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Crl.R.C. No. 1349 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM

THE HON'BLE MR.JUSTICE M. NIRMALKUMAR

Crl.R.C. No. 1349 of 2024

M. Natarajan

..Petitioner

Vs.

1. State rep. by
Deputy Superintendent of Police,
Avinashi Sub Division,
Tiruppur District.

2. Tahsildhar,
Tirupppur District.

3. S. Divagar

..Respondents

Prayer: Criminal Revision under Section 397 and 401 of the Code of
Criminal Procedure as against the order dated 11.08.2023 passed in C.M.P.

No. 263 of 2021 by the learned Chief Judicial Magistrate, Avinashi.

For Petitioner	::	Mr. M. Roshan Atiq
For Respondents	::	Mr.R. Vinothraja, Govt. Advocate (Crl.Side) for R1 and R2



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ORDER

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The petitioner/de facto complainant in Crime No. 503 of 2014 had filed a petition showing his protest on the closure report filed by the respondent and further action dropped report filed by the Deputy Superintendent of Police on 15.02.2015 and notice regarding which was served to the petitioner on 27.01.2016. The petitioner filed protest petition but wrongly termed it as further investigation under Section 173 (8) Cr.P.C. and the Trial Court dismissed the petition filed by the petitioner by order dated 11.08.2023 against which the present revision filed.

2. The contention of the learned counsel for the petitioner is that the petitioner lodged a complaint before the respondent Police stating that his daughter Tamilarasi @ Nithya was married to one Divagar, of Uthukuli on 10.03.2008. At the time of marriage, his son-in-law was working in a company at Tiruppur and both his daughter and son-in-law shifted their residence to Kaikaatiputhur, Avinashi. After the marriage, his daughter could not conceive a child and she was taking treatment. Due to this reason, there was some misunderstanding between the couple. Further, petitioner's son-in-law Divagar was in the habit of taking alcohol and not



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known to the petitioner. Learned counsel would submit that the petitioner's son-in-law would come in a drunken state, harass, abuse and assault petitioner's daughter. Besides that, he pledged all the jewels presented during marriage for his business and he was dealing in waste clothes. Later, due to fire, he sustained heavy loss in his business and he got addicted to alcohol. He had taken loans from several persons causing ignominy to the petitioner's daughter and failed to take care and support the family. Due to family circumstances, the petitioner's daughter joined a Garment Company as Computer Operator and was receiving salary with which she was paying the rent and maintaining the family. The petitioner's daughter used to complain that her husband Divagar was leading a life of waywardness, drunkenness and humiliation and assault at his hands. Even a day prior to her death, she called her mother and poured out her woes. On 25.11.2014, the petitioner's son-in-law contacted through mobile phone and informed that his daughter was found hanging. Thereafter, the petitioner along with his wife and son had gone to the house of his daughter where they found her hanging with one of her legs folded and resting on the floor. Suspecting that it could be a murder, petitioner lodged a complaint that his son-in-law had



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committed murder of his daughter. The respondent Police registered a case in Crime No. 503/2014 under Section 174 Cr.P.C. and the Revenue Divisional Officer conducted inquest and thereafter, no action taken. However, to the shock of the petitioner, he was informed that the case is closed as 'mistake of fact'. In fact, the petitioner had filed Crl.O.P. No.571 of 2016 before this Court to alter the charges and this Court, by order dated 05.11.2016 finding that the Revenue Divisional Officer, after the inquest, had not sent any report to the Judicial Magistrate concerned, directed the Revenue Divisional Officer to submit the entire case records to the Judicial Magistrate, Avinashi. The petitioner thereafter filed a copy application seeking Revenue Divisional Officer's report, which was returned for the reason, report yet to be filed. The petitioner filed Crl.O.P. No. 28168 of 2017 and this Court, vide order dated 26.11.2018 directed RDO's report shall be be furnished to the petitioner. Further, a direction was issued to the Lower Court to entertain the protest petition filed by the petitioner. The petitioner then filed the protest petition and this petition was not numbered immediately. Hence, the petitioner filed Crl.O.P. No. 26707 of 2019 and thereafter only, the petitioner's protest petition was numbered in Crl.M.P.



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SR. 11471 of 2019, which is found at Page No.43 of the typed set of papers and the same was taken on file as C.M.P. No. 263 of 2021. The petitioner filed the petition in the year 2017 and in the meanwhile, he had approached this Court on 3 occasions and finally, the protest petition was filed, but the same was dismissed for the reason that the petition was filed quoting a wrong section i.e., under Section 173(8) Cr.P.C. and hence, not entertained. However, learned counsel submitted that the Apex Court in several cases has held that wrong mentioning of provision of law would not deny a petitioner his right and that cannot be a reason to dismiss the petition without considering on merits. According to the learned counsel, in this case, the petitioner clearly stated about the marriage between the petitioner's daughter and his son-in-law in the year 2014, and presenting of *sridhana* articles and 35 sovereigns of gold jewels. The petitioner's son in law pledged 35 sovereigns of jewels in Bank for his business and later, the business also sustained loss. Even after six years of marriage, the petitioner's daughter could not bear a child. Hence, the petitioner's wife had taken her daughter and son-in-law to a Doctor in Coimbatore and the Doctor had advised the petitioner's son-in-law to keep away from alcohol since it would be



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detrimental to the treatment. This was two months prior to the occurrence.

The petitioner's daughter was employed in a Garment Company as Computer Operator and from the salary, she was sustaining herself and managing the family. This being so, on 24.01.2014, the petitioner's daughter had rang up to her mother and informed that her husband had taken away Rs.1500/- from the cupboard, sent her message that he is going along with his friends for taking liquor. The petitioner's daughter got dejected, called her husband and asked him not to consume alcohol and come back home, but, he switched off his mobile phone and did not respond thereafter. The petitioner's wife called her daughter the next day, but she did not respond. Later, she was informed that her daughter had committed suicide. The version of Divagar is that he had taken money from the cupboard and gone along with his friends to consume liquor. As his wife had shouted at him, he did not return home and stayed in his friend's shop and also switched off his mobile. On the next day, at about 10.30a.m., when he switched on the mobile phone, he saw several missed calls from his father and when he went home, he found his wife hanging. Thereafter, with the help of neighbours, broke open the door and the body was brought down. The RDO during



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enquiry, enquired the petitioner, his wife, his son, son-in-law Divagar, his parents, neighbours, the Village Administrative Officer and gave a report on 26.11.2014 that death was not due to any demand for dowry, but due to the misunderstanding between the petitioner's daughter and her husband Divagar. A direction was also given to the Police to find out the real reason behind the death of the petitioner's daughter. This factor not considered. Dr. Saravanan, Senior Civil Surgeon attached to Tiruppur Government Headquarters Hospital, who conducted postmortem along with one Dr. Leelvathi, Assistant Civil Surgeon had clearly given report that the deceased Tamilarasi died due to asphyxia on account of external compression of neck, confirming that Tamilarasi died not due to natural causes. In view of the same, the respondent Police ought to have conducted investigation in order to find out the reason for her death. He further submitted that initially case was projected as a suicide and thereafter, the petitioner lodged a complaint suspecting it to be a murder, however, it may not be a case of murder, but a case of suicide abetted by the conduct of petitioner's son-in-law. Hence, it will be a case under Sections 306 and 498A IPC.



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3. On the other hand, learned Govt. Advocate (Crl.Side) submitted that on the complaint of the petitioner, a case in Crime No. 503 of 214 was registered under Section 174 Cr.P.C. Since death had occurred within 7 years of marriage, the case was referred to the Revenue Divisional Officer, Tiruppur. The Revenue Divisional Officer conducted enquiry and submitted a report in நி.மு. 5837/2014/அ1, நாள் 26.11.2014. During inquest, he examined the petitioner, his wife, his son-in-law Divagar, Divagar's parents Selvaraj and Radhamani, the Village Administrative Officer, Avinashi, neighbours – S. Subramaniam, (Additional Superintendent of Police), K. Subramanian – Executive Officer of Vaniputhur Panchayat and P. Velraj Kannan, Assistant Headmaster of Nanjappa Municipality Boys High School, who had confirmed that death was due to hanging and not a case of murder as suspected by the petitioner. In his report dated 26.11.2014, he had confirmed that death was not because of any dowry demand. Thereafter, the Deputy Superintendent of Police conducted investigation, examined the petitioner, his family members, Divagar's parents, neighbours, postmortem Doctor and friend of Divagar, in whose shop Divagar stayed overnight on the day when the deceased quarrelled with him for taking away the money



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kept in the cupboard. Learned Government Advocate fairly submitted that from the statements recorded and materials collected, this may not be a case under Sections 304B and 302 IPC, but this is a case that will fall under Sections 306 and 498A IPC. He further submitted that the citation referred in the impugned order i.e., ***Reeta Nag V. State of West Bengal and Others*** reported in ***2009 (9) SCC 129*** is no longer in force and it had been overruled in ***Vinubhai Haribhai Malaviya V. State of Gujarat*** reported in ***AIR 2019 Supreme Court Cases 5233***. He also prayed that appropriate orders may be passed enabling the respondent Police to continue with the investigation and file the final report without any delay preferably within a period of three months from the date of receipt of a copy of this order.

4. Considered the submissions on either and perused the materials on record.

5. It is seen that in this case, death had taken place in the matrimonial home where the petitioner's daughter Tamilarasi and her son-in-law Divagar were residing. A day prior to her death, the petitioner's daughter spoke to her mother over phone complaining about her husband's attitude in not co-operating for the medical treatment and continuing with



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his drinking habit. Further, Divagar had taken away a sum of Rs.1500/- which the petitioner's daughter had kept for some other purpose. It is an admitted fact that for the purpose of business, Divagar had pledged 35 sovereigns of gold jewels given as *sridhana* at the time of marriage and he sustained loss in his business due to which Divagar had taken to vigorous drinking and became an alcoholic. He did not pay heed to the Doctor's advice that only if he gives up drinking, the fertility treatment taken by them would be successful. On the fateful day, Tamilarasi, after returning from job, found that a sum of Rs.1500/- missing from the amount she had kept in the cupboard and when she contacted him and asked him why he had taken the money, he had given a lame excuse and further stated that he will repay when he comes back home. Sensing that Divagar might have gone with friends for taking liquor, the petitioner's daughter scolded him over phone and sent a message that she would commit suicide. But, Divagar had not taken it seriously, since on an earlier occasion, such threat given. Thereafter, he had switched off his mobile phone and stayed at his friend's shop for the night and when he switched on his mobile phone on the next day, his father informed him that one of his relatives had gone to his house,



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the door remained closed and there was no response even after calling his wife over phone. After hearing this, Divagar sent a message to his wife's phone that he would return the money he had taken. There was no response. He called her office number and he was informed that his wife did not report for duty. Thereafter, at about 10a.m., he reached home, found no response for ringing of calling bell several times, hence, peeped through one of the windows, found his wife hanging. The commission of suicide by the petitioner's daughter cannot be seen as an isolated incident. The deceased Tamilarasi was suffering harassment and humiliation at the hands of her husband for quite some time. Her efforts to bring him back to the family fold and bear a child were thwarted due to the unmending ways of Divagar. On the fateful day, Tamilarasi, after returning from work found that Divagar had taken a portion of the money kept in the cupboard to have liquor with his friends much against doctor's advice. The said incident had triggered the pent up frustrations of Tamilarasi, who after sending an SMS to Divagar, committed suicide by hanging. These attendant circumstances would clearly prove that the conduct of Divagar had been the cause, which abetted Tamilarasi to take away her life. Hence, this Court finds from the available



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materials that a case under Section 306 and 498A is made out for investigation. In view of the same, the Trial Court's finding on an overruled decision and dismissing the petitioner's protest petition on technicality is not proper and the order under challenge is set aside.

6. In the result, the criminal revision stands allowed. The Deputy Superintendent of Police, Avinashi, is directed to conduct investigation, complete the investigation and file the final report within a period of four months. In the event of filing charge sheet, the Trial Court shall complete the trial within a period of six months thereafter without delay. This direction is necessary since the occurrence had taken place in the year 2014 and the petitioner has been running from pillar to post seeking justice for the death of his daughter and about 10 years have elapsed. The Superintendent of Police, Tiruppur, shall monitor the investigation and the progress of trial.

18.10.2024

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To

1. The Court of Judicial Magistrate,
Avinashi.

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2. Deputy Superintendent of Police,
Avinashi Sub Division,
Tiruppur District.
3. Tahsildhar,
Tirupppur District.
4. The Public Prosecutor,
High Court, Madras.
5. The Superintendent of Police,
Tiruppur.

M. NIRMALKUMAR,J.

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