

2008 SCC OnLine Mad 3 : 2008 Cri LJ 3167 : (2008) 5 All LJ (NOC 1101) 354 :  
(2008) 6 AIR Bom R (NOC 1070) 351 : (2008) 1 LW (Cri) 263

Madras High Court  
(BEFORE A. SELVAM, J.)

H. Mohamed Ibrahim Kaleel & Ors.

*Versus*

State & Anr.

Crl. R.C. Nos. 188 & 189 of 2007

Decided on January 2, 2008

ORDER

1. These criminal revision cases have been filed against the orders passed in Crl. M.P. Nos. 540 & 398 of 2007 in Calendar Case No. 509 of 2004 by the Judicial Magistrate Court, Pudukottai. The second respondent in Criminal Revision Case No. 188 of 2007 as petitioner has filed the petition in question u/s. 91 of the Code of Criminal Procedure and the same has been taken on file in Crl. M.P. No. 540 of 2007 praying to issue search warrant. The Judicial Magistrate, Pudukottai after considering the divergent contentions raised on either side has allowed the same. The revision petitioners as petitioners have filed a petition under Section 239 of the Code of Criminal Procedure and the same has been taken on file in Crl. M.P. No. 398 of 2007 praying to discharge them from the proceedings of Calendar Case No. 509 of 2004. The Judicial Magistrate, Pudukottai after considering the rival contentions raised on either side has dismissed the same.

2. Since common question of laws and facts are involved, common order is passed in Criminal Revision Case Nos. 188 & 189 of 2007.

3. Before propounding the rival submissions made by either counsel, it would be apropos to perorate the circumstances under which Crl. M.P. Nos. 540 & 398 of 2007 have been filed. The second respondent in both the revision cases has lodged the complaint in question on 21-8-2004 and the same has been registered in Crime No. 5 of 2004 under Sections 498(A) of Penal Code, 1860 and also under Section 4 of the Dowry Prohibition Act, wherein the revision petitioners herein have been arrayed as accused.

4. In the complaint, it has been specifically stated that the marriage between the second respondent (complainant), the first accused viz., Mohamed Ibrahim Kaleel, has been conducted on 25-9-1995 and at the time of marriage as required by the first accused and his relatives, the parents of the second respondent (complainant) have given 150 Sovereigns of gold jewels, Rupees 2,00,000/- and household articles by way of dowry and at the time of marriage, the first accused has run a printing press which



resulted in heavy loss. In the meanwhile, the second respondent (complainant) has given birth to a child, but, unfortunately the same has passed away. After few days, the parents of the second respondent have dropped her in the house of the first accused at Tiruchirapalli. The first accused and other accused have tortured the second respondent to get money from her parents so as to build a house. The first accused without the knowledge of the second respondent (complainant) has kept certain jewels

in bank lockers and subsequently, sold some jewels and by utilising sale proceeds, the first accused has gone to Malaysia. After some time, the second respondent (complainant) has gone to Malaysia and he has given birth to a child. Further it is stated in the complaint that the in-laws of the second respondent (complainant) have also caused dowry torture and under the said circumstances, the complaint in question has been lodged.

5. The investigating agency after completing investigation has filed a final report on the file of the Judicial Magistrate Court, Pudukottai and the same has been taken on file in Calendar Case No. 509 of 2004. During the pendency of the Calendar Case No. 509 of 2004, the second respondent (complainant) has filed CrI. M.P. No. 540 of 2007 under Section 91(1) of the Code of Criminal Procedure and all the accused (revision petitioners) have filed CrI. M.P. No. 398 of 2007) under Section 239 of the Code of Criminal Procedure.

6. As adverted to earlier, CrI. M.P. No. 540 of 2007 has been allowed and CrI. M.P. No. 398 of 2007 has been dismissed by the Judicial Magistrate, Pudukottai. Against the order passed in CrI. M.P. No. 540 of 2007, Criminal Revision Case No. 188 of 2007 has been filed and likewise, against the order passed in CrI. M.P. No. 398 of 2007, Criminal Revision Case No. 189 of 2007 has been filed.

7. For better appreciation and also for easy reference, the Court shall first consider Criminal Revision Case No. 189 of 2007.

8. The learned counsel appearing for the revision petitioners has strenuously contended that the alleged demand of dowry has been made only at Tiruchirapalli and therefore, the complaint in question cannot be lodged in All Women Police Station, Pudukottai and further the Judicial Magistrate Court, Pudukottai has virtually no jurisdiction to decide the alleged culpability of the revision petitioners (accused) and under the said circumstances, the revision petitioners (accused) have filed CrI. M.P. No. 398 of 2007, but, the Judicial Magistrate, Pudukottai, without considering the contentions urged on the side of the revision petitioners (accused) has erroneously dismissed the same and therefore, the order passed by the Judicial Magistrate, Pudukottai, in CrI. M.P. No. 398 of 2007 is liable to be set aside and the petition in question is liable to be allowed.

9. In order to remonstrate the argument advanced by the learned counsel appearing for the revision petitioners (accused), the learned counsel appearing for the second respondent (complainant) has also equally argued that even though the alleged demand of dowry has been made at Tiruchirapalli and since the second respondent (complainant) has not been able to brook the demand of dowry made by the revision petitioners (accused), left marital abode and now she is living at the house of her parents in Pudukottai and therefore, All Women Police Station, Pudukottai is having jurisdiction to entertain the complaint and likewise the Judicial Magistrate Pudukottai is also having jurisdiction to decide the criminality of the revision petitioners (accused) and therefore, the argument advanced by the learned counsel appearing for the revision petitioners (accused) is sans merit and Criminal Revision Case No. 189 of 2007 is liable to be dismissed.

10. It is an admitted fact that the revision petitioners (accused) have filed the CrI. M.P. No. 398 of 2007 under Section 239 of the Code of Criminal Procedure, praying to discharge them from the proceedings of Calendar Case No. 509 of 2004. In fact, this Court has perused the petition filed in CrI. M.P. No. 398 of 2007 in Calendar Case No. 509 of 2004, wherein two grounds have been mentioned. The first and foremost ground, is that the Judicial Magistrate, Pudukottai is not having Jurisdiction to determine the culpability of the revision petitioners (accused) and the second ground is that no sufficient materials are available so as to attract the provisions of Section 498(A) of Penal Code, 1860 and also Section 4 of the Dowry Prohibition Act.

11. In order to analyse the rival submissions made by either counsel, the Court has to once again look into the allegations made against the revision petitioners (accused) in the complaint. In the complaint, it has been specifically stated that all kinds of alleged



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dowry torture have been made only in the house of the first accused (husband of the complainant) which situates at Tiruchirapalli and further it is stated in the complaint that since the second respondent (complainant) has not been able to thole the demand of dowry alleged to have been made by the revision petitioners/accused, she has left marital abode and now she is living with her parents in Pudukottai. The Judicial Magistrate, Pudukottai has dismissed the petition filed in CrI. M.P. No. 398 of 2007 mainly on the ground that since the second respondent (complainant) has been living in. Pudukottai, the Judicial Magistrate Court, Pudukottai is having jurisdiction to decide the culpability of the revision petitioners (accused).

12. In order to buttress the argument advanced by the learned counsel appearing for the revision petitioners (accused), he has befittingly drawn the attention of the Court to the decision reported in (2004) 8 SCC 100 : (2004 Cri LJ 4180) (*Y. Abraham Ajith v. Inspector of Police, Chennai*) wherein the Apex Court has held in categorical terms that the complaint itself disclosed that after 15-4-1997 the respondent left the place 'N' (where she was residing with her appellant husband) and came to the City 'C' Since all the alleged acts as per the complainant took place at 'N', the Courts at 'C' did not have the jurisdiction to deal with the matter.

13. In fact, identical facts and circumstances have arisen in the case referred to earlier. In the instant case, all kinds of dowry torture have been made only at Tiruchirapalli. Therefore, as per Sections 177 & 178 of the Code of Criminal Procedure, the concerned Court in Tiruchirapalli is alone having exclusive jurisdiction to deal with the alleged culpability of the revision petitioners (accused). Simply because, the second respondent (complainant) has been living in her parents house at Pudukottai, the All Women Police Station, Pudukottai has no jurisdiction to entertain the complaint in question and likewise the Judicial Magistrate, Pudukottai has also virtually no jurisdiction to decide the alleged culpability of the revision petitioners (accused). Therefore, it is pellucid that the order passed in CrI. M.P. No. 398 of 2007 in Calendar Case No. 509 of 2004 by the Judicial Magistrate, Pudukottai is totally erroneous and the same is liable to be set aside.

14. At this juncture, the learned counsel appearing for the second respondent (complainant) has drawn the attention of the Court to the provisions of Section 179 of the Code of Criminal Procedure and the same reads as follows;

"Offence triable where act is done or consequence ensues.- When an act is an offence by reason of anything which has been done and of a consequence which has ensued, the offence may be inquired into or tried by a Court within whose local jurisdiction such thing has been done or such consequence has ensued."

15. It has already been pointed out that the learned counsel appearing for the second respondent (complainant) has advanced his argument mainly on the ground that after meeting out dowry torture at the hands of the revision petitioners (accused), the second respondent (complainant) has been living with her parents at Pudukottai and therefore, the Judicial Magistrate, Pudukottai is having jurisdiction to decide the culpability of the revision petitioners (accused). It is not an adulation to say that the decision report in (2004) 8 SCC 100 : (2004 Cri LJ 4180) (*Y. Abraham Ajith v.*

*Inspector of Police, Chennai*) is a befitting answer to the argument advanced by the learned counsel appearing for the second respondent (complainant). As adverted to earlier, similar facts and circumstances are found in the case referred to in the decision. Therefore, the argument advanced by the learned counsel appearing for the second respondent (complainant) is really sans merit and the same can be eschewed and further the provisions of Section 179 of the Code of Criminal Procedure has no application to the facts and circumstances of the present case.

16. The revision petitioners (accused) have filed Crl. M.P. No. 398 of 2007 mainly on two grounds. The first and foremost ground is that the Judicial Magistrate, Pudukottai is not having Jurisdiction to decide the culpability of the accused (revision petitioners). It has already been decided that the Judicial Magistrate, Pudukottai has no jurisdiction to decide the alleged criminality of the accused (revision petitioners). The second ground is that no sufficient materials are available in the complaint so as to invoke the provisions of Section 498 of the Penal Code, 1860 as well as Section 4 of



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the Dowry Prohibition Act. In fact, this Court has perused the entire allegations made in the complaint and ultimately found that sufficient materials are available so as to invoke the provisions of Section 498 of Penal Code, 1860 as well as Section 4 of the Dowry Prohibition Act against the revision petitioners (accused). Therefore, the second ground mentioned in the petition is not at all maintainable and the same cannot be accepted.

17. Now, the Court has to analyse the Criminal Revision Case No. 188 of 2007. It has already been stated that the second respondent as petitioner has filed Crl. M.P. No. 540 of 2007 under Section 91(1) of the Code of Criminal Procedure praying to issue search warrant. It is stated in the petition that the revision petitioners (accused) are in possession of article mentioned in the petition and under the said circumstances, Crl. M.P. No. 540 of 2007 has been filed so as to issue search warrant. The Judicial Magistrate, Pudukottai has allowed Crl. M.P. No. 540 of 2007.

18. The learned counsel appearing for the revision petitioners (accused) has ingeniously contended that the provision of Section 91(1) of the Code of Criminal Procedure cannot be invoked against (accused) and therefore, the entire order passed by the Judicial Magistrate, Pudukottai is erroneous and the same is liable to be set aside.

19. The learned counsel appearing for the second respondent (complainant) has also equally contended that at the time of marriage all the properties mentioned in the petition have been given to the first accused, the husband of the complainant and now all the articles mentioned in the petitions are under the care and custody of the revision petitioners (accused) and under the said circumstances, the petition in Crl. M.P. No. 540 of 2007 has been filed and the Judicial Magistrate, Pudukottai has rightly allowed the same and there is no inkling nor vantage to make interference with the well merited order passed by the Judicial Magistrate, Pudukottai and therefore, Criminal Revision Case No. 188 of 2007 is liable to be dismissed.

20. For better appreciation, it has be come shunless to look into the provisions of Section 91(1) of the Code of Criminal Procedure and the same reads as follows;

"Summons to produce document or other thing.— (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or be fore such

Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order."

21. From the close reading of the provisions of Section 91(1) of the said Code, the Court can easily ken that the power mentioned in the said Section vests with the Court or any officer in charge of Police Station.

22. In the instant case, the second respondent (complainant) has filed the petition in question under Section 91(1) of the said Code praying to issue search warrant and the same has been allowed by the Judicial Magistrate, Pudukottai. At this juncture, a nice legal question arises as to whether the provision of Section 91(1) of the said Code can be invoked against accused. In order to clinch the above legal question, the following decisions are very much useful;

(a) The first and foremost decision is re ported in AIR 1965 SC 1251 : (1965 (2) Cri LJ 256) (*State of Gujarat v. Shyamla*) wherein the Apex Court has clinchingly held that Section 94(presently Section 91(1)) of the Code of Criminal Procedure, would not apply to the accused as it violates article 20(3) of the Constitution of India.

(b) The second decision is reported in 1997 (3) C.T.C. 196 (*K. Senthamarai v. State by Inspector of Police, CB CID, Madurai*) wherein this Court has categorically held that the power under Section 91 of the Code of Criminal Procedure, cannot be exercised against accused to produce any incriminating materials.

23. From the close reading of the decisions referred to earlier, it is needless to say that the power enshrined in Section 91(1) of the said Code cannot be invoked against any accused.

24. In the instant case, the second respondent (complainant) herself has filed the petition in question under Section 91(1) of



the Code of Criminal Procedure so as to issue search warrant. The Judicial Magistrate, Pudukottai without considering the applicability of Section 91(1) in respect of the accused (revision petitioners), has erroneously allowed the same. Therefore the order passed by the Judicial Magistrate, Pudukottai in CrI. M.P. No. 540 of 2007 is totally erroneous and the same is liable to be set aside.

25. The learned counsel appearing for the second respondent (complainant) has advanced his residual argument stating that the orders passed in CrI. M.P. Nos. 398 of 2007 & 540 of 2007 in Calendar Case No. 509 of 2004 are nothing but interlocutory in nature and against which the criminal revision cases are not legally maintainable and therefore, the Criminal Revision Case Nos. 188 & 189 of 2007 are liable to be dismissed. In support of his contention, he has drawn the attention of the Court to the following decisions;

(a) The first and foremost decision is re ported in (1997) 4 SCC 241 : 1997 CrI LJ 1519 (*Krishnan v. Krishnaveni*) wherein the Apex Court has held that though second revision before the High Court under sub-section (1) of Section 397 is prohibited by sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the Courts below.



(b) The second decision is reported in (1977) 4 SCC 551 : AIR 1978 Supreme Court Cases 47 : 1978 Cri LJ 165 (*Madhu Limaye v. State of Maharashtra*) wherein the Apex Court has culled out the following principles in relation to exercise of the inherent power of the High Court;

“(1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;

(2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;

(3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

26. From the conjoint reading of the decisions referred to earlier, it is very clear that even though there is a specific prohibition under Section 397(3) of the Code of Criminal Procedure, the High Court is having ample power under Section 482 of the said Code so as to prevent miscarriage of justice.

27. In the instant case, it has already been pointed out that the Judicial Magistrate, Pudukottai has virtually no jurisdiction to look into the alleged culpability of the revision petitioners (accused) and further Section 91(1) of the Code of Criminal Procedure cannot be invoked against the revision petitioners (accused). Since the Judicial Magistrate, Pudukottai has done clear miscarriage of Justice, tills Court is having ample inherent powers to prevent the same. Therefore, the residual argument advanced by the learned counsel appearing for the second respondent (complainant) is not having attractive force.

28. It has already been pointed out that on the ground of jurisdiction CrI. M.P. No. 398 of 2007 can be allowed. Likewise, CrI. M.P. No. 540 of 2007 is liable to be dismissed on the ground of inapplicability of provision of Section 91(1) of the Code of Criminal Procedure to the revision petitioners (accused) and under the said circumstances, both the revision cases are liable to be allowed.

29. In fine, Criminal Revision Case No. 188 of 2007 is allowed and the order passed in CrI. M.P. No. 540 of 2007 by the Judicial Magistrate, Pudukottai is set aside and the petition filed in CrI. M.P. No. 540 of 2007 is dismissed. Criminal Revision Case No. 189 of 2007 is allowed and the order passed in CrI. M.P. No. 398 of 2007 by the Judicial Magistrate, Pudukottai is set aside and the petition filed in CrI. M.P. No. 398 of 2007 is allowed and the revision petitioners (accused) are discharged only on the ground of jurisdiction from the proceedings of Calendar Case No. 509 of 2004 pending on the file of the Judicial Magistrate, Pudukottai. The second respondent (complainant) if she chooses, may lodge a fresh complaint in the appropriate police station against the revision petitioners (accused). Consequently, connected miscellaneous petitions are closed.

30. *Order accordingly.*