

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-04-2013

CORAM

THE HONOURABLE MR. JUSTICE S.PALANIVELU

CRL.RC.No.330 of 2013  
and M.P.No.1 of 2013

Manjunath Eshwar

.. Petitioner/Accused5

Versus

State rep by  
Inspector of Police AWPS  
Tambaram

.. Respondent/Complainant

Revision filed u/s.397 r/w 401 Cr.P.C., to call for the records and set aside the order dated 30.01.2013 made in M.P.No.6507 of 2012 in C.C.No.421 of 2009 on the file of the Judicial Magistrate, Tambaram.

For Petitioner : Mr.R.V. Vasudevan

For Respondent : Mr.C. Emilias  
Addl. Public Prosecutor,

ORDER

1. The following are the allegations contained in the petition filed by the petitioner under Section 239 Cr.P.C. for discharging him from the case:-

The petitioner is sister's husband of first accused who is husband of defacto complainant. The marriage of the first accused with the defacto complainant took place in the year 2000. He was not at all a member in the family of the 1<sup>st</sup> accused at the time of marriage. There would be no possibility of he being a party in the alleged dowry harassment/demand. In the complaint given to the police the defacto complainant it is stated that "vd;id xU khjpupahfg; ghu;j;jhd;/ jfhj thu;j;ijfshy; jpl;odhd;/ vd;id ,oj;jhd;" Even if it is admitted for argument sake, it would not form a part to constitute an offence under Section 498(A) I.P.C. or Section 4 of Dowry Prohibition Act. The defacto complainant only with an intention of harassing the petitioner has added his name in the complaint. The act of complainant is against the well laid dictum of the Hon'ble Supreme Court in various judgments that adding distance

relatives are "damage more than repair" or remedy more than peril. Hence the petitioner may be discharged from the case.

2. In the counter filed by the respondent it is averred as follows:

2.(a) The petition is not maintainable and liable to be dismissed as devoid of merits. The above petition is filed to drag on the case and to gain time. Even though the petitioner is not the relative of 1<sup>st</sup> accused at the time of marriage with the defacto complainant he is the main relative after the marriage of the 1<sup>st</sup> accused with the defacto complainant and played a major role in harassing the defacto complainant. The materials collected during the investigation and produced before the Court disclose a prima facie case against the petitioner. The statement of the witnesses recorded by the Investigating Officer during the investigation clearly establishes the act of the petitioner in committing the offence charged against him and other accused. It is well settled law that at the time of framing charges court need not go deep into the merits of the case and court has to frame charges if prima facie case is made out if unrebutted would warrant a conviction. Hence, the Court may be pleased to dismiss the petition for discharge.

3. After hearing both sides, the learned Judicial Magistrate, Tambaram, has dismissed the petition by observing that there is a prima facie case against the petitioner and since the petition is filed at the stage of framing charges. Aggrieved at the order of the Judicial Magistrate, the petitioner is before the Court.

4. Point for consideration:

Whether sufficient prima facie materials are available to frame charges against the petitioner/accused?

Point:

5. Mr.R. Vasudevan, learned counsel for the petitioner would strenuously argue that inasmuch as the petitioner was not a member of accused family at the time of marriage the offence under Dowry Prohibition Act would not attract, that even the allegations contained in the FIR could not constitute any crime against this petitioner, that it is well settled principle that when there is no material at all on the basis of which it could be said that there is prima facie case against the accused and the charges against him appear to be groundless, there could be no charges, that the allegations contained in the complaint are false, that according to the statutory requirement of Section 2 and 4 of the D.P. Act, to bring a person under Dowry Prohibition Act, the prosecution has to atleast state that the said person was a party to the marriage which began the cause of action for the alleged crime, but when the petitioner was not a party to the marriage the petitioner cannot be saddled with the charge of Section 4 of D.P. Act and that no

sufficient material is available to get the accused in this case, that the trial Court has not approached any of the issues in the pragmatic settled position of law laid down by the Apex Court and in the lines of Criminal Procedure Code but dismissed by stating simple reason that since the petition is filed at the stage of framing the charge. In support of his contention the learned counsel for the petitioner relies upon various judgments of Honourable Supreme Court.

6. In 1972 CRL.L.J.329 [Century Spinning and Manufacturing Co.Ltd., and others v. The State of Maharashtra] Their Lordships have observed as follows:

7.

"Reading the two sub-sections together it clearly means that if there is no ground for presuming that the accused has committed an offence, the charges must be considered to be groundless, which is the same thing as saying that there is no ground for framing the charges. This necessarily depends on the facts and circumstances of each case and the Magistrate is entitled and indeed has a duty to consider the entire material referred to in Sub-section (2). (Para 15)

It cannot be said that the Court at the stage of framing the charges has not to apply its judicial mind for considering whether or not there is a ground for presuming the commission of the offence by the accused. The order framing the charges does substantially affect the person's liberty and it cannot be said that the Court must automatically frame the charge merely because the prosecuting authorities, by relying on the documents referred to in Section 173, consider it proper to institute the case. The responsibility of framing the charges is that of the Court and it, has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution. (Para 16)"

7. In AIR 1999 SC 471 [Arun Vyas and another v. Anita Vyas] it is held that the allegations or imputations made against the accused do not make out a prima facie case and do not furnish basis for framing charges, it will be a case of charge being groundless, so the court has no option but to discharge the accused, that the most appropriate stage at which the accused can plead for his discharge is the stage of framing charges and that the accused need not wait till the completion of the trial.

8. In (2000) 8 SCC 547 [K. Ramakrishna and others v. State of

Bihar and another] the Honourable Supreme Court has held that if upon the admitted facts and documents relied upon by the complainant or prosecution, without sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed.

9. The next limb of contention of the learned counsel for the petitioner is that the petitioner being not a party to the marriage, he cannot be charged under Section 4 of Dowry Prohibition Act. It is submitted that the date of marriage of the defacto complainant with the first accused is 23.06.2000 and the marriage of this petitioner with fourth accused was celebrated on 18.02.2001. Hence, at the time of marriage of the defacto complainant, the petitioner was not a member in the 1<sup>st</sup> accused family and he did not participate in any affair of the marriage.

10. The learned counsel for the petitioner draws attention of this court to the definition of the term 'Dowry' as defined in Section 2 of the Dowry Prohibition Act [hereinafter referred to as 'Act']. The provision 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 any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies."

11. As per the above said definition, the person on whom the charges made, should be a party to the marriage and unless he is shown as a party to the marriage, the charge under Section 4 of the Act could not be invoked, the learned counsel adds. Section 4 of the Act goes thus -

4. Penalty for demanding dowry. - If any person demands, directly or indirectly, fromt he 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:

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

12. In support of his contention, the learned counsel for the petitioner places much reliance upon a decision of the Hon'ble Supreme Court reported in 2010 (1) MWN (Cr.) 39 (SC) [State of U.P. vs. Santosh Kumar] wherein Their Lordships have held as follows :-

40. Section 4 of the Dowry Act deals with penalty for demanding dowry, directly or indirectly, from the parents or other relatives or guardian of a bride or bridegroom, as the case may be. The object of Section 4 is to discourage the very demand for property or valuable security as consideration for a marriage between the parties thereto. Section 4 prohibits the demand for 'giving' property or valuable security which demand, if satisfied, would constitute an offence under Section 3 read with Section 2 of the Act.

41. Thus, the ambit and scope of Sections 3 and 4 of the Dowry Act is different from the ambit and scope of Section 498-A, IPC.

13. It is made clear that the implications of Section 498 IPC would not disturb much confusion with the provisions of the Act. It is also made clear that the dowry should have been demanded directly or indirectly from the parents or other relatives or guardian or bridegroom. The learned counsel also cites a decision of the Calcutta High Court reported in 1991 CrL LJ 639 [Sankar Prosad Shaw and ors. v. State and another] wherein the learned Judge has dealt with the definition on term 'Dowry' as referred in Section 2 of the Act. The discussion is as follows:-

"In view of the definition of "Dowry" under S.2 (i) of Dowry Prohibition Act, the mere demand thereof would not be an offence under S.4 of that Act. It should either be given or agreed to be given at or before or after the marriage in connection with the marriage. Although in common parlance one very often use the term "dowry demand" in the cases where the husband or his relations demand valuable security from the parents and other relations of the wife after the marriage, yet this



will not amount to demand for dowry under the Act in view of the definition of dowry contained in S.2 of the Act. Demand for dowry under the Act and in the legal sense will mean the demand for dowry only when it refers to property of valuable security given or agreed to be given at or before or after the marriage."

14. From the above, the following points emerge -

(a) the dowry should have been demanded directly or indirectly to the parents or by the parents of the bridegroom or relatives of the third party

(b) It may be before or after the marriage

(c) the demand must be directly or indirectly in connection with the marriage

(d) the person who was not a party to the marriage at the time of marriage could not be charged under section 4 of the Act.

15. In the light of the above said decisions, it is to be held that since the petitioner was not a party to the marriage and there could be no demand by the petitioner either to the bride or to her parents, Section 4 of the Act could not be invoked and he has to be discharged from Section 4 of the Act. In so far as charge u/s.498A IPC is concerned, the relevant allegations contained in the complaint would attract the said provision since they are in the nature of perpetrating cruelty upon the defacto complainant. In such view of this matter, the petitioner is entitled to be discharged from the charge u/s.4 of DP Act alone and not from the charge u/s.498A IPC. This point is answered accordingly.

16. In fine, criminal revision is partly allowed by discharging the petitioner from the charge under Section 4 of the Dowry Prohibition Act (28 of 1961), Act. The charge u/s.498A IPC shall continue on record. Connected Miscellaneous Petition is closed.

Sd/-

Deputy Registrar

/true copy/

Sub Assistant Registrar.

ggs

To

1.The Inspector of Police,  
All Women Police Station,  
Tambaram.

2.The Public Prosecutor,  
High Court, Madras.

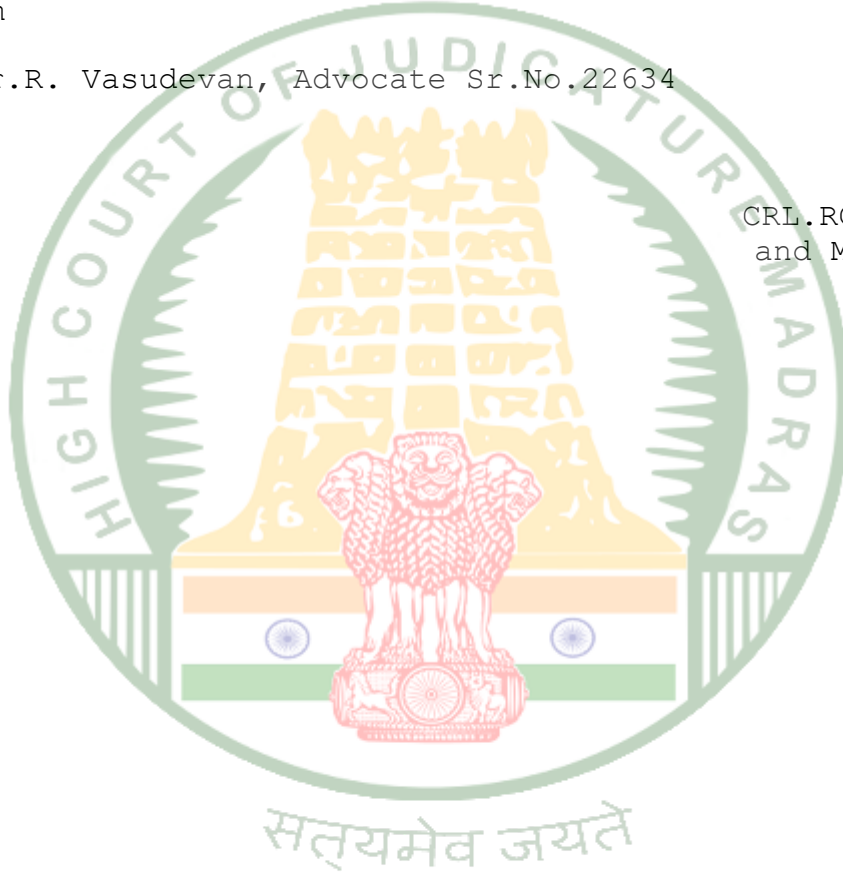
3.The Judicial Magistrate,  
Tambaram

+1cc to Mr.R. Vasudevan, Advocate Sr.No.22634

PUR(CO)  
ka 20/06

CRL.RC.No.330 of 2013  
and M.P.No.1 of 2013

16.04.2013



WEB COPY