

S.Ramya Devi Vs. D.Madhankumar

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Court : Chennai

Decided On : Jan-29-2013

Judge : A.Arumughaswamy

Appellant : S.Ramya Devi

Respondent : D.Madhankumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

29. 01.2013 CORAM: THE HON'BLE MR.JUSTICE A.ARUMUGHASWAMY
Crl.O.P. No.37007 of 2007 and M.P.Nos.1 of 2007 and 1 of 2008 S.Ramya Devi ..
Petitioner/Accused Vs. D.Madhankumar .. Respondent/Complainant Criminal
Original Petition filed under section 482 of Criminal Procedure Code to call for the
records in C.C.No.6066 of 2007 on the file of the learned II Metropolitan
Magistrate, Egmore, Chennai and quash the same. For Petitioner : Mr.Kumar
Talrejaa For Respondent : Mr.R.Lakshmi Narasimhan ***** O R D E R The petition
has been filed to quash the proceedings pending against him in C.C.No.6066 of
2007 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

2. The facts of the case are as follows: The marriage of the petitioner and the
respondent has taken place on 12.9.2003 as per the Hindu Rites and Customs
and out of the said wedlock, the petitioner gave birth to a female child on
3.11.2004. Thereafter, due to some difference of opinion between the spouses,
the petitioner refused to live with the complainant along with his parent. Therefore,

they lived separately in a house at Kilpauk from 30.04.2006 and once again the petitioner became pregnant and the same was also confirmed by the Life Line Rigid Hospital on 24.8.2006. The same was also admitted by the accused. It is further alleged that during the period of pregnancy, the petitioner never gave up her attitude of ill-treating the complainant herein and threatened him that she would terminate the pregnancy. Unable to bear with the torture given by his wife, the respondent has also lodged a complaint with the Kilpauk All Women Police Station and based on the same, a case has been registered which is pending investigation. The respondent husband has also filed a petition for divorce under Section 13(i)(ia) of the Hindu Marriage Act, 1955 and the same is pending before the learned I Additional Family Court, Chennai in OP No.2391/2006. As a counter blast, the petitioner herein/accused has lodged a complaint under Section 498-A of IPC read with Sections 3 and 4 of the Dowry Prohibition Act, 1963 against the complainant and his family members and the same was registered in Crime No.4/2006 by the All Women Police Station, Kilpauk, Chennai for the offences under Section 498 of IPC read with Sections 3 and 4 of the Dowry Prohibition Act. It is also alleged in that complaint that due to the kick made by the respondent on the stomach of the petitioner/accused, it developed a unbearable pain in her stomach and later on, the pregnancy was terminated. The respondent herein has filed a Crl.O.P.No.26680/2006 for anticipatory bail and the petitioner herein also has filed intervening petition in the same. Since terminating the pregnancy itself is an offence, the respondent has preferred the present complaint before the learned II Metropolitan Magistrate, Chennai and subsequently, the same was taken cognizance as C.C.No.6066/2007 by the learned II Metropolitan Magistrate, Chennai. Aggrieved over the same, the petitioner is before this Court with this petition.

3. The learned Counsel for the petitioner would submit that during pregnancy, the respondent by demanding flat and car, kicked her on his stomach in the presence of other family members due to which the pregnancy got aborted and the petitioner was put to unbearable pain and sufferings. The learned Counsel would further submit that the termination of the pregnancy is a normal thing and the same is not prohibited as per the provisions of the Medical Termination of Pregnancy Act (hereinafter referred to as, 'the Act'. Therefore, the learned Counsel would pray to

allow this petition.

4. The learned Counsel for the respondent would submit that when once the pregnancy was confirmed by the Life Line Rigid Hospital on 24.8.2006, it is not known, how the same was terminated and the same has to be proved by the petitioner/accused. Hence, the learned Counsel would pray to dismiss the present petition.

5. Heard the rival submissions made on either side and I have also perused the materials available on record.

6. At the outset, it is not in dispute that the marriage between the petitioner and the respondent has taken place in the year 2003 as per the Hindu rites and customs and they have blessed with a female child in the year 2004. Thereafter, due to some misunderstanding between them, they lived separately and after some time, they lived together due to which she got pregnant and the same was confirmed by the Life Line Rigid Hospital on 24.8.2006 and Dr.Jayanthi of the concerned Hospital has issued a reference stating as follows: "Single early live intra uterine gestation with CRL measuring 15 mm corresponding to 8 weeks gestation." 7. Now, the point that arises for consideration is as to whether the termination of the pregnancy was done as per the consent of the petitioner/accused or the foetus has been terminated on the ill-treatment meted out to her by her husband.

8. It is needless to point out that the above fact of termination of pregnancy would be decided during the time of recording the evidence by the trial court. The learned Counsel for the petitioner would also rely on a decision of the High Court of Bombay at Nagpur in *Sau. Archana and others vs. State of Maharashtra* and another reported in CDJ 200.BHC 08.in this regard. In my considered opinion, that decision relates to Section 312 of IPC and not with the medical termination of pregnancy. Therefore, the said decision will not come to the rescue of the petitioner herein. So far as this case is concerned, as per Section 3 of the Tamil Nadu Medical Termination of Pregnancy Act, pregnancy can be terminated only by a Registered Medical Practitioner but subject to certain conditions and the pregnancy should not exceed 12 weeks and two doctors opinion are necessary for the termination. Further, as per Section 4 of the Act, the termination of pregnancy

must be in a hospital by a qualified Doctor. In this case, these facts would be considered by the trial court only at the time of trial and proved by the petitioner herein/accused since, no investigation was made by the police in this regard. Unfortunately at the earliest point of time, when the husband has given a complaint to the police, no action was taken on the same. Therefore, he has preferred a complaint under Section 200 of Cr.P.C. before the learned Metropolitan Magistrate concerned and the same was taken on file as cited supra.

9. In view of all the above, I am of the opinion that these are the facts to be decided after giving opportunity to both the parties by the trial court by appreciating the evidence on either side and at this stage, the criminal proceedings pending before the learned II Metropolitan Magistrate, Chennai in C.C.No.6066 of 2007 cannot be quashed. Accordingly, the Criminal Original Petition is dismissed with a direction to the petitioner to agitate all the grounds raised here before the trial court and the trial court is directed to dispose of the case by taking into account the provisions of the Tamil Nadu Medical Termination of Pregnancy Act, more particularly, Sections 3 and 4 of the Act. After the trial is over, the presence of the petitioner is dispensed with and she is directed to appear as and when required by the court. Before the conclusion of the trial, In the event of filing of any 317 Cr.P.C. petition by the petitioner, it is for the trial court to decide the same on merits. Consequently, connected Miscellaneous Petitions are also closed. tsi To 1. The II Metropolitan Magistrate, Chennai.

2. The Public Prosecutor, High Court Madra

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