

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

CrI.O.P.No.1129 of 2016

And

CrI.M.P.No.505 of 2016

Ashokraj

... Petitioner

Vs.

1.A.R.Poojasri

2.Kingsley

... Respondents

Prayer :

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.No.3459 of 2015 on the file of X Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.A.Aruldoss

For Respondent : Mr.K.M.Subramaniam for R1

ORDER

The petitioner who is the second respondent in C.C.No.3459 of 2015 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai has come forward with this petition seeking to quash the proceeding in C.C.No.3459 of 2015.

2.The learned counsel for the petitioner submitted that the petitioner is the father of the second respondent herein and father-in-law of the first respondent herein. He would further state that the first respondent herein has preferred complaint under the Domestic Violence Act and in the complaint itself she has stated that after marriage she is residing in the house which was booked by her father. In paragraph no.7 of the complaint it was stated at the instigation of the petitioner herein only the property has been registered in the name of the second respondent herein and not in the joint name of the respondents 1 and 2 herein and would further submit that at no point of time the petitioner is residing along with the respondents and would further submit that the petitioner has not committed any offence. He further submitted that on 30.06.2008, the petitioner retired from service and settled at Kovilpatti

but the marriage was held on 18.11.2010, so there is no joint living with the respondents and prayed for quashing of the same. To substantiate his claim, the learned counsel relied upon the judgment of the Madurai Bench of this Court reported in Indiankanoon (Revathi Rajasekaran Vs. State Rep. through the Inspector of Police and another).

3. Resisting the same, the learned counsel for the first respondent has taken me to paragraph no.7 of the complaint, wherein it is specifically stated that at the instigation of the petitioner herein only the property has been registered in the name of the second respondent herein and not in the joint name of the respondents 1 and 2 herein and the master mind of the petitioner is behind him. He further submitted that in the memorandum of grounds, the petitioner has admitted the same and further submitted that it is a question of fact and it has to be decided only at the time of trial after letting in oral and documentary evidence and hence prayed for dismissal of the petition.

4. Considering the rival submissions and on perusal of the typed set of papers it is known that the petitioner/ father-in-law of the first respondent and father of the second respondent. On the basis of the complaint given by the first respondent under the Domestic Violence Act, it was taken on file in C.C.No.3549 of 2015. Now, the relationship under Section 2(f) of the Act, domestic relationship is available, but the only point to be decided is whether there is any allegations against this petitioner.

5. The admitted facts are that the petitioner retired from service on 30.06.2008 and is residing at Kovilpatti at Thoothukudi District and the marriage between the respondents 1 and 2 was held on 18.11.2010 and after marriage, both were staying in a house at Adambakkam which was booked by the father of the first respondent for them. The only averment against the petitioner is that when the respondents want to purchase the property in the joint name, the first respondent parted Rs.10 Lakhs (Rs.8 Lakhs by cheque and Rs.2 Lakhs by cash), but, at the instigation of the petitioner, the property was registered in the name of the second respondent and except that there is nothing.

6. At this juncture, it is appropriate to consider the arguments advanced by the learned counsel for the petitioner. He took me to paragraph no.10 of the grounds, the relevant portion of which reads as follows:

"10. The para 7 of the complaint it is stated that " Later Kingsley registered the apartment in his name only as insisted and demanded by his father to do so." Other than this there are no allegations made against the petitioner in the said complaint."

Except this allegation, there is no other allegation as against this petitioner.

7. However, it does not mean that the petitioner herein has accepted that the allegations are true. So, the argument advanced by the learned counsel appearing for the respondent does not merit acceptance. Admittedly, after his retirement the petitioner is settled at Kovilpatti and only the spouses alone were living together at Chennai. While so, they intended to purchase the property. Merely because the second respondent had purchased the property in his name, it cannot be presumed that only the petitioner/father had instigated his son to register the property in his name.

8. It is also appropriate to consider the judgment of the Madurai Bench of this Court reported in Indiankanoon (Revathi Rajasekaran Vs. State Rep. through the Inspector of Police and another), wherein it was held as follows:

""7. In another decision relied on by the learned counsel for the petitioner reported in Karuppiyah Servai and others V. Nagavalli Ammal 1981 LW (Crl.) 336 it is held as follows:

"...By mere association of the accused persons who are charged for an offence of abetment of the principal offender, in the absence of any material to show that there was an instigation by the petitioners or that there was any intention either in aiding or in the commission of the offence, it cannot be said that they they have committed an offence of abetment."

11. Since the petitioners are married 12 years/10 years ago, respectively and they are residing separately and at the time of filing the said petitioner under Section 12 of the Act, they were not impleaded as parties and also as per the decision of this Court cited above, merely because the petitioners are the sisters of A.1 and sister-in-law of the second respondent/ de-facto complainant, they will not be roped in or fastened into the criminal proceedings."

9. Hence, this Court is of the view that it is a fit case for quashing the proceedings against the petitioner. Accordingly, this Criminal Original Petition is allowed and the proceedings against this petitioner in C.C.No.3459 of 2015 on the file of the learned X Metropolitan Magistrate, Egmore, Chennai is hereby quashed.

10.At this juncture, the learned counsel for the first respondent wants earlier disposal of the C.C.No.3459 of 2015 as against the proceedings of the second respondent. Hence, the learned X Metropolitan Magistrate, Egmore, Chennai is directed to dispose of the C.C.No.3459 of 2015 within a period of three months from the date of receipt of a copy of this order.

11.This Criminal Original Petition is accordingly disposed of. Consequently, the connected miscellaneous petition is also closed.

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Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The X Metropolitan Magistrate,
Egmore, Chennai.

2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.K.M.Subramaniam, Advocate Sr 14128

+ 1 cc to Mr.A.Aruldoss, Advocate Sr 13677

KR/17/3/16

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