition has been filed only by the second accused and the first accused is living in United Kingdom. The records would show that the very same allegations have been made against the petitioner and the first accused in several police stations and the earlier complaint given in this



regard has been closed by the Choolaimedu Police Station. The petitioner has written to the Commissioner of Police also by stating that she is being harassed by the second respondent by giving repeated complaints. The allegations made in the complaint are difficult to be believed. It is alleged that Rufina was threatened from April 2016 and the first accused attempted to kill her from then onwards. As stated already, the formal marriage had taken place in the Church during July 2016. If life threat was caused to the bride and it was persisting at the relevant point of time at the hands of the first accused, Rufina would not have married him. It is difficult to believe that a person who has an international exposure by having employed at United Kingdom, had not objected to marry a person who had threatened her to take away her life and misbehaved with her, even before marriage.

13. It is relevant to consider some other facts which have been brought to the notice of this Court by the petitioner. The first accused and Rufina dissolved their marriage and obtained a divorce decree by consent and an interim divorce decree has been passed by the Family Court, Bromley on 17.10.2018. In the said order, it is observed that it was Rufina who had behaved in such a way that the first accused cannot reasonably be expected to



live with her. If the interim divorce decree is not opposed in six weeks that would become permanent. According to the submission made by the learned counsel for the petitioner, the decree was not opposed. The petitioner's son had given a detailed representation of all that had happened at United Kingdom while the couple lived together. Since the materials produced by him was satisfactory to the Foreign Court, the Court has held that the first accused is entitled to the decree of divorce on the ground that the marriage was irretrievably broken down on the basis of the Rufina's unreasonable behaviour proved before the Court. Despite the decree of divorce was granted by the Foreign Court without the objection of the second respondent's daughter, the second respondent continued to send complaints to various authorities.

14. Since Rufina or the second respondent appeared to have given a complaint before the National Commission for Women against the first accused, his passport was revoked and he was called for enquiry. After having clarified the ground realities, the first accused managed to get back his passport. When the facts are so, the second respondent has repeatedly given complaints by making the very same allegations. Even after the marriage was broken and the decree of divorce was obtained, the second respondent



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continues to allege that the first accused is attempting to upload certain obscene video of herself and her daughter and for which no material has been produced. Even in the complaint it is stated that the second respondent went to United Kingdom just in order to check the mobile phone of the first accused and came to know that he disposed the mobile phone.

15. The relationship between the first accused and Rufina got strained shortly after the marriage and they had chosen not to live together. The records would sufficiently show that the complaint given in India is an offshoot of the strained relationship between the couple and in which, the mother of the first accused is also dragged unnecessarily.

16. Since the occurrence is said to have taken place at United Kingdom and the couple has also got their marriage dissolved due to Rufina's unreasonable behaviour, it is obvious that the complaint is just a motivated one. The precious time of the Investigating Agency should not be allowed to be wasted in investigating complaints which are wholly unfounded. In this regard, it is appropriate to refer the judgment of the Hon'ble Supreme Court held in the case of *State of Haryana and Others Vs. Bhajan Lal and Others*,



reported in 1992 Supp (1) Supreme Court Cases 335, as shown under:

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“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;



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(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the Institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”

17. The facts of this case is squarely applicable to be fit in point No.3 of the above portion extracted from the case of **Bhajan Lal**. When the case is based upon those facts which are unbelievable and the allegations and other materials on record, even if uncontroverted, does not disclose any commission of an offence, no purpose will be served to allow the investigation to be continued. Since the allegations in the FIR are self-failing, I feel the powers of this Court should be exercised under Section 482 of Cr.P.C., in order to meet the ends of justice.



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18. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.12 of 2019 dated 22.11.2019 is quashed in so far as this petitioner is concerned and the investigation shall go on as against the other accused.

Index: Yes/No

23.01.2023

Speaking / Non Speaking Order

Neutral Citation : Yes/No

gsk

To

1.The Inspector of Police,
AWPS, Mylapore Police Station,
Chennai.

2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J

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