

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserving Date : 08.04.2015
Pronouncing Date : 13.04.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.26716 and 26717 of 2014

V.Prasanth ... Petitioner in Crl.OP.26716/2014
V.Priya Nair ... Petitioner in Crl.OP.26717/2014

vs.

State rep by
The Inspector of Police
N-3, Muthaiyalpet Police Station
Chennai 600 001. ... Respondent in both Crl.OPs.

Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.3430 of 2012 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai and quash the same in respect of the petitioners.

For Petitioners : Mr.K.Rajasekaran
For Respondents : Mr.C.Emalias, APP
For Intervenor : Mr.K.Shanmugakani

C O M M O N O R D E R

These petitions have been filed by V.Prasanth [A2] and V.Priya Nair [A1] respectively, to quash the prosecution in C.C.No.3430 of 2012 for offence under Section 120(B), 506(ii) IPC r/w 34 IPC pending on the file of the XVI Metropolitan Magistrate, George Town, Chennai.

2. For the sake of convenience, the parties would be referred to as the de facto complainant, police and the accused.

3. The de facto complainant in this case is one Irudhayanadhan, who is an Advocate by profession. The de facto complainant lodged a complaint on 20.08.2012 to the Commissioner of Police alleging that he got married to one Vinitha on 23.04.2005 and his matrimonial life ran into rough weather on account of continuous intervention in his married life by Vinitha's maternal aunt Usha and her daughter Priya Nair. It is further alleged in

the complaint that Vinitha got married to one Ramesh on 27.05.2007, even without getting divorce from the de facto complainant. The crux of the allegation in the complaint of the de facto complainant is that Vinitha's maternal aunt Usha, Prasanth and Priya Nair were continuously harassing him and they are of loose morals and that they are planning to attack him.

4. Based on the complaint dated 20.08.2012, the respondent police registered a case in Cr.No.1307 of 2012 under Section 506 (ii) IPC against Priya Nair, Usha and Prasanth and after completing the investigation, they filed the impugned Final Report under Section 173(2) Cr.P.C. against Priya Nair, Prasanth and Vinitha and deleted Usha from the Final Report for offences under Sections 120(B), 506(ii) IPC r/w 34 IPC, before the XVI Metropolitan Magistrate, George Town, Chennai. The trial Court took cognizance of the offence in C.C.No.3430 of 2012 and issued process to the accused, aggrieved by which the accused have approached this Court to quash the proceedings against them.

5. Heard Mr.K.Rajasekaran, learned counsel for the accused, Mr.Shanmugakani, learned counsel for the de facto complainant and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the State.

6. Mr.Shanmugakani, learned counsel for the de facto complainant submitted that there are sufficient materials in the Final Report to proceed against the accused and that this is not a fit case to quash the proceedings. It is his further contention that Usha should have been made as an accused and in her place Vinitha has been made as an accused by the police, which is incorrect.

7. This Court carefully perused the Final Report and all the 161 Cr.P.C. statements of the witnesses. Both in the complaint and in the 161 Cr.P.C. statement of the de facto complainant, he has made series of allegations touching upon the morality of Usha and Priya Nair, which are indeed very defamatory. He has alleged that they are sex workers and that they were caught by anti-vice squad. But coming to the crux of the allegations, he has clearly stated that Vinitha had told him that Priya Nair, Usha and Prasanth are planning to eliminate him. Nowhere in his complaint or in his 161 Cr.P.C. statement he has stated about any overt act of the accused in that direction and the allegation is based on the information provided by Vinitha. In other words, there is no overt act alleged against any of the accused, in order to come to an inference that they are planning to attack him. It must be remembered that the de facto complainant is an Advocate by profession and in his complaint he has made most unsubstantiated and nasty allegations against the accused and thereafter, in the concluding portion of the complaint he has stated that Vinitha told him that the accused are planning to attack him. Thus in the opinion of this Court,

there is absolutely no prima facie case against the accused for the offence under Sections 120(B), 506(ii) and Section 34 IPC for them to face this prosecution. The allegations sound absurd and imaginary.

8. Relying upon the test laid down by the Supreme Court in Bajanlal vs. State of Haryana, [AIR 1992 SC 604], the prosecution in this case is clearly an abuse of process of Court and hence, the petitions are allowed and the proceedings in C.C.No.3430 of 2012 are quashed.

9. It is brought to my notice that the de facto complainant had filed Cr.O.P.No.4414 of 2015 for a direction to the respondent to submit police report after conducting investigation into his complaint dated 20.08.2012 by examining the complainant and witnesses pending the evidence in C.C.No.3430 of 2012 on the file of XVI Metropolitan Magistrate Court, George Town, Chennai and submit the Final Report before the Court.

10. The grievance expressed by the learned counsel appearing for the de facto complainant is that Usha should have been made as an accused in C.C.No.3430 of 2012 and Vinitha should have been excluded. But the prayer in the petition as stated above is not for the relief that was argued by the learned counsel for the petitioners. This Court dismissed Crl.O.P.No.4414 of 2015 on 08.04.2015 with liberty to the de facto complainant to move the trial Court under Section 319 Cr.P.C., if evidence against Usha surfaces during the course of trial. This Court also gave liberty to Vinitha to apply for discharge in C.C.No.3430 of 2012. In view of the order passed by this Court in these petitions quashing the very prosecution in C.C.No.3430 of 2012 pending on the file of XVI Metropolitan Magistrate, George Town, Chennai, the earlier order in Crl.O.P.No.4414 of 2015 dated 08.04.2015 becomes infructuous.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
N-3, Muthaiyalpet Police Station
Chennai 600 001.

2.The XVI Metropolitan Magistrate,
George Town,
Chennai - 1.

3.The Public Prosecutor
High Court
Madras.

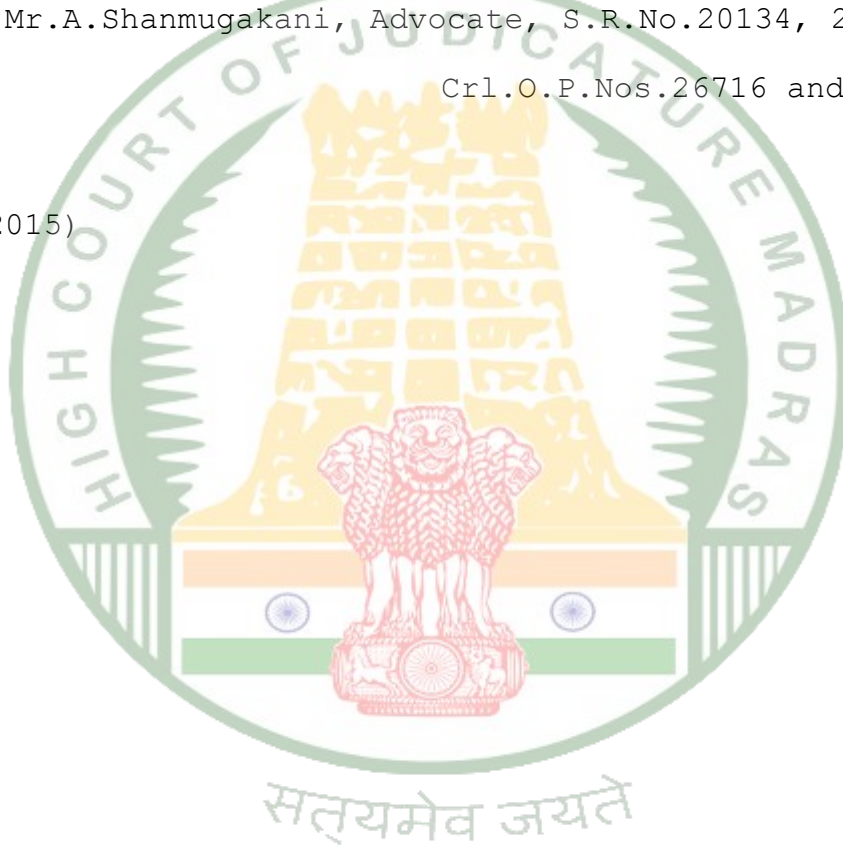
+4cc's to Mr.K.Shanmugakani, Advocate, S.R.No.19466,19468

+2cc's to Mr.K.Rajasekaran, Advocate, S.R.No.20092, 20093

+4cc's to Mr.A.Shanmugakani, Advocate, S.R.No.20134, 20133

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BR(CO)
CA(20/04/2015)



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