

(2010) 08 MAD CK 0353

Madras High Court

Case No: Criminal O.P. No. 16492 of 2010

R. Vijayalakshmi

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 23, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 174
- Penal Code, 1860 (IPC) - Section 306

Citation: (2010) 1 LW(Cri) 1106

Hon'ble Judges: T. Sudanthiram, J

Bench: Single Bench

Advocate: P.R. Balasubramanian, for the Appellant; A. Saravanan, G.A. and C.D. Johnson, for Intervener, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Sudanthiram, J.

The Petitioner herein filed an application, seeking direction from this Hon'ble Court, directing the 1st Respondent to reinvestigate the case in Crime No. 718 of 2009 for including additional charges under Sections 498-A and 304-B along with Section 306 of Indian Penal Code.

2. The Petitioner herein is the mother of the deceased, Tharani. The deceased committed suicide on 26.08.2009 by self-immolation. A case was registered in Crime No. 718 of 2009 u/s 174 Code of Criminal Procedure Subsequently, final report has also been filed by the Police only against the mother of the deceased.

3. The Petitioner herein filed an affidavit, stating that the investigation has not been done properly and though materials are available to show that there was a demand of dowry and there was cruelty by the husband of the deceased, the Respondents

have failed to file a final report against the husband and in-laws of the deceased for offences under Sections 498-A and 304-B IPC. It is also stated in the affidavit that neither the Police nor the Revenue Divisional Officer have properly recorded the statement of the deceased.

4. Learned Counsel for the Petitioner was heard.

5. It is not stated either in the petition filed by the Petitioner or in the affidavit filed by the Petitioner about the stage of the case. Only during the hearing of the arguments, it was brought to the notice of this Court that after filing the final report, the case has been committed to the Sessions and trial had commenced before the Assistant Sessions Court, Namakkal in S.C. No. 45 of 2010.

6. Subsequently, learned Counsel appearing for the Petitioner fairly filed the copy of the evidence of the prosecution witnesses examined before the trial Court. Learned Counsel for the Petitioner pointed out that initially, the Inspector of Police has not filed a final report and about to close the case u/s 174 Code of Criminal Procedure, but the Petitioner filed an application before this Hon"ble Court in CrI.O.P. No. 25838 of 2009 and pursuant to the orders of this Court, the Police decided to file a final report for the offence u/s 306 IPC.

7. Learned Government Advocate (CrI. Side) submitted that even as per the Revenue Divisional Officer's enquiry, there is no dowry demand and no allegations were made against any other person, except the accused, Baikkyam @ Pappathi. He also submitted that so far, fifteen prosecution witnesses have been examined by the prosecution and only two more witnesses are yet to be examined and among them, the Investigating Officer, who laid a final report, has to be examined.

8. Mr. C.D. Johnson, learned Counsel sought for permission of this Court to intervene in this petition and make his submission on behalf of the accused, Baikkyam @ Pappathi, who is already facing charge for offence u/s 306 IPC. Learned Counsel submitted that the Petitioner had filed this application, suppressing the fact that the trial has almost come to an end and only in order to harass the accused and other family members, this petition is filed. Learned Counsel also submitted that even as per the evidence so far let in by the prosecution, no offence has been made out against the accused.

9. This Court has considered the submissions made by all the parties and perused the records.

10. This Court does not want to narrate all the details on the facts of this case, since it may affect the proceedings against the accused. But at the same time, it is to be seen that in the complaint given by the Petitioner, based on which, FIR has been registered, no serious allegation was made against the husband of the deceased or any other family members. Even during enquiry by the Revenue Divisional Officer, the Petitioner has given a statement and also signed in the said statement. In the

said statement, she had specifically stated that there was no demand of any cash or jewel as dowry. She also stated that she did not know anything about the quarrel among her daughter and her son-in-law. She did not make any serious allegation against anyone of the accused. After recording the statement, the Revenue Divisional Officer also concluded that it was not a case of dowry death.

11. This Court also perused the copy of the evidence of prosecution witnesses, Pws.1 to 15. None of the prosecution witnesses have deposed regarding the demand of dowry by the accused, Baikkyam @ Pappathi, or other members of the family. Therefore, this Court feels that it is not proper at this stage to order re-investigation in this case, so as to collect the materials to include the offences u/s 304-B IPC against the accused, Baikkyam @ Pappathi, or any other family members. At the same time, this Court feels that at the time of framing charges, the trial Court ought to have framed a charge for the offence u/s 498-A IPC also. A charge for the offence u/s 306 IPC is a grave charge, than the charge for the offence u/s 498-A IPC.

12. Section 498-A IPC is as follows:

498-A. Husband or relative of husband of a woman subjecting her to cruelty.- Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

13. It would be appropriate for the trial Court, before testing whether the offence u/s 306 IPC is made out against the accused, to decide whether the offence u/s 498-A IPC is also made out. Section 221(1) of the Code of Criminal Procedure is as follows:

221. Where it is doubtful what offence has been committed: (1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed someone of the said offences.

14. In view of Section 221 of the Code of Criminal Procedure, it is always safe to frame a charge u/s 498-A IPC also as alternative charge, for the charges u/s 306 IPC, if the deceased had committed suicide within 7 years from the date of her marriage. Even in cases where the materials are available for framing charge u/s 304-B IPC, alternative charges u/s 306 and 498-A IPC should be framed.

15. For the above said reasons, this petition filed by the Petitioner for reinvestigation is dismissed. The trial Court is at liberty to frame an additional charge against the accused, Baikkyam @ Pappathi for an offence u/s 498-A IPC and to proceed further, in accordance with law. Any of the observations made by this Court should not influence the trial Court, while deciding the case for the charges u/s 498-A and 306

IPC. No costs.