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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :29.06.2012

CORAM

The Hon'ble Mr.Justice C.S.KARNAN

Crl.RC.No.30 of 2012

and

M.P.No.1 of 2012

Mallika

... Appellant/3rd Accused

vs.

State rep. by
The Inspector of Police,
Sevvapet Police Station,
Thiruvallur District.
(Cr.No.352/2009)

... Respondent/Complainant

PRAYER: Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code to call for the records and set aside the order passed in Crl.M.P.No.408 of 2011 against S.C.No.175/2011 on 29.12.2011 on the file of the Additional District and Sessions Judge, Fast Track Court No.III, Thiruvallur.

For Appellant :Mr.K.Madhan

For Respondent :Mr.D.Sivaram Kumar
Government Advocate

JUDGMENT

The petitioner / petitioner / accused No.3 has preferred the present revision in Crl.R.C.No.30 of 2012 to set aside the order made in Crl.M.P.No.408 of 2011 in S.C.No.175/2011 dated 29.12.2011 by the Additional District and Sessions Judge, Fast Track Court No.III, Thiruvallur.

2.The short facts of the case are as follows:-

The defacto complainant / mother of deceased Sharmila has filed a complaint before the B4-Sevvapettai Police Station stating that A1 is the husband of deceased Sharmila and the marriage between Sharmila and A1 was performed on 08.04.2009. A2 is his mother and A3 is the Aunt of A1. After marriage A1 and the accused lived at No.35, Sengani Amman Koil Street, Nandhivaram, Chengalpattu. The deceased was subjected to cruelty by A1 to A3 and she was harassed for demand of dowry and she was ill-treated for not bringing additional dowry from her parents. It

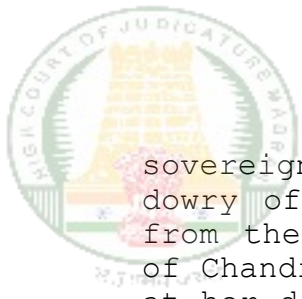


was submitted that the dowry demand had made Sharmila to commit suicide by setting herself ablaze, after pouring kerosene on her body by herself on 15.09.2009 in her parents house at 324, K.P.Janakiraman Street, Veppampattu and she died on the same day at K.M.C. Hospital, Chennai at 20.15 hours. Hence, the prosecution case was filed against A1 to A3 as they are said to have committed offences under Section 498 (A), 306 and 304(B) of I.P.C., in Cr.No.352 of 2009 at B4-Sevvapettai Police Station. Subsequently, the case was taken on file at Additional District and Sessions Judge, Fast Track Court No.III in S.C.No.175 of 2011.

3.Subsequently, the accused No.3 / Mallika has filed a petition in CrI.M.P.No.408 of 2011 in S.C.No.175 of 2011 to discharge her from the prosecution case. It was submitted that the marriage between the first accused and deceased took place on 08.04.2009 and it was performed in accordance with Hindu Rites and customs and that the marriage was an arranged one. It was submitted that the deceased and A1 were living happily and there was no problem between them. It was submitted that the deceased had gone to her parents house in order to participate in the ceremony performed for him and the same was performed on 14.09.2009. It was submitted that on 15.09.2009, the deceased was called to the matrimonial home and at 5.00 p.m. on that day, she poured kerosene on her body and set herself ablaze. It was submitted that the reason for the deceased to commit suicide was only due to the fact that the complainant had insisted the deceased to go to her matrimonial house even as per the statement of the complainant. It was submitted that there was no dowry demand and abetment to commit suicide and that no overt act had been stated against the petitioner in the complaint. It was submitted that even as per Revenue Divisional Officer's report, the statement of witnesses are that A1 was instigated by A2 to demand dowry and they harassed the deceased. It was submitted that this petitioner is only the aunt of the 1st accused and she has been falsely implicated in the case. It was submitted that this petitioner was residing at Chitlapakkam, which is far away from the matrimonial house. It was submitted that this petitioner had only attended the marriage and participated in the customary functions and therefore the adding of this petitioner as 3rd accused in the prosecution is without any basis. Hence, it was prayed to discharge her from the prosecution case.

4.The respondent, in his counter had averred that the petitioner / 3rd accused is the aunt of the 1st accused and as such the averments in the petition that she is staying at Chitlapakkam, which is far away from the matrimonial house, cannot be stated as a ground for discharge of the accused. Hence, it was prayed to dismiss the petition.

5.The lower Court observed that in the 161 Cr.P.C. statement of the defacto complainant, it is stated that on enquiry of her daughter as to why she was not happy and had a worried look on her face, her daughter had told her that her husband Madankumar and mother-in-law Maheswari and aunt Mallika had scolded her for getting only 40



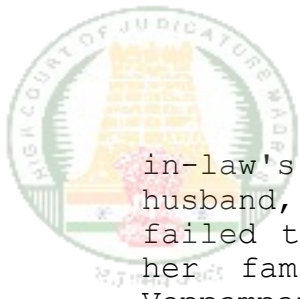
sovereigns of gold as dowry from her parents when they had demanded dowry of 60 sovereigns and also told her that they had made her work from the morning to evening. On scrutiny of 161(3) Cr.P.C. statement of Chandru, it is seen that when he enquired from the deceased, who was at her death bed, as to why she had committed the act, she had informed him that she had done so due to the harassment caused to her by her husband, mother-in-law and aunt of her husband.

6.The lower Court further observed that even in the statement of witness Sampathkumar, all the three names had been mentioned. The lower Court further observed that the neighbour of defacto complainant had also deposed that the deceased, when questioned about her attempt to commit suicide had told about the harassment, ill-treatment and demand of dowry of the 3rd accused.

7.The lower Court further observed that Vasu, who is the relative of Sasikala, the defacto complainant had also deposed that the demand of dowry was told to him and to his wife through phone call made by the deceased and he had deposed that all the three accused had harassed the deceased by demanding dowry. Thulasi, a maternal aunt of the deceased had also stated that all the three accused had harassed the deceased and demanded dowry.

8.The trial Court, on observing that the statements of the witnesses implicate all the three of the accused and that a prima facie case has been made out by the prosecution against the accused held that the guilt or innocence of the accused can be decided only after trial. The lower Court further opined that just because the petitioner's / A3 residence is at Chitlapakkam, it cannot be taken that she would not have come to the house of A1 and A2 after the marriage of A1. Hence, the lower Court on observing that the discharge petition has no substance, dismissed the petition.

9.Aggrieved by the dismissal of her petition, the petitioner / accused No.3 has preferred the present revision. The learned counsel appearing for the revision petitioner has contended in his revision that the entire statements given under Section 161(3) Cr.P.C. is an afterthought and deposed in order to wreck vengeance and tarnish the image of the petitioner's family. The First Information Report lodged by the complainant it had been mentioned that at around 5.00 p.m., after hearing the cry of her daughter, she had gone inside her house and saw her daughter's body charred state in the bathroom and that when she questioned her daughter as to why she had committed such an act, she had stated that she had done so only because she had insisted on her to go to her mother-in-law's place. It was further stated by the complainant that she had admitted her daughter at Thiruvallur Government Hospital. It was submitted that the trial Court failed to consider the fact that thereafter, after the death of the deceased, the complainant tuned her version by stating that her daughter had committed suicide only to the harassment caused to her at her mother-



in-law's place and due to the demand of additional dowry made by her husband, mother-in-law and aunt. It was contended that the trial Court failed to consider the fact that she got married and has been running her family separately near Chitlapakkam which is far away from Veppampattu. Moreover the deceased committed suicide in her parents house and the immediate reason was that her mother had insisted the deceased to go to her matrimonial house. So, the reason for her suicide was the immediate reaction of the wounds pronounced by her mother. It was also contended that the trial Court failed to note that no specific overt act against the petitioner is attributed in the 161 (3) Cr.P.C. statement as well as Revenue Divisional Officer report. Hence, it was prayed to set aside the order of the trial Court.

10.The highly competent counsel Mr.D.Sivaramkumar appearing for the State submits that initially, a criminal case has been registered in Cr.No.352 of 2009 on the file of the respondent police for the alleged offence under Section 174(b) of Cr.P.C. After a comprehensive enquiry conducted by the respondent herein, the prosecution case has been made out under Section 498(a), 306 and 304(b) of I.P.C. against the three accused. All the three accused, with common intention on demand of dowry had tortured the deceased and as a result, the deceased had committed suicide. The occurrence had happened within 7 years from the date of marriage. As such, the case had been levelled against the accused. A3 is the aunt of the 1st accused and she had also taken part in the commission of offence. Hence, the accused should not be discharged from the criminal proceedings.

11.On considering the factual position of the case and arguments advanced by the learned counsel on either side and on perusing the impugned order of the trial Court, this Court does not find any discrepancy in the conclusions arrived at for dismissing the petition. This Court is of the further view that in the dying declaration of the deceased, she had stated that A3 also had demanded dowry and harassed her. Therefore, this Court declines to allow the above revision. Consequently, the order passed by the trial Court is confirmed.

12.In the result, the above revision is dismissed. Consequently, the order passed in Crl.M.P.No.408 of 2011 against S.C.No.175 of 2011, on the file of the Additional District and Sessions Judge, Fast Track Court No.III, Thiruvallur, dated 29.12.2011, is confirmed. Connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(J)

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Sub Assistant Registrar



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To

1.The Additional District and Sessions Judge,
Fast Track Court No.III,
Thiruvallur.

2.The Inspector of Police,
Sevvapet Police Station,
Thiruvallur District.

3.The Public Prosecutor,
High Court,Madras.

4.The Section Officer,
Criminal Section, High Court,Chennai.

RBD(CO)
km/21.1.

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