

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/11/2003

CORAM

THE HON'BLE MR. JUSTICE M. THANIKACHALAM

CRL.O.P.NO.25505 OF 2002

1.Dr. G. Shanmugam  
2.T. Venkatesan  
3.V. Baggialakshmi  
4.G. Rukmani ..Petitioners.

vs.

S. Uma ..Respondent.

Petition filed under Section 482 Cr.P.C. praying for the relief as stated therein.

!For petitioners : Mrs. R. Meenalochani

^For respondent : Mr. N. Bhaskaran

:O R D E R

Accused 5 to 8 in C.C.No.588/2001 on the file of the learned Judicial Magistrate No.VI, Coimbatore, have filed this petition, to quash the proceedings against them.

2. The respondent herein as complainant filed a private complaint against the petitioners, arraying them as A5 to A8 along with A1 to A4, alleging that all the accused are liable to be punished under Section 498-A I.P.C. as well as under Section 4 of Dowry Prohibition Act, that all of them had jointly troubled the petitioner, inflicting cruelty, demanding dowry and for the non compliance, harassed her also. In this view, she brought all the accused, including the petitioners, to face the offence under Section 498-A of I.P.C. and under Section 4 of Dowry Prohibition Act.

3. The petitioners/accused 5 to 8 have filed this petition, seeking to quash the proceedings pending against them, since the allegations set out against them, in the complaint, even if it is taken on the face value, do not, in law, constitute or spell out any offence and therefore, compelling them to face the trial, is an onerous ordeal, that too, going from Trichy to Coimbatore, for

each and every hearing. It is the further contention that the case against them is barred by territorial jurisdiction.

4. In order to appreciate the facts in issue, and to find out whether the allegations levelled against the petitioners, prima facie, would constitute an offence, even if the allegations are not rebutted, we have to see the relationship between the parties and their nativity and permanent abode.

5. The fact that the marriage between the complainant/respondent and the first accused was solemnised on 28.5.2000, is not in dispute. The second and third accused are the father and mother of the first accused. The 4th accused is the younger sister of the first accused. Even as seen from the cause title, they are all residing at Coonoor. The first petitioner/fifth accused, after the dispute arose between the spouses, is not living at Coimbatore. The 5th accused/first petitioner in this petition is the cousin brother of the first accused. The 6th accused is the brother of A3 or in other words, he is the maternal uncle of A1. The 7th accused/3rd petitioner is the wife of A6 and the aunt of the first accused. The 8th accused is the elder sister of A3 and aunt of A1.

5. Accused 5 to 8/the petitioners, are all residing admittedly at Trichy. The first petitioner is a practitioner in medicine. The second petitioner is an Executive Engineer working in P.W.D. It is not the case of the complainant/respondent, in the private complaint that the petitioners are all residing at Coonoor, along with other accused or they lived at least for sometime, when the incident said to have taken place. My effort to find out some allegations, regarding their coming to Coonoor or Coimbatore, to make a demand for dowry or on the failure to pay the dowry amount, committed cruelty or harassment, ended in vain. Except the omnibus allegations, as if all the accused joined together and committed the offence, I am unable to find out any specific allegation, implicating the petitioners. If it is the case, that all the accused were living under the same roof, where the complainant/respondent was living, as the wife of the first accused, then even in the absence of specific allegations, against each accused, an inference could be drawn that they also might have committed the offence, since they were all living under the same roof, then seeking corroboration by way of oral or documentary evidence, as the case may be, at the time of the trial. Admittedly, the petitioners are not residing at Coonoor and therefore, to make out a case prima facie, against these petitioners, there should be some averments, in order to rope in them, within the four walls of 498-A I.P.C. and 4 of Dowry Prohibition Act.

6. According to the learned counsel for the petitioners, no allegations are levelled in the complaint, even if any that is taken on the face value, not warranting a conviction and therefore, allowing the proceedings to go on against the petitioners, would

amount to an abuse of process of the Court. From the reading of the entire complaint, I am unable to say "no" to the above submission.

7. The learned counsel for the petitioners in support of the above contention, relied on a decision in *Kans Raj v. State of Punjab & Others* (2000 - 2- L.W. (Crl.) 660, wherein the Apex Court has ruled, in the absence of materials, convicting the brother-in-law, mother-in-law, sister-in-law of the complainant/wife is an impossibility. As ruled by the Apex Court in *S.A. Nanjundewara vs. M/s. Varlak Agrotech Pvt. Ltd* 2001 (3) CTC 378, criminal proceedings could be quashed by the High Court, only if it comes to the conclusion that even the statement made by the complainant taken on face value, does not make out any offence. It is the further contention of the learned counsel for the petitioners, that mere demand of dowry is not an offence and it should be either given or agreed to be given, but according to the learned counsel for the petitioners, the petition is bereft of particulars, regarding the date of demand of dowry, as well as the date of agreement, for the same etc. and in this view also, it is submitted that the petitioners, who have no connection with the alleged crime, should be discharged, relieving them from the ordeal of facing a trial unnecessarily. In this context, we have to see the allegations in the complaint, since that should be the basis for quashing the proceedings. It is not the endeavour of the Court, whether the allegations would be sufficient, to sustain a conviction and as observed by the Supreme Court, the face value of the statement made in the complaint, must be capable of bringing to surface the offence said to have been committed by the accused.

7. In paragraph 3 of the complaint, it is said that A1 to A8 came over to Coimbatore on 1.5.2000 to fix the alliance. As the relative of the first accused, there is nothing wrong and that by itself would not amount to an offence. In paragraph-5 of the complaint, it is stated that the real colour of the accused No.8 was shown, after the marriage, when the complainant was taken to Coonoor. There also no specific averments were made indicating, what are the activities committed by A8, in order to attract the penal provisions. In paragraph-6 of the complaint, the allegations are leveled only against A1 & A3, regarding the illegal demand of dowry, as well as harassment. In paragraph-7 also, allegations are made only against A1 to A4, as if they have snatched the savings of the respondent/complainant. In paragraph-8 of the complaint also, I find allegations only against A1 to A3, accusing A1 specifically. In paragraph-9, it is stated that on 31.5.2000, A1 to A8 demanded Rs.1 lakh in the pretext of establishing office for A1 at Coonoor and also a Maruti Zen Car worth Rs.4 lakhs. In addition to this they all demanded silver vessels worth Rs.20,000/- and a refrigerator. It is not the case in paragraph-9 that A5 to A8 came over to Coonoor on 31.5.2000. Therefore, the bald allegations, as if A1 to A8 demanded dowry from the complainant, in my considered opinion, even if it is taken on face value, do not make out an offence against A5-A8, since

no other allegations were made against these petitioners. In paragraph 17, it is alleged that the complainant was subjected to pain, suffering, agony and torment at the hands of the accused 1 to 8. It further reads that the harassment meted out to this complainant was executed by A1 to A3 by the effective advice, abetment and participation of A4 to A8. In this way, an attempt is made to rope in A5 to A8 also. As aforementioned, here also no allegation is levelled against the petitioners, as if they came to Coonoor on the date of the incident as narrated in paragraph-17. The admitted position being, the petitioners are the natives of Trichy, it is beyond one's imagination, even to suggest that they would have abetted or advised the other accused to torture or harass the respondent/complainant. Here also, neither the date nor the time nor the place is mentioned. Paragraph 18 reads that the complainant was subjected to all the cruelties by the accused husband along with his relatives, which would not embrace the petitioners, since they are not residing under the same roof, as that of the other accused. In paragraph 20, once again, it is said that accused 4-8 have all participated, advised and abetted the illegal demand, harassment and cruelty in furtherance of a common intention both by words and deeds for which they are liable. Here incorporating the words necessary for committing an offence, though a complaint is drafted in such a way, it lacks particulars to attract the provisions of Section 498-A I.P.C. even prima facie. The incorporation of the words contained in the section alone would not suffice to make out an offence and there should be something more, picturing the activities of the accused petitioners. If the activities of the accused, petitioners are detailed, then it is the duty of the Court to find out, whether those activities would constitute an offence or not at the time of trial. By giving ingredients required for the offence or by incorporating the legal terms alone, an offence could not be made out, in the absence of the incident, especially, the overt act said to have been committed by each accused. In this view, I am of the considered opinion, as rightly contended by the learned counsel for the petitioners, the statement made by the complainant, even if it is taken on face value, does not make out an offence, either under Section 498-A I.P.C. or under Section 4 of Dowry Prohibition Act. The contention of the learned counsel for the respondent/complainant, that the above averments are sufficient to rope in the accused prima facie, is not acceptable to me, for want of particulars in the complaint.

8. For the foregoing reasons, I am of the opinion that as per the complaint, no case has been made out against the petitioners/accused 5-8 and therefore, it is unnecessary for them to face the trial, for the sin of being the relatives of the first accused. In this view, I am constrained to quash the proceedings in C.C.No.588/2001 as far as the petitioner 5-8 alone are concerned.

In the result, the petition is allowed and the proceedings

against A5 to A8 in C.C.No.588/2001 is quashed and they are discharged from the above criminal proceedings. The trial Court is directed to proceed with the case against the remaining accused viz., 1 to 4 and dispose of the case, according to law.

Index: Yes

Website : Yes

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