

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 05-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Writ Petition No.11592 of 2012

Muhammed Aslam Sherief

... Petitioner

Vs.

1. The Central Bureau of Investigation
Rep. by the Joint Director
Nungambakkam
Chennai
2. The Commissioner of Police
Office of the Commissioner of Police
Egmore
Chennai
3. The Inspector of Police
D2, Spensers Police Station
Anna Salai
Chennai
4. Mrs. Navaneetham
The Inspector of Police
All Women Police Station
D-2, Spensers Police Station Campus
Anna Salai
Chennai
5. Aysha Khanum @ Saadia
6. N. Balquis Begum

... Respondents

(RR5 and 6 impleaded as per Court order dated 27-04-2012 by KCJ in M.P.No.1 of 2012 in W.P.No.11592 of 2012.)

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus to withdraw and transfer the investigation of the case in Crime No.2209 of 2011 pending on the file of the third respondent to the first respondent and direct the first respondent to thoroughly investigate the case and take action in accordance with law.

For petitioner :: Mr. S. Ravee Kumar
 for M/s. Maha Associates
For respondents :: Mr. K. Srinivasan, Spl.P.P.
 for CBI cases for R1
 Mr. P. Govindarajan,
 Additional Public Prosecutor
 for RR2 and 3
 Mr. M.R. Rajkumar Paul for R5
 Mr. S.N. Ravichandran for R6
 No appearance for R4

ORDER

This writ petition has been filed under Article 226 of the Constitution of India praying to withdraw and transfer the investigation of case registered in Crime No.2209 of 2011 from the file of the third respondent to the file of the first respondent by way of issuance of writ of mandamus.

2. Before excogitating the rival submissions advanced on either side it would be apposite to perorate the circumstance under which the petitioner has given the complaint, in question, registered in Crime No.2209 of 2011.

3. The fifth respondent herein is the wife of the present petitioner and she has given a complaint against the present petitioner and others, on 24-03-2011 to the Inspector of Police, W2, All Women Police Station(AWPS), Triplicane, wherein she alleged that her husband has harassed her. Further, she alleged that her marriage has been solemnized by her father. At the time of marriage, she has been given ten sovereign of gold jewels. She asked her husband to give back her jewels and also the expenditure incurred by her father. The said complaint has been endorsed in C.S.R.No.39 of 2011 and subsequently, taken up for enquiry by the Inspector of Police, AWPS. On the same day, the present petitioner has been summoned by the Inspector of Police to attend enquiry. Both the petitioner and counter-petitioner are present in AWPS with their relatives. At the time of enquiry, both the petitioner and her relatives, and counter-petitioner and his relatives, have made heated arguments in the presence of the Inspector of Police, AWPS. The Inspector of Police had intervened and pacified them and bound over them to appear for enquiry on 31-03-2011. The present petitioner has sent various telegrams to higher Police Officials against the rowdy elements headed by Ameerjan and others. The petition given by the present petitioner has been forwarded to the Inspector of Police, AWPS for enquiry and despite all repeated summons, the petitioner had failed to appear for enquiry and subsequently, filed a direction petition before

the High Court and due to intervention of High Court, the complaint given by the petitioner has been registered in Crime No.2209 of 2011.

4. The learned counsel appearing for the petitioner has repeatedly contended that the entire occurrence has taken place on 24-03-2011 in AWPS and in fact, relatives of the fifth respondent have tried to attack the petitioner and his father. Under the said circumstances, the complaint, in question has been given. But the same has not been registered immediately and due to that various telegrams have been given to higher officials and only due to intervention of High Court, the complaint in question, has been registered in Crime No.2209 of 2011 and the third respondent has adopted a lethargic attitude in conducting investigation. Under the said circumstances, the present writ petition has been filed for getting the relief sought for therein.

5. The learned Special Public Prosecutor appearing for the first respondent has contended that the complaint given by the petitioner has been registered in C.C.No.2209 of 2011 only under Sections 417 and 506(ii), IPC and the dispute is only in between the petitioner and fifth accused, and both of them are husband and wife and only due to their domestic problem, such occurrence has become emerged. Under the said circumstances, the first respondent cannot be forced to conduct investigation.

6. The learned Additional Public Prosecutor appearing for the respondent Nos.2 and 3 has also contended to the effect that on the basis of the direction given by this Court, the complaint given by the petitioner has been registered in Crime No.2209 of 2011 only under Sections 417 and 506(ii), IPC and the third respondent as the investigation officer has been doing the investigation in a proper manner and examined connected witnesses, including the petitioner and since the third respondent has been conducting investigation properly, the relief sought in the present petition is totally unwarranted and therefore, the present petition deserves to be dismissed.

7. The learned counsel appearing for the fifth respondent has contended that the petitioner is a practising lawyer and by way of suppressing so many factual aspects, he married the fifth respondent and subsequently, put her to unnecessary troubles and tribulations. Under the said circumstances, she has given a complaint and on the date of occurrence, the same has been enquired into and no such occurrence has taken place as alleged on the side of the petitioner and since the petitioner is a practising

advocate, he has given so many ordeals to the fifth respondent and therefore, the present petition deserves to be dismissed.

8. On the basis of rival submissions made on either side, the Court has to look into as to whether investigation pertaining to the case registered in Crime No.2209 of 2011 can be withdrawn and transferred to the file of the first respondent.

9. It is an admitted fact that the complaint, in question has been belatedly registered under Section 417 and 506(ii), IPC. In fact, the present petition looks like a magnum opus. But the only aspect that has to be decided in the present petition, as pointed out earlier, is as to whether the third respondent has been conducting investigation properly. The first respondent is nothing but Central Bureau of Investigation. As rightly pointed out by the learned Special Public Prosecutor appearing for the first respondent, the dispute between the petitioner and the fifth respondent is nothing but their domestic problem, and their problem can be solved by instituting proper proceedings in civil forum. However, the complaint, in question, has been registered under Section 417 and 506 (ii), IPC. Considering the gravity of offences committed by the accused mentioned therein, intervention/ investigation of the first respondent is totally unwarranted.

10. In fact, this Court has perused the entire case diary and ultimately found that the petitioner and other witnesses have been examined. Since the petitioner and other witnesses have been examined, the Court cannot come to a conclusion that the third respondent has not done proper investigation.

11. It has already been pointed out that the entire dispute is only in respect of domestic problems emerged in between the petitioner and fifth respondent. Under the said circumstances, it is highly unfair to direct the first respondent to conduct such kind of investigation and further, there is no vulnerable lapses on the side of the third respondent in pursuing the investigation. Under the said circumstances, the relief sought in this petition cannot be granted.

In fine, this writ petition is dismissed. However, the third respondent is strictly directed to conduct fair

investigation and file final report before the concerned Court, as early as possible.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

glp

To

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gj co
kra 04/11/2015

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