

(2009) 07 MAD CK 0282

In the Madras High Court

Case No : Criminal OP. No. 30718 of 2006 Criminal MP. No. 1 of 2006

B. Geetha, A. Babitha, K. Balasubramanian and Arunkumar APPELLANT
Vs

State by Inspector of Police All Women Police Station and RESPONDENT
Indhumathi

Date of Decision : 06-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 161, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 406, 498A

Citation : (2009) 07 MAD CK 0282

Hon'ble Judges : Aruna Jagadeesan, J

Bench : Single Bench

Advocate : M. Balasubramanian, for the Appellant; S. Senthil Murugan, for R1 and V. Padmanaban, SC for R2, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Jagadeesan, J.—The Petitioners are arrayed as A3 to A6 in CC. No. 6538/2006 on the file of the Chief Metropolitan Magistrate, Egmore.

2. The 2nd Respondent has filed the private complaint before the V Metropolitan Magistrate, which was referred to the 1st Respondent Police u/s 156(3) for investigation and report. Thereafter, the above complaint was registered in Cr. No. 2/2006 and was investigated by the 1st Respondent Police and after investigation filed a report u/s 498A and 406 of IPC read with Sections 4 and 6 of the Dowry Prohibition Act. Thereupon the above case was taken on file by the Chief Metropolitan Magistrate in CC. No. 6538/2006 and summons were issued to all the accused for their appearance.

3. The 1st accused is the husband of the defacto complainant and the 2nd accused is the mother of the 1st accused and the petitioners 1 and 2 are the sisters of the 1st accused and the Petitioners 3 and 4 are the brothers of the 1st accused.

4. In the complaint, it is alleged that the Petitioners along with A1 and A2 demanded dowry and when she failed to meet the said demand, she was harassed and treated with cruelty.

5. According to the Petitioners, the allegations made in the complaint do not make out any offence as against them, as they are vague and uncertain and bereft of vital particulars and if the proceedings are allowed to be continued as against them, it will be only an abuse of process of law. Further, the said complaint has been filed only as a counter blast to the divorce petition filed by the 1st accused/husband of the 2nd Respondent in Family Court in OP. No. 774/2006.

6. It is well settled by a long course of decisions by the Honourable Supreme Court that for the purpose of exercising its power u/s 482 Code of Criminal Procedure to quash the FIR or a complaint, the High Court would have to proceed entirely on the basis of the allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the truthfulness or otherwise of the allegations.

7. In the case of Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, , the Honourable Supreme Court has reiterated the same principle and laid down that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence.

8. In the case of State of Bihar Vs. Murad Ali Khan and Others, , the Apex Court has laid down that the jurisdiction u/s 482 of the Code has to be exercised sparingly and with circumspection and has observed that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

9. Keeping the above said principles in mind and considering the decisions as referred to herein, let us apply them to the facts of the present case.

10. The allegations contained in the complaint disclose that the Petitioners along with A1 and A2, the husband and mother in law of the 2nd Respondent demanded a sum of Rs. 5 lakhs from the 2nd Respondent and directed her to get the said amount from her father. It is further stated that as she refused to meet the said demand, they started harassing her by using physical violence and forced her to subject herself to illegal demand of the accused persons. That the 1st accused along with A3 and A4 had pledged the 2nd Respondent's jewels without her consent and appropriated the money for their use and in order to cover up the misdeeds, they have made wild allegations against her, as if she moved closely with the male students and chatted with them through E-Mail and exchanged photos. It is further alleged in the complaint that A1 along with the other accused have made wild allegations against her that she was having bonhomie with her male friends and thereby tried to bring disrepute to her character and integrity. It is further alleged in the complaint that in view of the

torture put to her, she suffered abortion on 7.11.2004.

11. The above said allegations are definite and specific against each of the Petitioners and A1 and A2, which would definitely constitute offence u/s 498A of IPC and other offences as alleged. It could be inferred from the complaint that the complaint was filed only when all efforts to return to the matrimonial home had failed and the 1st accused/husband had filed the divorce petition before the family court. The argument of the learned Counsel for the Petitioners that the complaint is filed only as a counter blast to the divorce petition cannot be accepted as divorce petition in the civil court cannot be a ground to quash the criminal proceedings u/s 482 of Code of Criminal Procedure, as it is well settled that the criminal proceedings are separate and independent and the pendency of the civil proceedings cannot bring to end the criminal proceedings, even if the same arise out of the same set of facts.

12. This court, in the case of Arunkumar v. State Sub Inspector of Police W31 All Women Police Station, Chennai-16 and Anr. 2007-2-LW-Crl-814, on similar set of facts and circumstances, has held that when the allegations are distinct and specific and there is a prima facie case made out against the Petitioners, no interference could be made by this Court to quash the proceedings and it is further held as under:

In the instant case, not only the complaint but also the statement recorded u/s 161 Cr.PC clearly discloses that there are specific and definite allegations leveled against the Petitioner herein that the Petitioner has ill treated the defacto complainant cruelly for the purpose of demanding dowry-Honourable Supreme Court has made it crystal clear that only in the even of allegations of causing insult, making derogatory remarks and behaving rudely against informant and the same not pertaining to dowry demand, then only the offences under Sections 498A or 406 of IPC and Section 4 of the Dowry Prohibition Act, are not attracted.

There is yet another allegation to the effect that the Petitioner A4 along with other accused viz. A2 and A3 demanded Rs. 10 lakhs case and also abused and assaulted the defacto complainant stating that she should not come to the matrimonial home without a sum of Rs. 10,00,000/- Therefore, Court has not hesitation to hold that there is a prima facie case is made out against the Petitioner herein who has been arrayed as A4 in this case for the alleged offences u/s 498A IPC and another Sections mentioned in the charge sheet.

13. In the case on hand, there are specific and definite allegations against the Petitioners that they have treated the 2nd Respondent with cruelty and specific overtact has been attributed against them. The truthfulness or otherwise of the said allegations can be gone into only at the time of trial. The legal position is absolutely clear and also well settled by the Judicial Authorities that the court would not interfere with the criminal proceedings, at this stage.

14. In view of the above said reasons, this Court is of the considered view that the complaint cannot be quashed and hence, the Criminal Original Petition is

dismissed. Consequently, the connected MP is closed.