
(2007) 03 MAD CK 0036

In the Madras High Court

Case No : Criminal R.C. No. 517 of 2005 and Criminal M.P. No. 3457 of 2005

Thangammal, Natarajan, Selvakumar and Saraswathi

APPELLANT

Vs

State by the Sub Inspector of Police

RESPONDENT

Date of Decision : 20-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(5), 482

Dowry Prohibition Act, 1961 — Section 4

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

Citation : (2007) 03 MAD CK 0036

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : C. Prakasam, for the Appellant; Hasan Mohamed Jinnah, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

S. Tamilvanan, J.—This Criminal Revision is directed against the order dated 11.01.2005, made in Crl.M.P. No. 3 of 2004 in C.A. No. 43 of 2004 on the file of Additional District Sessions Court - cum - Fast Track Court No. III, Dharapuram. The revision petitioners 1 to 3 were accused and the 4th revision petitioner is the defacto complainant before the Trial Court. The first and second revision petitioners are the mother-in-law and the father-in-law of the 4th respondent. The 3rd respondent is the husband of the 4th respondent. On the complaint lodged by the 4th petitioner / defacto complainant a case in S.T.C No. 310 / 03 u/ s 498-A and Section 4 of Dowry Prohibition Act was taken on file of the Judicial Magistrate, Kangayam.

2. Based on the oral and documentary evidence and upon hearing the arguments on either side, the learned Trial Court convicted the petitioners 1 to 3. Being aggrieved against the said order of conviction, they preferred an appeal before the Additional District and Sessions Court - cum - Fast Track Court No. III, Dharapuram. When the appeal is pending before the Additional District Sessions

Court, the 4th petitioner / defacto complainant, filed a petition for compounding the offence on the ground that she is now leaving with her husband and also with the 1st and 2nd respondents.

3. The learned Additional District Sessions Court - cum - Fast Track Court No. III, Dharapuram dismissed the petition seeking compounding the offence on the ground that the offence u/s 489-A and Section 4 of the Dowry Prohibition Act could not be compounded as per Section 320 of the Code of Criminal Procedure since the appeal was pending before the said Court for disposal. Aggrieved by the said order the petitioners herein have preferred this Criminal Revision Petition.

4. The point for consideration is whether the case taken on file u/s 489-A and Section 4 of the Dowry Prohibition Act is compoundable and based on the compromise reached between the defacto complainant and the orders have to be passed by the Court below.

5. Mr. C.Prakasam, learned Counsel appearing for the petitioners contended that it is a matrimonial matter, though there was allegation of dowry harassment by the 4th petitioner / defacto complainant against her husband and her in-laws. Subsequently, the parties have settled the dispute among themselves and the 4th petitioner is also living peacefully with her husband and other family members. If the matter is not compounded, even it may affect the peaceful life of the fourth respondent, at her matrimony home.

6. It is relevant to note Section 320 of Cr.P.C. Sub-section (5) which reads as follows:

when the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

It being a matrimonial dispute between the parties, the learned Government Advocate (Crl. Side) contended that the alleged offence is within the preview of compounding and in support of his contention the learned Government Advocate also cited the decision of the Hon"ble Apex Court, reported in B.S. Joshi and Ors. v. State of Haryana and Anr. 2003 SCC (Crl) 848 wherein the Hon"ble Supreme Court has held that in relation to matrimonial disputes as per the inherent power u/s 482 of the Code of Criminal Procedure the non-compoundable offence, u/s 498-A and 406 I.P.C can be quashed and the same would encourage genuine settlement of matrimonial disputes.

7. In the instant case also, it is only a matrimonial dispute that the case was taken on file by the Trial Court, only on the complaint given by the 4th petitioner / defacto complainant, against the petitioners 1 to 3. It is also not in dispute that the 4th respondent / defacto complainant is living along with the petitioners 1 to 3 and on account of the same the 4th respondent / defacto

complainant had voluntarily filed the Criminal M.P. No. 3 of 2004, seeking an order for compounding the offence. After the dismissal of the aforesaid Criminal M.P. No. 3 of 2004, the petitioner 1 to 3 (accused before the trial court) and the 4th petitioner / defacto complainant, jointly have filed the present Revision Petition. The Court below has failed to consider that law is only the means and justice is the end. In the matrimonial matters, when dispute could be solved amicably and there is possibility for peaceful living of the husband and wife in the matrimonial home, it should not be prevented on the ground of mere technicalities. Sub-section (5) of Section 320 of the Cr.P.C, as contemplated therein, enable the parties even when the appeal is pending to compound the offence with leave of the Court and Sub-section (6) of the aforesaid section reads as follows:

A High Court or Court of Session acting in the exercise of its powers of revision u/s 401 may allow any person to compound any offence which such person is competent to compound under this section.

8. The Hon"ble Supreme Court in the decision reported in B.S. Joshi and Ors. v. State of Haryana and Anr. 2003 SCC (Crl) 848 has held that genuine settlements of matrimonial disputes has to be encouraged.

9. Though the revision petitioners 1 to 3 were convicted u/s 498-A and Section 4 of Dowry Prohibition Act by the Trial Court., since it is a matrimonial dispute and defacto complainant herself has filed the petition for compounding the offence, on account of her living along with other petitioners in her matrimonial home peacefully, it would be the duty of the Court to allow the petition. Therefore, I am of the considered view that the Criminal Revision Petition has to be allowed.

10. In result, the Criminal Revision Case is allowed. Consequently the connected Miscellaneous Petition is closed.