

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING THE ORDERS : DATED 24.9.2014

DATE OF PRONOUNCING THE ORDERS: DATED: 27.02.2015

Coram:

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

Crl.O.P.No.24148 of 2012
and MP.No.1 of 2012

T.Harigopalan ... Petitioner

Vs.

1.State by Inspector of Police,
Katpadi Police Station.

2.Shanbagavalli Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for all the records pertaining to the case in Crime No.804 of 2011 on the file of the Inspector of Police, Katpadi Police station, Vellore District and quash the same.

For Petitioner : Mr.Gopinath, SC for
M/s.M.R.Ravi Shankar

For Respondents : Mr.C.Emalias
Additional Public Prosecutor (R1)

ORDER

The petitioner, who is arrayed as A2 in Cr.No.804 of 2011 on the file of the Inspector of Police, Kadpadi Police station, has come forward with the present petition for quashing the same.

2.The impugned FIR is registered for the offences under sections 376 and 506(i) IPC on 21.8.2011 on the basis of the complaint dated 15.8.2011 given by the second respondent defacto complainant on 21.8.2011 in respect of the occurrence allegedly happened from June 2009 onwards. The complaint proceeds as if the defacto complainant belongs to Adi dravidar community and she was a member of women Self Help Group and was a social work activist and she came to be acquainted with one Vellore Philip, who is the President of Human Rights Commission and he made false promises to secure her Government job and to get high post in his social service organisation and accordingly appointed her as Human Rights Organiser in his Human Rights Commission for a monthly salary of Rs.3,000/-.

3.While so, one Sunday during August 2009, he took her to Chennai, where she was taken to a flat in the second floor at Anna Nagar, where she was given a cool drink and she became unconscious and after she regained conscious, she found herself undressed and naked and having understood her position, she appealed to Philip, who promised to marry her. Thereafter, they had physical relationship frequently at Vellore office and Anna Nagar flat and he also compelled her to bring her friends to recommend to one Harigopalan, who is the Managing Trustee and Correspondent of Sun Beam Schools of Vellore and believing his words, she introduced 15 girls including Sumathi and Selvi. Thereafter, the defacto complainant was informed by her friends Sumathi and Selvi that Vellore Philip and Harigopalan forcibly had physical intimacy with those girls and they took video of the same and threatened them to release it to the media, if any complaint is made against them. On coming to know about the same, the defacto complainant went to Philip and questioned him and at that time, Philip threatened her that he will release their physical relationship, which he recorded in the cell phone, to others. Thereafter, the defacto complainant cut off her relationship with Philip and was engaged. However, Philip during April 2011 contacted her over cell phone and forced her to go and give company to Harigopalan and as his threat continued, she approached DIG office to give complaint. On coming to know about the same, Philip and 4 unidentified persons threatened her that if any complaint is made against him or Harigopalan, they will throw acid and cut her into pieces and throw her in Elagiri Hills. The defacto complainant thereafter, with the help of Self Help Group lodged the present complaint.

4.The complaint is registered and investigation is conducted and during the pendency of the petition, investigation is completed and the Investigating officer has filed charge sheet against the accused for the offences under sections 365, 420, 376, 506(ii) IPC and Section 3(1)(v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989 r/w section 34 IPC. The allegations raised against Philip in the charge sheet are in the line of the allegations raised in the complaint.

5.The allegations raised against A2 Harigopalan in the charge sheet are that A1 and A2 have joined together with the common intention of committing rape of the complainant Shenbagavalli and often had sexual intercourse with her and on 2.8.2011, when Shenbagavalli went to give a complaint to DIG, Vellore on the way, A1 came along with 4 unknown persons and threatened her to throw acid on her face and to murder her by cutting her into pieces and throwing the body in Elagiri Hills, if any complaint is made against them. A1 and A2 thus committed the offences knowing fully well that Shenbagavalli belongs to Adi Dravidar community.

6.The petitioner Harigopalan/A2 has come forward with the present petition for quashing the FIR on the ground that the overt acts attributed in the complaint and in the charge sheet are solely against A1 Vellore Philip and no direct or specific allegations are raised against A2 and the allegations raised against A2 are bald, vague and without any material particulars and are not based on any legally permissible evidence. It is also his case that the complainant is in the habit of lodging false complaint against men for the purpose of extracting money and she used to have personal intimacy with various men and thereafter lodged various complaint for getting wrongful gain. It is also his case that A2 is the Managing Trustee and Correspondent of Sun Beam school, Vellore which is recognised by the Government of Tamil Nadu and has been graded as A+ institution and has classes from LKG to +2 and has 4000 students and nearly 400 teaching staff and non-teaching staff and the complaint is lodged only at the instigation of local Gang leader for his failure to comply with the demand of mamool.

7.Per contra, the respondents 1 and 2 would seriously oppose the relief sought for herein mainly by relying on the nature of the allegations raised in the complaint and in the charge sheet against A2.

8.Heard the rival submissions made on both sides and perused the case file produced on the side of the respondent police.

9.The reading of the allegations contained in the complaint and in the charge sheet as referred to above would reveal that major part of the allegations are only against A1 Vellore Philip. The second respondent defacto complainant, in her complaint except stating that her friends informed her that they were frequently subjected to forcible physical relationship by Philip and Harigopalan and further informed that the friends were threatened not to make complaint against them, failing which, the video relating to their physical relationship will be released to media and except stating that Philip compelled the defacto complainant to have physical relationship with Harigopalan and Philip and 4 unknown persons threatened her that she is not fully aware of Harigopalan and if she gives any complaint, they will throw acid on her face and murder her into pieces and throw in Elagiri Hills, has not raised any specific allegation in the complaint that Harigopalan compelled her to have physical intimacy with him and subjected her to physical intimacy and Harigopalan directly threatened her. It is also not her case that she met A2 Harigopalan in person and Harigopalan committed any act of mischief together with A1 as stated above. The complaint also does not furnish the date, time and place at which, Philip compelled her to go to Harigopalan and have company with him and 4 unknown persons met and threatened her with dire consequences.

10.As far as the allegations regarding her friends' statement about Philip and Harigopalan are concerned, the same are hearsay in nature and not supported by the statements of two named friends Sumathi and Selvi. Their statement to the Investigating Officer as well as under Section 164 Cr.P.C are not in support of the allegations raised herein. Further, both Sumathi and Selvi as LW4 and LW5 in their statements totally denied any acquaintance with Philip and Harigopalan. Out of 33 witnesses examined by IO, 18 witnesses are independent witnesses. Excluding LW4 Sumathi and LW5 Selvi, the statements of other witnesses LW6 to LW18 do not corroborate with the material allegations raised in the complaint. The statements of LW2 Lalitha and LW3 Senthilkumari, who are none else than the mother and sister of LW1 Shenbagavalli, are more in the nature of hearsay and the same would reveal that they would not have any direct knowledge about what transpired either between Philip and Shenbagavalli or between Philip and Hairgopalan. The remaining witness available is LW1 Shenbagavalli, who in her complaint does not raise any specific allegation against Harigopalan, but introduced an improved version in section 161 Cr.P.C statement that he subjected her to physical intimacy frequently in Anna Nagar flat on false promise to get her employment. Here again, the allegations are more vague and without any material particulars. Thus, serious allegations contained in the charge sheet against A2 Harigopalan are based on either no allegations or bald and vague allegations without any material particulars and without any other supporting and corroborating materials.

11.As far as the defacto complainant Shenbagavalli is concerned, the petitioner/A2 in his typed set enclosed the copy of the police complaints given by her against one Wincent, Badrinathan and Joseph and copy of the police report closing her complaints for her non-cooperation and her representation against one MLA and one Badrinathan. The same would to some extent probablise the case of the petitioner/A2 that Shenbagavalli is in the habit of making false complaints against men. The petitioner has also in his typed set filed the copy of the complaints made by him to various authorities against the interference and disturbance caused by the neighbouring land owners and others and the acknowledgment given by the police for receipt of various complaints by A2 on behalf of Sunbeam School, Vellore against known and unknown persons. Thus, the discussions held above would not rule out the possibility that the present complaint is one such complaint made against A2 with ulterior motive either to harass or to wreck vengeance against him. Considering the bald and vague nature of the allegations in the complaint and in section 161 Cr.P.C statement of the defacto complainant and in the absence of any corroborating materials, in the event of the criminal prosecution launched against the petitioner on the basis of such complaint and charge sheet being allowed to continue against the petitioner, it amounts to abuse of process of law and causes irreparable injury to his reputation and to his institution.

12.At this juncture, it is noteworthy to recollect the principle laid down by the Hon'ble Supreme Court in the decision reported in (2009) 10 SCC 184 (Neelu Chopra and another v. Bharti), that in order to lodge a proper complaint, mere mention of the sections and the language of sections is not be all and end of the matter. What is required to be brought to the notice of the court is the particulars of the offence committed by each and every accused and the role played by each and every accused in committing of that offence. When the complaint is sadly vague and which accused has committed what offence and what is the exact role played by the accused in the commission of offence, it would be an abuse of process of law to allow the prosecution to continue against the accused, on the basis of vague and general complaint which is silent about the precise acts of the accused.

13.The learned brother Judge of this court in his order dated 15.4.2008 made in CrI.OP.No.19816 of 2005 (Prakash Bachraj Jain v. Mani Textile Traders) reported in Indian Kanoon -<http://indiankanoon.org/doc/1275893> has followed the earlier decision of this court in 1989 CrI.L.J.669 (Noble Mohandass v. State), wherein it is held that "for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word, when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually" and observed that when the allegations of threat with dire consequences are only vague and bald, the offence under section 506(ii) is not made out on the face of the allegations contained in the complaint and this court is left with no other alternative except to quash the proceedings initiated against the petitioners.

14.That being the legal and factual position, this court has no hesitation to hold that to secure the ends of justice and to prevent the abuse of process of law, the criminal proceedings against the petitioner arising out of FIR in Cr.No.804 of 2011 is hence liable to be quashed and stands quashed.

15.In the result, the criminal proceedings arising out of FIR in Cr.No.804 of 2011 on the file of the Inspector of Police, Kadpadi Police Station, Vellore stands quashed insofar as A2 is concerned and the criminal original petition is accordingly ordered. Consequently, connected miscellaneous petition is closed.

rk

s/d-

Assistant Registrar(V)

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police,
Katpadi Police Station.
Katpadi.

2. The Public Prosecutor, High court, Madras.

+ 1 cc to Mr.M.R.Ravishankar, Advocate SR 11204

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