

(2011) 11 MAD CK 0211

In the Madras High Court

Case No : Criminal OP. No. 10170 of 2011 and M.P. No. 1 of 2011

Seema Mehra and Others

APPELLANT

Vs

Ms. Amitha and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(8), 200

Dowry Prohibition Act, 1961 — Section 3

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

Tamil Nadu Prohibition of (Harassment of Woman) Act, 1998 — Section 4

Citation : (2012) MLJ(Cri) 764

Hon'ble Judges : A. Arumughaswamy, J

Bench : Single Bench

Advocate : S. Ashok Kumar, for R. Sunil Kumar, for the Appellant; K. Kalyanasundaram, for S. Subramaniam, for C. Emalias, Government Advocate (Crl. Side), for the Respondent

Final Decision : Dismissed

Judgement

A. Arumughaswamy, J.—The petitioners are the Accused and they have come forward with this petition seeking to set aside the order dated 3.2.2011 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No. 528 of 2011 in C.C. No. 4574 of 2010. The de facto complainant has filed the above said petition u/s 173(8) of Cr.P.C. before the Chief Metropolitan Magistrate, Egmore, Chennai, seeking for a direction to the investigating agency in Tamil Nadu to conduct further investigation in C.C. No. 4574 of 2010. The learned Chief Metropolitan Magistrate, Egmore, Chennai, has passed an order directing the Inspector of Police W-7 Anna Nagar Police Station, Chennai to do further investigation in C.C. No. 4574 of 2010 on the basis of the materials and evidences produced by the de facto-complainant and also by examining other witnesses and file final report within a period of two months. Against which the Accused have preferred this petition.

2. It is admitted by both sides that the de facto complainant and the first

Accused are the husband and wife and the other relationship between the parties as mentioned in the petition also has been admitted. It is also admitted that there are two complaints and the first one was lodged by the de facto complainant viz., Amrita Arora W/o Gauresh Mehra on 17.6.2009 before the Commissioner of Police, Bangalore apprehending danger to her life and liberty against her husband and his parents, uncle and aunt for the offence u/s 498A and 506(ii) of IPC and Section 3 of the Dowry Prohibition Act 1961 and the said complaint was registered in Crime No. 289 of 2009 in Jaya Nagar Police Station, Bangalore City and later it was transferred to Basavanagudi Mahila Police Station and renumbered as Crime No. 129/2009. Since no action was initiated against the husband of the de facto-complainant pursuant to the complaint made to the Cyber Crime Cell by the father of the de facto-complainant, he filed a private complaint u/s 200 of Cr.P.C. before the Chief Metropolitan Magistrate, Egmore, Chennai and pursuant to the direction a case in Crime No. 396 of 2009 was registered u/s of Section 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

3. A charge sheet was filed in Crime No. 129 of 2009 on the file of the II Additional Chief Metropolitan Magistrate, Bangalore only against the husband of the de facto-complainant and other leaving out the other co-accused from the charges.

4. The de facto-complainant filed a Transfer Petition (Civil) No. 848 of 2009 on the file of the Hon"ble Supreme Court of India seeking transfer of M.C. No. 1294 of 2009 filed by the husband on the file of the Principal Judge, Family Court, Bangalore, Karnataka to the First Additional Family Court, Chennai for being tried along with M.C. No. 302 of 2009 filed by the de facto complainant on the file of the First Additional-Family Court, Chennai and the same was ordered by the Hon"ble Supreme Court of India. The de facto complainant has also filed yet another Transfer Petition (Crl.) No. 59 of 2010 seeking transfer of C.C. No. 17518 of 2009 from the file of the II Additional Chief Metropolitan Magistrate, Bangalore to the file of the Chief Metropolitan Magistrate, Egmore, Chennai and the same was also ordered by the Hon"ble Supreme Court.

5. Under such circumstances, Crl. M.P. No. 528 of 2011 has been filed seeking direction to the police agency in Tamil Nadu to conduct further investigation in the complaint laid before the Commissioner of Police, Bangalore City on 17.6.2009 against her husband Gauresh Mehra, her father-in-law Sushil Mehra, her mother-in-law Neelam Mehra, her husband's paternal uncle Sanjeev Mehra and her husband's aunt Seema Mehra in which two months time has been granted to do further investigation in C.C. No. 4574 of 2010 on the basis of the materials and evidences produced by the de facto-complainant and also by examining other witnesses and file final report.

6. The vehement contention of the learned senior counsel for the petitioners/accused is that the investigating officer after examining the de facto complainant's father, mother, uncle and relatives and after completing the

investigation had filed charge sheet against the husband of the de facto-complainant on the file of the II Additional Chief Metropolitan Magistrate, Bangalore and for want of evidence charges against others was dropped. Under such circumstances, ordering further investigation is prejudicial to the petitioners/accused. Hence, he prayed that the order dated 3.2.2011 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No. 528 of 2011 in C.C. No. 4574 of 2010 has to be set aside.

7. Per contra, the learned senior counsel appearing for the first respondent/de facto complainant would contend that pursuant to the order of the Hon'ble Supreme Court in Transfer Petition (Criminal) No. 59 of 2010, the case in C.C. No. 17518 of 2009 on the file of the Additional Chief Metropolitan Magistrate, Bangalore has been transferred to the file of the Chief Metropolitan Magistrate, Egmore, Chennai and renumbered as C.C. No. 4574 of 2010. The de facto-complainant after getting the charge-sheet papers translated from Kannada in English came to know about the tainted nature of the charge sheet in favour of the petitioners, dropping them from the charges. Further no notice has been served on the de facto complainant by the investigating agency for dropping the other accused from the charges. Therefore, the de facto-complainant approached the Court of Chief Metropolitan Magistrate by filing a petition u/s 173(8) of Cr.P.C. and the learned Chief Metropolitan Magistrate has rightly allowed the said petition and ordered for further investigation against the petitioners. Hence, there is no need to interfere with the findings of the learned Chief Metropolitan Magistrate and it has to be confirmed and this petition has to be dismissed.

8. There is no dispute with regard to the relationship of the parties. From the perusal of the records it is seen that in the FIR in Crime No. 129 of 2009 on the file of the Commissioner of Police, Bangalore Police Station, the names of all the petitioners herein find a place. However, in the charge sheet filed in C.C. No. 17518 of 2009 on the file of the Additional Chief Metropolitan Magistrate, Bangalore the name of the husband of the de facto complainant alone finds a place and the name of the petitioners herein have been left out. Further no document has been produced by the prosecution to show that notice was served on the de facto complainant with regard to the dropping of the other accused namely the petitioners herein from the charges. Further on a perusal of the documents it is seen that the de facto complainant was not examined under 161 of Cr.P.C. The contention of the learned counsel for the petitioners/accused that mere filing of a case by the de facto complainant before the Hon'ble Supreme Court will not mean that the petitioners/accused are not entitled to file this petition cannot be correct one. Under such circumstances, I am of the view that the learned Chief Metropolitan Magistrate has rightly come to the conclusion to order further investigation in C.C. No. 4574 of 2010. Hence, there is no need to interfere with the findings of the learned Chief Metropolitan Magistrate in ordering further investigation and accordingly, this petition is dismissed confirming the order dated 3.2.2011 passed by the learned Chief Metropolitan Magistrate, Egmore, Chennai in Crl. M.P. No. 528 of 2011 in C.C. No. 4574 of

2010. Consequently, M.P. No. 1 of 2011 is closed. For further investigation two months time is granted from the date of receipt of copy of this order.