

(2009) 09 MAD CK 0262

Madras High Court (Madurai Bench)

Case No: Criminal O.P. (MD) No. 3403 of 2009 and M.P. (MD) No's. 1 and 2 of 2009

Dhanalakshmi, K.  
Varadharajan and

APPELLANT

Vs

Vinayagamoorthy Vs  
The State

RESPONDENT

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Date of Decision: Sept. 30, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 482
- Dowry Prohibition Act, 1961 - Section 4
- Penal Code, 1860 (IPC) - Section 109, 406A, 498

Citation: (2010) 1 LW(Cri) 834

Hon'ble Judges: G.M. Akbar Ali, J

Bench: Single Bench

Advocate: R. Meenakshi Sundaram, for the Appellant; P. Rajendran, G.A. (Crl. Side), for the Respondent

Final Decision: Allowed

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### Judgement

#### @JUDGMENTTAG-ORDER

G.M. Akbar Ali, J.

The petition is filed u/s 482 Code of Criminal Procedure to quash the charge-sheet in C.C. No. 333 of 2008 on the file of the learned Judicial Magistrate, Rajapalayam.

2. The facts of the case is as follows:

The Petitioners are the accused Nos. 1 to 3 for the alleged offence committed under Sections 498(A), 406 I.P.C. and Section 4 of the Dowry Prohibition Act in Crime No. 637 of 2007. One Gnanalakshmi, who is the daughter of the de-facto complainant was married to the one Raman in the year 1998. The first and second Petitioners are the parents of the said Raman. At the time of marriage, the de facto complainant

gave away the essential articles to run the family. After marriage, the couple were residing at Ooty and a child was born to the said Gnanalakshmi. Unfortunately, the child died on the next day of the delivery. Thereafter, the said Raman went to Canada for higher studies and subsequently, obtained a job and settled there. At the insistence the said Raman, his wife Gnanalakshmi joined with him at Canada in the year 2002 and the de facto complainant also accompanied his daughter to Canada. There at Canada, the de facto complainant found that his daughter was not living happily with her husband, who demanded money, and subjected her for cruelty. Therefore, the de facto complainant gave 1600 Canadian Dollars which was worth about Rs. 15,000/-. But not satisfied with the same, the husband demanded more money and to meet the demand, the de facto complainant made arrangement of 2,500 Canadian Dollar from the account of her daughter Gnanalakshmi at Rajapalayam Branch. Even thereafter, the de facto complainant received calls from his daughter that her husband was demanding more money and used to beat her and hence, the de facto complainant met the parents and brother viz., Vinayagamoorthy of the Raman, who were instigating him for such demand and cruelty and they justified the demands. The de facto complainant was meeting the demands on various times. When the de facto complainant requested the said Raman to send back his daughter to India he refused by saying that he has to get permission from his mother, who is the first Petitioner and accordingly, when the first Petitioner was requested, she demanded more dowry and refused to send his daughter back to India. This was continuing for some time and on 22.11.2006 the said Raman assaulted his wife so badly and she died. The Canadian Police filed a case of murder and intimated the death of the victim. The allegation of the de facto complainant is that only on the instigation of the Petitioners, the said Raman had demanded dowry and subjected her for cruelty and ultimately murdered her.

3. A case was registered in Crime No. 637 of 2007 based on the complaint given by the de facto complainant against the Petitioners. On completion of investigation, the Respondent police has filed a charge-sheet against A1 and A2 u/s 498(A), 406 and Section 4(1)(A) of Dowry Prohibition Act and against A3 u/s 498, 406 read with 109 I.P.C. The Petitioners have come forward before this Court for quashing the charge-sheet on the ground that the marriage took place in the year 1998; the husband had gone to Canada in the year 2000; only in the year 2002 the victim joined her husband and nearly for 2 years the victim was residing only with her parents; till 2006 the couple were living happily in Canada and till such time there was no complaint of cruelty or dowry demand. Further, the Petitioners contended that their son is facing criminal prosecution at Canada for the death of the victim and the Petitioners have nothing to do with the said crime. Moreover, the de facto complaint gave the said complaint only on 17.04.2007, which is after five months after the death of the victim by raising false allegation without any material and there is no evidence to constitute the said offences or make out a case against the Petitioners.

4. Heard the learned Counsel for the Petitioners and the learned Government Advocate (Crl.side).

5. The de facto complainant also appeared as intervenor through counsel and was heard.

6. The learned Counsel for the Petitioners would submit that the deceased never lived with the Petitioners after the marriage and there is no materials to show that they have subjected her for cruelty or instigated of demand of dowry as alleged by the de facto complainant. The learned Counsel also pointed out that the Petitioners are aged parents and the third Petitioner is the brother of the said Raman and all of them have nothing to do with the said offence and only to harass the Petitioners, the de facto complainant has falsely implicated them. The learned Counsel relied on a decision of the Supreme Court reported in 2 (2004) DMC 371 (SC) (Y. Abraham Ajith and Ors. v. Inspector of Police, Chennai and Anr.).

7. The learned Government Advocate (Crl.side) would submit that on a direction given by this Court in Crl.O.P. No. 5723 of 2007 a case has been registered in Crime No. 637 of 2007 under Sections 498(A), 406 r/w 109 I.P.C. and Section 4 of the Dowry Prohibition Act. The learned Government Advocate also pointed out that the investigation was over and charge-sheet was also laid against the Petitioners and the same is pending for examination of witnesses.

8. The learned Counsel for the intervener would submit that there were ample evidences to show that the Petitioners have subjected the victim for cruelty and demanded dowry which has to be proved only through a trial and quashing of the entire proceedings as against the Petitioners is unwarranted and against law.

9. The specific charge against A1 and A2 are under Sections 498-A and 406 I.P.C. and u/s 4(1)(a) of the Dowry Prohibition Act and as against A3 u/s 498-A, 406 r/w 109 I.P.C. The parents of the deceased had spoken about the entire incident and two other witnesses were examined to corroborate de facto complainant and his wife. The Senior Branch Manager of Bank of Baroda had been examined to speak about the money transaction. Four more witnesses were examined to speak about the betrothal ceremony and marriage ceremony and three witnesses were examined to speak about bringing the dead body of the said Gnanalakshmi from Canada and speak about funeral ceremony of the said victim.

10. The case of the Petitioners is that all the allegations contained in the complaint are only against the husband of the victim and there is no direct evidence against the Petitioner to attract the ingredients of Section 498A, 406 and 4(1)(a) of the Dowry Prohibition Act. The only allegation by the de facto complainant is that they were instigating the husband to do the said offences. The learned Counsel for the Petitioners pointed out that the marriage took place in the year 1998 and there was no complaint of demand of dowry and after the marriage the couple were residing at Ooty for two years and they never lived with the Petitioners. According to

Petitioners, from the year 2000 to 2002 the victim was living with the de facto complainant and there was no complaint of dowry demand or allegation of cruelty; the victim left for Canada along with the de facto complainant and was living till 2006 and the Petitioners never went to Canada and that being so, the allegation that the Petitioners committed offences under Sections 498(A), 406 and Section 4 of the Dowry Prohibition Act will not arise. According to the Petitioners, the de facto complainant has bent upon to harass the Petitioners who are innocent and whatever being the fault of their son they cannot be punished under the alleged offences.

11. The only point for consideration arises whether this Court can exercise its powers u/s 482 Code of Criminal Procedure to quash the charges levelled against the Petitioners at this stage and whether the continuance of the proceeding will amount to abuse of process of law?

12. The instant case is an unfortunate episode of a married woman who lost her life at the hands of her husband in a foreign soil. The father of the victim alleges demand of dowry and cruelty as the cause of death. However, the Canadian law has taken care to punish the offender and it is understood that the husband was charged with murder.

13. But the anxiety of the saddened father does not end there and a complaint was given by him against the parents and brother who are also under similar torment.

14. Numerous cases have been filed against the in-laws and the relatives for cruelty and for dowry demand either by the victim or by their parents. In my opinion, there are three categories of in-laws and relatives.

The first category is, the active participants;

The second category is, the mute/silent spectators; they will neither resent nor object their son's actions; and some time their position is precarious as they are dependants;

The third category is, objecting, resenting parents who disassociate themselves from the perpetrators.

15. I have no doubt in my mind that the 3rd category cannot be fastened with any of the offences as they stand clear. The first category are the active participants, directly or indirectly, who are guilty of the offences subject to evidences and presumptions. If they are directly involved in the offence, the provisions u/s 498-A, or 304 B of IPC and provisions under D.P. Act will take care and if they are indirectly involved Section 306 or 109 I.P.C. will be pressed in to service.

16. As far as the second category is concerned, they are in a different position and they are some time nearer to the third category or some time nearer to first category.

17. In any event, We are bound by rule of law.

Coming to the present case, the first and second Petitioners, who are the mother-in-law and father-in-law, are charged for the offence u/s 498-A, 406 I.P.C and u/s 4 of Dowry Prohibition Act and the 3rd Petitioner who is the brother-in-law, is charged for instigating the above said offences u/s 109 of IPC.

18. The Section 498-A of I.P.C., reads 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."

Explanation -For the purpose of this section ."cruelty" means -

(a).....

(b)harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand of any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

19. The Section 406 of I.P.C., reads as follows

Punishment for criminal breach of trust: Whoever commits criminal breach of trust shall be punished with imprisonment of either description for term which may extend to three years, or with fine, or with both."

Section 4 of Dowry Prohibition Act reads as follows:

Penalty for demanding dowry.- If any person demands, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, any dowry, he shall be punishable with imprisonment for a term which shall not be less than six months, but which may extend to two years and with fine which may extend to ten thousand rupees:

Section 2 of Dowry Prohibition Act reads as follows:

2. Definition of "dowry" - In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to a marriage to the other party to the marriage; or

(b)by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person; at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not included] dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.

20. One of the charge is u/s 406 of I.P.C., for criminal breach of trust. Where is the entrustment of property or dishonest misappropriation?

21. The Hon"ble Supreme Court in [Rishi Anand and Another Vs. Government of National Capital Territory of Delhi and Others](#), has held as follows:

6..... These alleged acts which took place beyond the territory of India, even if assumed to be correct, does not make out a case to proceed against the first Appellant for an offence u/s 406 IPC. The High Court, in exercise of its jurisdiction u/s 482 Cr PC, ought to have quashed the criminal proceedings against the 1st Appellant.

22 . The another charge is u/s 4 of the Dowry Prohibition Act. To attract the ingredients of Section 4 of Dowry Prohibition Act, there must be some specific allegations of demand of Dowry as defined in the Act. "Dowry" means any property or valuable security given or agreed to be given either directly or indirectly-before or any time after the marriage and in connection with the marriage of the said parties. Even the de facto complainant never used the word "dowry".

23 . Yet another charge is u/s 498 A of I.P.C. Even according to the de facto complainant, the Petitioners never lived with the deceased at any point of time during her eight years of marriage. The defacto complainant and other witnesses in their statement would state that the husband was demanding money and subjecting the deceased for cruelty in Canada. According to them, when the same was complained to the Petitioners, they either acted indifferently or justified the demands of their son by stating that why not the defacto complainant meet the demand. This happened in the year 2003.

24. Cruelty must be either physical or mental or harassment of the women where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand of any property or valuable security. It is pertinent to note that the alleged cruelty or harassment should be directed towards the woman. The statements given by the defacto complainant or by the other witnesses would neither indicate cruelty nor harassment of the women, directly or indirectly. Obsoletely there is no material to involve the 3rd Petitioner u/s 109 I.P.C. for instigation. Moreover the demands and payments where during the period 26.9.2002 to 11.5.2004. The victim died on 22.11.2006 and the complaint was made on 17.4.2007.

25. It is also pertinent to note that the first Petitioner is aged about 55 years and the second Petitioner is aged about 65 years, living away from their son. In my opinion, the Petitioners would fall under the second category, never resenting, non objecting and some time justifying, parents. Should they be subjected for a trial?

26. In [R.S. Raghunath Vs. State of Karnataka and another](#), the Honb"le Supreme Court has laid down the principles governing the exercise of powers u/s 482 Code of

Criminal Procedure These principles have been followed in catena of cases and it is a settled principle that the powers of quashing the criminal proceeding should be exercised very sparingly and in rarest of rare cases. Certain guidelines are also given where the powers can be exercised and the guidelines No. 7 reads as follows;

(7) Where a criminal proceeding is manifestly attended with mala fide and or where the proceeding is maliciously instituted with ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private or personal grudge.

27. In my considered view, in the instant case, the motive is only to wreck vengeance and the allegations are vexatious and it is a fit case to be interfered with u/s 482 of Code of Criminal Procedure, otherwise the continuance of which, will amount to abuse of process of law.

28. In the result, this petition is allowed and the charge-sheet against the Petitioners in C.C. No. 333 of 2008 pending on the file of the learned Judicial Magistrate, Rajapalayam, in Crime No. 637 of 2007, is hereby quashed. Consequently, connected miscellaneous petitions are closed.