



WEB COPY



Crl.O.P.No.27708 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.03.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.27708 of 2023

And

Crl.M.P.Nos.19202 and 19203 of 2023

S.Ramya

... Petitioner

Vs.

1.The State Rep. by Inspector of Police,
W8 All Women Police Station,
Thirumangalam,
Chennai – 600 101.
(Crime No.20 of 2018)

2.M.Amala

... Respondents

Prayer:

Petition filed under Section 482 of Cr.P.C., seeking to call for the records in C.C.No.40 of 2020 on the file of the learned Additional Mahila Metropolitan Magistrate Court, Egmore and quash the charge sheet in the same as far as the petitioner is concerned.

For Petitioner : Ms.S.Ramya
Party – In – Person

For Respondents : Mr.A.Gopinath for R1
Government Advocate (Crl. Side)
Mr.N.Manoharan for R2



CrI.O.P.No.27708 of 2023

ORDER

WEB COPY

This petition has been filed by A3 seeking to quash the proceedings pending in C.C.No.40 of 2020 on the file of the Additional Mahila Metropolitan Magistrate Court, Egmore.

2.The case of the prosecution is that A1 was married to the defacto complainant in the year 2009. There was a matrimonial dispute between A1 and the defacto complainant and it was alleged that A1 and A2 who is the father of A1 were demanding for dowry and were causing cruelty to the defacto complainant. Thereafter, A1 and defacto complainant went to Dubai and were living there for some time. However, there was again a dispute and the defacto complainant was sent back to India. At the time when she returned back to India, she was pregnant and she delivered a girl child on 11.09.2011.

3.The defacto complainant later came to know that A1 is living with the petitioner (A3) after marrying her in the year 2017 and there was also a child born to the petitioner. The defacto complainant not being able to take the cruelty any longer, gave a complaint to the first respondent which resulted in the registration of an F.I.R. in Crime

2/20



Crl.O.P.No.27708 of 2023

No.20 of 2018. The husband, his father and the petitioner were added as accused. On completion of investigation, final report has been filed before the Court below and the same was taken on file in C.C.No.40 of 2020. In so far as the petitioner (A3) is concerned, the Court below has taken cognizance for offence under Section 494 read with 109 of I.P.C. The petitioner has approached this Court seeking to quash the proceedings.

4.Earlier, A1 and A2 approached this Court and filed a quash petition in Crl.O.P.No.1340 of 2021. This Court by an order dated 19.10.2023 allowed the petition in so far as A2 is concerned and quashed the proceedings. However, the petition was dismissed in so far as A1 is concerned.

5.The petitioner who was present in person argued the case in person. She submitted that she never had any contact with A1 and that she has been unnecessarily roped in this case and that she is a single parent who is taking care of the child and she is undergoing the agony of facing the criminal prosecution before the Court below for the last four years. The petitioner further submitted that all the



Crl.O.P.No.27708 of 2023

documents that are available with her shows that only the name of the petitioner has been mentioned as the parent of the child and the name of A1 has not been mentioned anywhere. Therefore, whatever materials are now being shown before the Court are fabricated documents. She further submitted that she did not want the child to undergo a DNA test since it will directly infringe the privacy of the child and therefore the same cannot be put against the petitioner. The petitioner submitted that none of the offences are made out against her and the continuation of the proceedings against the petitioner is an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

6.The learned Government Advocate (Crl. Side) appearing on behalf of the first respondent submitted that the final report has been filed against the petitioner only for offence under Section 494 read with 109 of I.P.C. and particularly the statements recorded from L.W.4 to L.W.8 clearly shows that the petitioner was living with A1 and the child was born to her only through A1. Therefore, it was contended that the offence under Section 494 of I.P.C. is prima facie made out. The learned Government Advocate (Crl. Side) submitted that if the offence under Section 494 of I.P.C. is tried along with the other



Crl.O.P.No.27708 of 2023

offence under Section 498 A, there is no need to resort to the private complaint procedure as contemplated under Section 198 of Cr.P.C. and both the offences can be investigated and final report can be laid before the Court below. To substantiate this submission, the learned Government Advocate (Crl. Side) relied upon the judgment in ***Sababathy Vs. State of Tamil Nadu*** reported in **2008 (2) LW (Crl.) 1027**.

7.Mr.N.Manoharan, learned counsel appearing on behalf of the second respondent submitted that there are sufficient materials that are available along with the final report to establish that the petitioner had married A1 and there was also a child through the said marriage. Therefore, it was contended that apart from committing the offence under Section 494 of I.P.C., the marriage between the petitioner and A1 had also caused mental cruelty to the second respondent and it will clearly come within the scope of the explanation (a) of Section 498 A of I.P.C. The learned counsel submitted that the materials that are relied upon by the petitioner as defence documents cannot be gone into at this stage and all those materials can only be relied upon before



Crl.O.P.No.27708 of 2023

the Court below in the course of trial. Hence, the learned counsel concluded his submissions seeking for dismissal of this petition.

8.This Court has carefully considered the submissions made on either side and the materials available on record.

9.It is not necessary for this Court to go into the entire facts of the case and it would suffice to confine the dispute pertaining to the petitioner in this case. The allegation that has been made against the petitioner (A3) is that she had married A1 during the subsistence of the first marriage between A1 and second respondent. Thereby, it is alleged that she has committed the offence of bigamy. The final report has been filed against the petitioner for offence under Section 494 read with 109 of I.P.C. However, the learned counsel for the second respondent submitted that the relationship between A1 and the petitioner had resulted in mental cruelty to the defacto complainant and therefore it is also an offence under Section 498 A of I.P.C.

10.In the considered view of this Court, the offence under Section 498 A of I.P.C. will arise only if the petitioner (A3) is brought



Crl.O.P.No.27708 of 2023

WEB COPY

within the scope of the term “relative of the husband”. The term relative would mean blood relations or relations by marriage. This position was made clear by the Apex Court in ***Vijeta Gajra Vs. State of NCT of Delhi*** reported in ***(2010) 4 MLJ (Crl.) 676***. This judgment was followed by this Court in ***Chinnaponnu and others Vs. State*** reported in ***(2018) 3 MLJ (Crl.) 215***. That apart, the Apex Court has also held that by no stretch of imagination, a girl friend or even a contrabine would come within the term “relatives” and hence the charge under Section 498 A of I.P.C. cannot be sustained. Useful reference can be made to the judgment of the Apex Court in ***U.Suvetha Vs. State by Inspector of Police and another*** reported in ***2009 (2) MLJ (Crl.) 1079***. In view of the same, there is no question of proceeding against the petitioner for the charge under Section 498 A of I.P.C.

11.The next question that arises for consideration is as to whether materials are available to proceed against the petitioner for offence under Section 494 of I.P.C. This Court carefully went through the final report and also the statements that have been recorded from the witnesses under Section 161 (3) of Cr.P.C. It must be borne in



CrI.O.P.No.27708 of 2023

WEB COPY

mind by this Court that it is sufficient that there is strong suspicion at the stage of framing charges. Therefore, the materials that have been placed before this Court certainly creates a strong suspicion and these materials are enough for the present to sustain the charge under Section 494 of I.P.C. against the petitioner. The petitioner is relying upon certain materials to establish that she never married A1 and that she was in relationship with another person who had the same name Saravana Kumar and the similarity of name is now put against the petitioner. It is too difficult for this Court to get into this issue while dealing with the quash petition and this issue certainly requires letting in evidence and appreciation of evidence.

12.Having found that the materials placed before this Court constitutes an offence under Section 494 of I.P.C., the next question that is to be gone into is as to whether the respondent Police could have investigated the offence under Section 494 of I.P.C. when there is a specific bar provided under Section 198 of Cr.P.C. which contemplates filing of private complaint in so far as the offence under Section 494 of I.P.C. is concerned. The Court below has taken cognizance of the final report filed under Section 173(2) of Cr.P.C. and



Crl.O.P.No.27708 of 2023

the Court below has not taken cognizance of a complaint under Section 200 of Cr.P.C. When this doubt was raised by this Court, convincing answer was given by both the learned Government Advocate(Crl. Side) appearing on behalf of the first respondent and Mr.N.Manoharan, learned counsel appearing on behalf of the second respondent. Both of them relied upon the earlier judgments that have specifically dealt with this issue and have provided answers.

13.The first judgment that was relied upon by Mr.N.Manoharan, learned counsel appearing on behalf of the second respondent is the judgment of the Apex Court in ***State of Orissa Vs. Sharat Chandra Sahu and another*** reported in ***(1996) 6 SCC 435***. The relevant portions in the judgment are extracted hereunder:

"5.The judgment of the High Court so far as it relates to the quashing of the charge under Section 494 IPC, is wholly erroneous and is based on complete ignorance of the relevant statutory provisions.

6.The first Schedule appended to the Code indicates that the offence under Section 494 IPC is non-cognizable and bailable. It is thus obvious



that the police could not take cognizance of this offence and that a complaint had to be filed before a Magistrate.

7.Relevant portion of Section 198 which deals with the Prosecution for Offences against Marriage provides as under:

"198. Prosecution for offences against marriage.—(1) No court shall take cognizance of an offence punishable under Chapter XX of the Penal Code, 1860 except upon a complaint made by some person aggrieved by the offence:

Provided that—

(a) where such person is under the age of eighteen years, or is an idiot or a lunatic, or is from sickness or infirmity unable to make a complaint, or is a woman who, according to the local customs and manners, ought not to be compelled to appear in public, some other person may, with the leave of the court, make a complaint on his or her behalf;

(b) where such person is the husband and he is serving in any of the Armed Forces of the Union under conditions which are certified by his Commanding Officer as precluding him from obtaining leave of absence to enable him to make a complaint in person, some other



Crl.O.P.No.27708 of 2023

person authorised by the husband in accordance with the provisions of sub-section (4) may make a complaint on his behalf;
(c) where the person aggrieved by an offence punishable under Section 494 or Section 495 of the Penal Code, 1860 is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the court, by any other person related to her by blood, marriage or adoption.

8. These provisions set out the prohibition for the court from taking cognizance of an offence punishable under Chapter XX of the Penal Code, 1860. The cognizance, however, can be taken only if the complaint is made by the person aggrieved by the offence. Clause (c) appended to the proviso to sub-section (1) provides that where a person aggrieved is the wife, a complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or other relations mentioned therein who are related to her by blood, marriage or adoption.

9. The High Court relied upon the provisions



contained in clause (c) and held that since the wife herself had not filed the complaint and Women's Commission had complained to the police, the Sub-Divisional Judicial Magistrate, Anandpur could not legally take cognizance of the offence. In laying down this proposition, the High Court forgot that the other offence namely, the offence under Section 498-A IPC was a cognizable offence and the police was entitled to take cognizance of the offence irrespective of the person who gave the first information to it. It is provided in Section 155 as under:

"155. Information as to non-cognizable cases and investigation of such cases.—(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate.

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.

(3) Any police officer receiving such order may



WEB COPY



Crl.O.P.No.27708 of 2023

exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable.”

10.Sub-section (4) of this section clearly provides that where the case relates to two offences of which one is cognizable, the case shall be deemed to be a cognizable case notwithstanding that the other offence or offences are non-cognizable.

11.Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable and non-cognizable offences) is to be treated as cognizable, the police had no option but to investigate the whole of the case and to submit a



Crl.O.P.No.27708 of 2023

charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, prima facie, to have been committed.

12.Sub-section (4) of Section 155 is a new provision introduced for the first time in the Code in 1973. This was done to overcome the controversy about investigation of non-cognizable offences by the police without the leave of the Magistrate. The statutory provision is specific, precise and clear and there is no ambiguity in the language employed in sub-section (4). It is apparent that if the facts reported to the police disclose both cognizable and non-cognizable offences, the police would be acting within the scope of its authority in investigating both the offences as the legal fiction enacted in sub-section (4) provides that even a non-cognizable case shall, in that situation, be treated as cognizable.

13.This Court in Pravin Chandra Mody v. State of A.P. [AIR 1965 SC 1185 : (1965) 1 SCR 269 : (1962) 2 Cri LJ 250] has held that while investigating a cognizable offence and presenting a charge-sheet for it, the police are not debarred



from investigating any non-cognizable offence arising out of the same facts and including them in the charge-sheet.

14.The High Court was thus clearly in error in quashing the charge under Section 494 IPC on the ground that the trial court could not take cognizance of that offence unless a complaint was filed personally by the wife or any other near relation contemplated by clause (c) of the proviso to Section 198(1).

15.The judgment of the High Court being erroneous has to be set aside. The appeal is consequently allowed. The judgment and order dated 3-5-1995 passed by the Orissa High Court insofar as it purports to quash the charge under Section 494 IPC and the proceedings relating thereto is set aside with the direction to the Magistrate to proceed with the case and dispose of it expeditiously.”

14.In the above case, a similar question was raised before the High Court of Orissa and the High Court had quashed the charge in so far as the offence under Section 494 of I.P.C. While dealing with the issue, the Apex Court has categorically held that the High Court was in



CrI.O.P.No.27708 of 2023

error in quashing the charge under Section 494 of I.P.C. and that the charge sheet filed by including the offence under Section 494 of I.P.C. is perfectly in order and there is no bar for the trial Court taking cognizance of the final report.

15.The learned counsel appearing on behalf of the second respondent also relied upon the judgment of this Court in **Victor Auxilium and others Vs. State and another** reported in **(2008) 1 LW (CrI) 328**. The learned counsel placed reliance upon paragraph no.19 in the judgment which is extracted hereunder:

"19. While the intent of the said provision is taken for consideration with respect to the request of the petitioners, though the offence under Section 494, I.P.C. is a non-cognizable one, since the police have investigated the same along with other cognizable offences viz., Sections 498-A, I.P.C. and 4 of Dowry Prohibition Act, it is to be deemed to be a cognizable offence, and the hands of police are not tied in this regard and the police can very well investigate the offence under Section 494, I.P.C. also, along with other offences."



Crl.O.P.No.27708 of 2023

WEB COPY

16.The learned Government Advocate (Crl. Side) also brought to the notice of this Court the judgment in ***Sababathy Vs. State of Tamil Nadu*** reported in ***2008 (2) LW (Crl.) 1027***, which in turn followed the judgment of the Apex Court in ***State of Orissa Vs. Sharat Chandra Sahu and another*** reported in ***(1996) 6 SCC 435***.

17.In the light of the above judgments that were brought to the notice of this Court, there is no doubt in the mind of this Court that the final report filed by including the offence under Section 494 of I.P.C. can be certainly taken cognizance by the Court below and there is no bar.

18.In the light of the above discussion, this Court finds that there are prima facie materials against the petitioner to sustain the charge under Section 494 of I.P.C. All those materials which are relied upon by the petitioner has to be necessarily tested before the trial Court and it will always be left open to the petitioner to raise all the grounds before the Court below which will be dealt with on its own merits and in accordance with law. Any observations made in this order will not have any bearing and the Court below shall deal with the



Crl.O.P.No.27708 of 2023

WEB COPY

case purely on merits.

19.The petitioner was complaining that there is absolutely no progress in this case and that the petitioner is made to undergo the ordeal of facing the criminal prosecution for years together. In the light of this complaint made by the petitioner, there shall be a direction to the learned Additional Mahila Metropolitan Magistrate, Egmore, to complete the proceedings in C.C.No.40 of 2020 within a period of three months from the date of receipt of a copy of this order. The trial shall be conducted on a day to day basis in accordance with the guidelines given by Hon'ble Supreme Court reported in ***Vinod Kumar Vs State of Punjab [2015 (1) MLJ (Crl) 288 SC]***.

20.Pursuant to the earlier orders passed by this Court, it is reported that A1 is now in India and therefore, he shall also participate in the proceedings without adopting any dilatory tactics. If A1 adopts any dilatory tactics, the Court below will proceed further in line with the judgment of the Apex Court in ***State of Uttar Pradesh vs. Shambhu Nath Singh*** reported in ***JT 2001 (4) SC 3191***.



Crl.O.P.No.27708 of 2023

WEB COPY

21.This criminal original petition is disposed of in the above terms. Consequently, the connected miscellaneous petitions are closed.

05.03.2024

pri

Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

- 1.The Additional Mahila Metropolitan Magistrate Court,
Egmore.
- 2.The Inspector of Police,
W8 All Women Police Station,
Thirumangalam,
Chennai – 600 101.
(Crime No.20 of 2018)
- 3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



WEB COPY



Crl.O.P.No.27708 of 2023

N.ANAND VENKATESH,J.
pri

Crl.O.P.No.27708 of 2023
And
Crl.M.P.Nos.19202 and
19203 of 2023

05.03.2024