

(2005) 02 MAD CK 0023

In the Madras High Court

Case No : Criminal O.P. No. 43699 of 2003 and Criminal M.P. No. 12524 of 2003

K. Jayasree

APPELLANT

Vs

State by Inspector of Police and Others

RESPONDENT

Date of Decision : 07-02-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482
Dowry Prohibition Act, 1961 — Section 4
Penal Code, 1860 (IPC) — Section 406, 489A

Citation : (2005) 2 CTC 31

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : K. Sumathi, for the Appellant; A.N. Thambidurai, Government Advocate (Crl.Side) for Respondent No. 1 and Vijayakumar, for Respondents 2 to 8, for the Respondent

Judgement

M. Chockalingam, J.—Seeking a re-investigation of the case in Crime No. 5 of 2003 on the file of the first respondent police, which was

taken cognizance pursuant to the filing of the final report, by the learned Chief Metropolitan Magistrate, Egmore, Madras, in C.C.No. 10183 of

2003, by some other investigating agency, the petitioner has brought forth this O.P.

2. Affidavit in support of the petition and the counters filed by the respondents are perused.

3. It is contended by the learned Counsel for the petitioner that she lodged a complaint against her husband and his family members, on the strength

of which a case came to be registered by the first respondent police in Crime No. 5 of 2003 for the alleged offences under Sections 498-A, 406

of I.P.C. and Section 4 of the Dowry Prohibition Act; that at the time of the

investigation, she requested the Investigating Officer to receive some documents which were essential to prove the guilt of the accused and were in her possession; that they informed her that they would receive it afterwards, and at that juncture, she filed a petition through her Counsel to assist the prosecution and also obtained a copy of the charge sheet. Added further the learned Counsel that the names of the, two of the accused namely Ramanujam and Jayakumar were not found in the charge sheet, though they were shown as A-5 and A-7 respectively in the F.I.R.; that the statements recorded from the witnesses u/s 161 of Cr.P.C. and now produced before the lower Court, did not contain the true particulars; that the particulars found in the statements before the lower Court, were not given by the witnesses; that the prosecution purposely deleted A-5 and A-7 in the charge sheet without any reason whatsoever; that the accused have filed a discharge petition before the lower Court, and it is pending, and under the circumstances, she has filed this petition for re-investigation. In support of her contention, the learned Counsel relied on the two decisions of the Apex Court one *Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors.*, 2004 SCC (CRI.) 1603 and the other in *Zahira Babibullah Sheikh and Anr. v. State of Gujarat and Ors.*, 2004 SCC (CRI.) 1613.

4. In answer to the above contentions, the learned Government Advocate for the first respondent would submit that it is true that a case was registered in Crime No. 5 of 2003; that the petitioner, her parents and the other witnesses have not stated anything in their 161 Cr.P.C. statements about the involvement of the persons Jayakumar and Ramanujam; that since there is no material implicating them, the charge sheet was laid against five persons; that there is no motive for the Investigating Officer to delete them in the charge sheet wantonly; that the de-facto complainant namely the petitioner herein, has not shown the so-called documents to the Investigating Officer till the charge sheet is filed; that the discharge petition filed by the accused in CrI.M.P.No. 3553/2003 was dismissed by the lower Court on 5.4.2004 itself; that though summons were issued to the petitioner to appear before the lower Court to give evidence, she was evading the same, and under the circumstances, there is no necessity for further investigation, and hence, this petition has got to be dismissed.

5. The learned Counsel appearing for the respondents 2 to 8 would submit that the petitioner has suppressed many material facts and lodged a false and fictitious complaint; that the marriage of the petitioner with the second respondent took place on 25.2.2002; that between 26.2.2001, the date of betrothal and 25.2.2002, the date of marriage, the second respondent sent demand drafts in the name of the petitioner to her account in Indian Overseas Bank, Perambour Branch, Madras; that a joint account and a joint bank locker were opened in their names in the said Bank; that the locker key is in the custody of the petitioner; that all these facts have been suppressed by her; that after perusing all the documents produced by the respondents 2 to 8, the first respondent filed a charge sheet against the respondents 2 to 6; that the case was taken cognizance by the lower Court; that for the last four occasions, the trial was adjourned for the presence of the petitioner; that at this stage, the request for re-investigation is only to harass and to defame their family in the society; that she can well depose before the trial Court and can pray for the implication of the respondents 7 and 8 in the case, and hence, this petition has got to be dismissed.

6. After careful consideration of the rival submissions made and scrutiny of the materials available, this Court is of the considered opinion that it is a fit case, where re-investigation has got to be ordered.

7. As could be seen from the available materials, the de-facto complainant, the petitioner herein, gave a complaint originally against the seven accused for the offences under Sections 498-A and 406 I.P.C. and Section 4 of the Dowry Prohibition Act. A case was registered in Crime No. 5 of 2003 originally by the Inspector of Police, W5 A.V.P.S., Anna Nagar, and subsequently, it was transferred to W8 A.W.P.S., Sembium Circle, Kilpauk. When the charge sheet was filed before the lower Court, two of the accused namely A-5 and A-7 were omitted, and the respondents 2 to 6 herein have filed an application for discharge before the lower Court. That application was allowed in part. Now, as on today, the lower Court has framed charges against A-1 under Sections 498(A) and 406 of I.P.C. and Section 4 of the Dowry Prohibition Act and as against A-2 to A-5 u/s 498(A) I.P.C. and Section 4 of the Dowry Prohibition Act and not in respect of the other provisions of law. This Court is able to see force in the contention put forth by the petitioner's side that the

matter requires the re-investigation on the following grounds.

(1) While there were specific allegations made against A-7 and A-8 in the case, how they were dropped at the time of the final report remained unknown.

(2) It has been specifically stated by the petitioner herein that the statements of herself and her parents were recorded u/s 161 of Cr.P.C.; but, a perusal of the same would clearly reveal that they were not the statements given by them; and that it has been recorded and placed before the lower Court in such a way to support the accused. Apart from that, it is also further added that the statements given by them, did not form part of the statements recorded and placed before the lower Court.

(3) It has been specifically averred by the petitioner that at the initial stage of the investigation, she made a request to the Investigating Officer that she has got documentary evidence to be placed, and they were vital for the prosecution case; and that she was assured that the same would be received by the Investigating Officer later; but, the Officer has neither received the same nor incorporated the same, and instead, he has finally filed the final report.

(4) Apart from the above, according to her, a reading of the charge sheet would clearly indicate that it has been drafted in such a way to help the accused rather than to prosecute the case.

8. While such allegations, which, in the opinion of the Court, are serious in nature, are made against the investigating agency and process and in view of the crowning circumstance that if the trial is allowed on the investigation done and the final report filed, it would cause certainly prejudice to the prosecution case, and the case might even end in acquittal, this Court is of the firm view that it is a fit case where re-investigation has got to be ordered, and all the above, interest of justice would require so.

9. The learned Counsel for the respondents 2 to 8 brought to the notice of the Court that subsequent to the marriage engagement between the petitioner and the first accused, the first accused was in the foreign country; that he sent sums to her; that she has been in possession of the same; that a joint account and a joint bank locker were opened, and it was also being operated by her; and that the bank locker key was well available

with her, which was in the joint name of the parties. All these things are the defence theory, which have got to be brought to the notice of the trial

Court at the time of the cross-examination of the witnesses of the prosecution. Now, at this stage, those cannot stand in the way of proper and fit

investigation in a case like this.

10. Therefore, this Court, in appraisalment of the circumstances and reasons recorded above, feels fit to direct for a re-investigation in the case.

Accordingly, re-investigation of the case is ordered, and the following directions are given.

(i) The first respondent is directed to hand over the Case Diary pertaining to Crime No. 5 of 2003, to the Joint Commissioner of Police, Central,

within one week herefrom.

(ii) The Joint Commissioner of Police, Central, is directed to authorise one of his subordinates, who is competent to investigate, and cause re-

investigation of the case.

(iii) The Investigating Officer so authorised, is directed to re-investigate the matter and file the final report within a period of three months herefrom

before the concerned Court.

(iv) The lower Court is directed to obtain the final report so filed by that Officer, and then proceed with the matter in accordance with law.

However, it is made clear that while doing the re-investigation, there is no impediment for the Investigating Officer to enquire into the matter fully

and appraise the documentary evidence to be adduced before him by the accused side also.

11. Hence, this criminal original petition is ordered in the above lines. Consequently, connected Crl.M.P. is closed.