

(2010) 09 MAD CK 0433

In the Madras High Court

Case No : Criminal Original Petition (MD) No. 4173 of 2009 and M.P. (MD) No. 1 of 2009

Revathi Rajasekaran and Sujatha Sundarajan

APPELLANT

Vs

State and J. Thilagavathy

RESPONDENT

Date of Decision : 24-09-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161(3)

Dowry Prohibition Act, 1961 — Section 4

Penal Code, 1860 (IPC) — Section 406, 420, 498A, 506

Protection of Women From Domestic Violence Act, 2005 — Section 12

Citation : (2010) 09 MAD CK 0433

Hon'ble Judges : R. Mala, J

Bench : Single Bench

Advocate : P. Malini, for the Appellant; S. Muthu Venkatesan, Government Advocate (Criminal Side) for R-1 and V.R. Shanmuganathan, for R2, for the Respondent

Final Decision : Allowed

Judgement

R. Mala, J.—The Petitioners have filed this CrI.O.P. to call for the records in respect of Charge sheet filed in C.C. No. 34 of 2009 on the file of the Judicial Magistrate No. 2, Virudhunagar against the Petitioners and quash the same.

2. Learned Counsel for the Petitioners submitted that the Petitioners are arrayed as A.4 and A.5 in C.C. No. 34 of 2009 on the file of the Judicial Magistrate No. 2, Virudhunagar; they are the sisters of A.1 and sister-in-laws of the second Respondent/de-facto complainant; there is no averment against the Petitioners and there is not even an averment of demand of dowry; the marriage between their brother and the second Respondent/de-facto complainant Thilagavathy was performed on 02.03.2006 at Tanjore; both were living together along with the father and mother of the Petitioners; the 1st Petitioner was married 12 years ago and working as Headmistress in a Government High School at Krishnagiri; the 2nd Petitioner was also married and living at Tanjore separately; there was a

misunderstanding between their brother and the second Respondent/de-facto complainant and hence, she left the matrimonial home and went to her mother's place at Virudhunagar; she gave a false complaint, which has been registered in crime No. 13 of 2008 on 20.11.2008, for the offences under Sections 420, 498-A, 406 and 506 (Part 2) IPC and Section 4 of the Dowry Prohibition Act, on the false information against the Petitioners and their brother and parents, with an ulterior motive; the Petitioners were already enlarged on bail; now they have come forward with this Crl.O.P. to quash the charge sheet, stating that the ingredients of Sections 420, 498-A, 406 and 506 (Part-2) IPC, have not been made out. To substantiate his case, learned Counsel for the Petitioners relied upon the judgments of this Court.

3. The learned Counsel appearing for the second Respondent/de-facto complainant submitted that in the F.I.R., and in the statement of the witnesses recorded u/s 161(3) Code of Criminal Procedure, the overt act of the Petitioners, was mentioned and whether ingredients of the offences are made out or not, is only a question of fact, which can be decided only at the time of trial. He further submitted that it is true that the first Petitioner was married and working as an HM in a Government School at Krishnagiri; her child is with the parents of the first Petitioner and hence each and every Sunday, she visited her parents' house at Tanjore; during that time, she caused cruelty as well as demand of dowry and they also extracted 40 sovereigns of jewels and money from the second Respondent/de-facto complainant. Learned Counsel for the second Respondent/de-facto complainant further submitted that A.5 is working as a Lecturer in a College at Tanjore; she has also been often visiting her parental home and at that time, she has committed the offences. Learned Counsel for the second Respondent/de-facto complainant stated that it is premature stage to quash the criminal proceedings against the Petitioners and prayed for dismissal of the Crl.O.P.

4. Learned Government Advocate (Crl. Side) appearing for the first Respondent-Police submitted that the ingredients of the offences are made out and prayed for dismissal of the Crl.O.P.

5. Considering the rival submissions made by both sides, it is seen that the marriage between the second Respondent/de-facto complainant and the brother of the Petitioners. was performed on 02.03.2006; a case has been registered against the husband of the second Respondent/de-facto complainant, viz., Rajkumar, his parents and his two sisters. Charge sheet has also has been filed, which was taken on file in C.C. No. 34 of 2009 and charges have also been framed on 26.05.2009. Now the Petitioners have come forward with this Crl.O.P. for quashing the charge sheet only in the month of June 2009.

6. Admittedly, the Petitioners are the sisters of A.1 and sister-in-laws of the second Respondent/de-facto complainant. A perusal of the F.I.R. which contained in page No. 1 of the typed set of papers filed along with the petition, would show that the second Respondent/de-facto complaint has impleaded the Petitioners/

A.4 and A5 and on that basis only, investigation has been conducted and charge sheet has also been filed. A fair reading of the F.I.R and the statements of the witnesses recorded u/s 161(3) Code of Criminal Procedure would clearly indicated the action of the Petitioners. The additional typed set of papers contains the statements of the witnesses recorded u/s 161(3) Code of Criminal Procedure.

7. It is further seen from the said additional typed set of papers that a petition has been filed before the learned Magistrate's Court u/s 12 of the Protection of Women from Domestic Violence Act, 2005, by the second Respondent/de-facto complainant against the husband and the father-in-law of the second Respondent/de-facto complainant, in which case, the learned Magistrate passed an order restraining the Respondents therein from interfering with the second Respondent/de-facto complainant's work and her residence and also ordered maintenance to the second Respondent/de-facto complainant.

8. The learned Counsel appearing for the Petitioners further submitted that when the second Respondent/de-facto complainant has taken action under the provisions of the Protection of Women from Domestic Violence Act, 2005, by filing a petition, which has been filed only against A.1 and A.2, who are the husband and the father-in-law of the second Respondent/de-facto complainant and thereafter only, the Petitioners have been implicated and hence, it is only an after-thought and hence, he prayed for allowing this CrI.O.P.

9. At this juncture, it is appropriate to consider the F.I.R./complaint, which has been given on 20.11.2008. But, the said petition u/s 12 of the Act has been filed on 09.05.2008, much prior to the F.I.R. In the above said petition, the second Respondent/de-facto complainant stated nothing about the Petitioners herein. Only after the disposal of the petition u/s 12 of the Act, the present complaint has been given, with an intention to rope all the family members of the husband of the second Respondent/de-facto complainant.

10. In such circumstances, it is appropriate to consider the decision of this Court relied upon by the learned Counsel for the Petitioners, reported in CDJ 2009 MHC 3335 in the case of "Raju and Ors. v. Sankarammal", wherein, this Court has held as follows:

7. In another decision relied on by the learned Counsel for the Petitioner reported in Karuppiiah Servai and Ors. v. Nagavalli Ammal 1981 LW 336 it is held as follows:

...By mere association of the accused persons who are charged for an offence of abetment of the principal offender, in the absence of any material to show that there was an instigation by the Petitioners or that there was any intention either in aiding or in the commission of the offence, it cannot be said that they they have committed an offence of abetment.

11. Since the Petitioners are married 12 years/10 years ago, respectively and

they are residing separately and at the time of filing the said petition u/s 12 of the Act, they were not impleaded as parties and also as per the decision of this Court cited above, merely because the Petitioners are the sisters of A.1 and sister-in-laws of the second Respondent/de-facto complainant, they will not be roped in or fastened into the criminal proceedings.

12. In such circumstances, I am inclined to quash the charge sheet as against the Petitioners/A.4 and A.5 alone. Accordingly, this Criminal Original Petition is allowed and the charge sheet in C.C. No. 34 of 2009 on the file of the Judicial Magistrate No. 2, Virudhunagar, is quashed as against the Petitioners/A.4 and A.5 alone. Consequently, connected miscellaneous petition is closed.