



Crl.O.P.(MD)No.5620 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **13.04.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

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1.Ayyalusamy

2.Subbulakshmi

3.Vijayalakshmi

4.Seenivasan

5.Jeyalakshmi

... Petitioners/Accused Nos.1 to 4 & 6

Vs.

1.The State rep. by

The Inspector of Police,

All Women Police Station,

Kovilpatti, Thoothukudi District.

(In Crime No.8 of 2015)

... 1st respondent/complainant

2.Krishnaveni

... 2nd Respondent/ defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No. 210 of 2019, on the file of the Judicial Magistrate No.I, Kovilpatti and quash the same in respect of the petitioners as illegal.

For Petitioners : Mr.A.Jayaramachandran

For Respondents : Mrs.M.Aasha
Government Advocate (Crl.Side)for R1

: No appearance for R2



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ORDER

This petition is filed to quash the charge sheet in C.C.No. 210 of 2019, on the file of the Judicial Magistrate No.I, Kovilpatti.

2. The allegation against the petitioners is that the marriage between the first petitioner and the second respondent was solemnized on 13.07.1998, at the time of marriage, 40 sovereigns of gold, Rs.1,00,000/- cash and house hold articles worth about Rs.1,00,000/- were given to the first petitioner as "Sridhana". The first petitioner was serving in the Indian Army at that time, and the first petitioner at the instance of his family members tortured and demanded more dowry. The defacto complainant was driven out from the matrimonial home and she lodged a complaint before the All Women Police Station, Vilathikulam, on 16.11.2014. Since the police did not take effective steps, she filed a petition before the Judicial Magistrate No.I, Kovilpati, under Section 156(3) of Cr.P.C. in Crl.M.P.No.3140 of 2015 and the Judicial Magistrate No.I, Kovilpati, has passed a direction. Based on that direction, a case in Crime No.179 of 2015, under Sections 498A, 506(i) of I.P.C and Section 4 of Dowry Prohibition Act was registered against the petitioners and the case was transferred to the first respondent and was re-numbered as



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Crime No.8 of 2015 and the same was taken on file as C.C.No.210 of 2019, on the file of the Judicial Magistrate No.I, Kovilpatti.

3. On the side of the petitioners, it is stated that the complaint itself is very vague. There is no specific overt act against the petitioners. The defacto complainant roped the entire family of the first petitioner and ten others into the case. The defacto complainant has arrayed one Balakrishnan as A3, the said Balakrishnan, who was the father of the petitioner as an accused, who passed away on 08.03.2015, even prior to the lodging of the complaint. The first petitioner lived with the defacto complainant in Hyderabad for a period of three years. The fourth petitioner, who is the brother of the first petitioner, has left India, during the year 2012 and he returned back only in the year 2016 and the allegations against the fourth petitioner are false. The fifth petitioner, who is the sister of the first petitioner, got married 25 years ago and she settled at Silankulam, which is 50 Km away from the place of the residence of the first petitioner. The defacto complainant has raised an allegation that the the first petitioner is having illicit relationship with the third petitioner, who is the brother's wife of the first petitioner. Only to scathing assault the entire family of the first petitioner, the defacto complainant invented such allegation against the third petitioner. The



fifth petitioner settled Abroad some decades ago and the case against the fifth petitioner is a false one. The second petitioner is 75 years old lady. The petitioners 3 and 6 are house wives and the case is a clear abuse of process of law and the same is liable to be quashed.

4.1. On the side of the petitioners, it is further stated that the complaint was given against 11 accused. Father-in-law of the defacto complainant was mentioned as an accused in the complaint, dated 06.08.2015, but, the father-in-law died on 08.03.2015, that is, prior to the date of the complaint. The defacto complainant is residing in the same locality and that she was aware that the father-in-law is no more, even then, this case was foisted against the father-in-law. Out of the 11 accused mentioned in the F.I.R, A10 is 19 years old. A9 was aged about 21 years. There is no specific overt act against them.

4.2. There is only a vague allegation against the mother of both A9 and A10 as if she has scolded the defacto complainant stating that all of the first petitioner's properties will go to A9 and A10, since the defacto complainant is having no issues. The third petitioner-A3 is the sister-in-law of the first petitioner-A1, whose name is Vijayalakshmi. Another person by name, Vijayalakshmi was added as A7 in the



complaint. There is no explanation as to the fact that who was this Vijayalakshmi and how she is related to the family.

5. On the side of the petitioners, it is stated that the last incident of harassment stated in the petition is during the end of 2011. The complaint was lodged only on 16.11.2014. The allegation and the complaint are time barred. A Judgment of the Hon'ble Supreme Court reported in **2020-4-MLJ (Crl.) - 501 (SC) (Kamlesh Kalra V. Shilpika Kalra)** is cited, wherein, it is stated as follows:

"13. As regards, the finding recorded by the High Court in respect of complaint/FIR filed under Section 498A IPC, we are of the firm opinion that the same does not call for interference. In the facts of this case, it is clear that the FIR filed in this regard in 2015 was time barred, having been filed much more than three years after the separation of Manish Kalra (husband) and Shilpika Kalra (wife) and the filing of the divorce petition by the husband, both in 2009. In the facts of the case, the reasons given by the High Court for quashing the proceedings under section 498A IPC are justified and do not call for interference by this Court."

6. At the time of marriage, the first petitioner, who is the husband of the defacto complainant, was working in the Indian Army



Service, then, both the husband and wife lived together in Hyderabad for a period of three years. Subsequently, the first petitioner went abroad, even then, the defacto complainant has made false allegations that the first petitioner was having illicitly relationship with his sister-in-law.

7. On the side of the prosecution, it is stated that the marriage between the first petitioner and the defacto complainant took place on 13.07.1998. At the time of marriage, 40 sovereigns of gold, Rs.1,00,000/- cash and house hold articles worth about Rs.1,00,000/-was given as "Sridhana". After the marriage, the first petitioner demanded more dowry and the petitioners indulged in harassing the defacto complainant and they caused mental and physical cruelty. There is specific overt act against A1 and A2 to A5. A2 to A5 have demanded more dowry. After A1 retired from Military service, during January 2007, he was having illicit relationship with his sister-in-law. A2 and A3 have driven away the defacto complainant from the matrimonial home during the year 2006 and again, in the year 2008, the defacto complainant came back and lived in the house, then, A1 went Abroad. A1, A2 and A6 have committed offence under Sections 498A, 506(ii) I.P.C and Section 4 of Dowry Prohibition Act. A5 and A6 have committed offences under Section 498A of I.P.C and Section 4 of Dowry Prohibition Act and A3,



A4 and A7 have committed offence under Section 498A of I.P.C. and prayed the petition to be dismissed.

8. On the side of the prosecution, it is stated that the delay in registering the F.I.R is not fatal, when the offence is a continuous one. A Judgment of this Court made in Crl.O.P.No.12751 of 2011, dated 12.04.2018, is cited, wherein, it is stated as follows:

“17. The court is to exercise its inherent powers under Section 482 of Code of Criminal Procedure only under exceptional cases where, there is a grave miscarriage of justice. But in the present case, no exceptional ground has been made out, which has resulted in grave miscarriage of justice to the petitioners. Since the offence alleged by the respondent would affect the public at large, it has to be construed as continuing offence. I therefore, hold that the present criminal original petition cannot be sustained.”

9. It is seen that the complaint was registered against 11 persons. The charge sheet was filed against 7 persons. The respondent police registered the F.I.R against the father-in-law of the defacto complainant, who was dead at the time of registration of the F.I.R. Considering that the F.I.R was registered on the direction of the Judicial



Magistrate and that the original complaint was filed before the Judicial Magistrate prior to the registration of F.I.R, the date of death of the father-in-law before the registration of the F.I.R is not fatal.

10. On the side of the petitioners, it is stated that a petition for restitution of conjugal rights was filed by the first petitioner against the defacto complainant in H.M.O.P.No.194 of 2014 and the same was dismissed for default on 05.03.2016. On the side of the petitioners, it is stated that the earlier complaint was on 06.11.2014 and the FIR was registered only in the year 2015 and that the last occurrence was alleged to have taken place during the end of 2010 and that the FIR is time barred.

11. A verification of the 161 statement of the defacto complainant reveals that after 2010, the first petitioner used to come to India once in a Year and during the time, he used to harass the defacto complainant. There is no specific date mentioned as the last date of cruelty and the earlier complaint was given on 06.11.2014. The offence stated in the petition is not affecting the public at large and hence, the judgment cited on the side of the prosecution is not applicable to this case. The question of limitation raised by the petitioners and the



judgment of the Supreme Court cited on the side of the petitioners are not applicable to the facts of the present case.

12. A perusal of the 161 statement reveals that the allegation against the petitioners 2 to 5 are very vague and there is no prima facie case made out against the petitioners 2 to 5. The allegations are vague that is during March 2001, since the defacto complainant was not having issues, the first petitioner left her at her parents house, but, in the next line, it is stated that during the time, the defacto complainant was living with the parents of the first petitioner. So, there is some contradictions in the 161 statement of the defacto complainant. In the 161 statement of the defacto complainant, it is stated that after 2006, the petitioners 2, 3 and 5 chased away the defacto complainant to her parents house, but, again after 3, 4 lines, it is stated that during April - 2007, the first petitioner asked the defacto complainant to come to his house. So, there is a doubt whether the defacto complainant out of her own will was staying in her parents house or that the petitioners 2, 3 and 5 have chased away the defacto complainant out of the matrimonial home.

13. For the above reasons, it is decided that the case against the petitioners 2 to 5 are liable to be quashed. It is seen that there is



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some allegation against the first petitioner, which requires a trial. Hence, the case against the first petitioner is dismissed.

14. In the result, this petition is partly allowed and the case in C.C.No.210 of 2019, on the file of the Judicial Magistrate No.I, Kovilpatti, against the petitioners 2 to 5 is hereby quashed.

NCC : Yes/No
Index : Yes/No
Ls

13.04.2023

To

1.The Judicial Magistrate No.I,
Kovilpatti.

2.The Inspector of Police,
All Women Police Station,
Kovilpatti,
Thoothukudi District.

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



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R.THARANI. J.

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