IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.No.20427 of 2015

R.Ranjeetha ... Petitioner

Vs.

1.The Additional Director General of Police/
Liaison Officer (Crime),
No.220, Pantheon Road,
Egmore, Chennai-80.

2.The Commissioner of Police,
O/o The Commissioner of Police,
Vepery, Chennai.

3.The State rep. by its
Inspector of Police,
W-3, Tambaram
All Woman Police Station,
Tambaram, Chennai-600 045. ... Respondents

Prayer: Petition filed under Section 482 of the Criminal Procedure Code praying to direct the respondents-Police to execute the 'Non-Bailable Warrant' issued in C.C.No.163 of 2011 on the file of the learned Judicial Magistrate, Tambaram against the A1-Mr.Gopalakrishnan Subramanian, a Fugitive Criminal, an Indian National employed in USA/Proclaimed Offender under Section 188 of Cr.P.C, 1973 and under India USA extradition treaty signed in 1999 under the India Extradition Act Article No.34(b) of 1962 to National Central Bureau (INTERPOL), New Delhi-Ministry of Home Affairs, Govt of India who is employed at Microsoft Corporation, One Microsoft Way, Redmond, WA.98052-7329, USA and secure his presence in India and to pass such other order.

For Petitioner :Mr.A.Suresh
For Respondents :Mr.C.Emalias, APP

ORDER

This original petition has been filed by the petitioner praying to direct the respondents-Police to execute the 'Non-Bailable Warrant' issued in C.C.No.163 of 2011 on the file of the learned Judicial Magistrate, Tambaram against the 1st accused-Mr.Gopalakrishnan Subramanian, a Fugitive Criminal, an Indian National, Proclaimed Offender under Section 188 of Cr.P.C, 1973 and under India - USA extradition treaty signed in 1999 under the India Extradition Act Article No.34(b) of 1962 to National Central Bureau (INTERPOL), New Delhi-Ministry of Home Affairs, Govt of India, employed at Microsoft Corporation, One Microsoft Way, Redmond, WA.98052-7329, USA, and to secure his presence in India.

2.The brief facts, which are necessary to decide the issue involved in this petition, are as follows:-

2-1.The petitioner herein is the daughter of one Prof.B.Ravichandran (retired Professor / Principal & State Govt. Pensions) and she was married to one Mr.Gopalakrishnan Subramanian on 28.05.2007 at Udhayam Kalyana Mandapam, Ashok Nagar, Chennai. The marriage between the petitioner and the said Gopalakrishnan Subramanian was solemnized as per Hindu rites and customs and it was also duly registered before the Sub-Registrar, Kodambakkam, Chennai on the same day.

2-2.The marriage was conducted by her parents by spending several lakhs of rupees. The petitioner's father has given sufficient Jewellery and other household articles as Sridana at the time of marriage. The petitioner's parents in all spent more than Rs.25 lakhs towards the marriage. The petitioner's husband Gopalakrishnan Subramanian is working as Software Engineer in Microsoft Corporation, Remond, United States of America. Immediately after the marriage, the petitioner along with her husband Mr.Gopalakrishnan Subramanian left for Virgina, U.S.A on H4 Dependant Visa and started her matrimonial life happily. However, during their stay in U.S.A., the parents of the Petitioner's husband regularly called the petitioner's husband Mr.Gopalakrishnan Subramanian over phone and instigated him to demand more money and jewels from the parents of the petitioner as dowry. On all such occasions, the petitioner pacified her husband Mr.Gopalakrishnan Subramanian and led the matrimonial life happily. However, the demand for more dowries by the in-laws of the petitioner and her husband Mr.Gopalakirshnan Subramanian mounted day-by-day.

2-3.During the month of November, 2007, the petitioner and her husband Mr.Gopalakrishnan Subramanian came down to Chennai, for the petitioner's educational purposes and also to celebrate their Thalai Deepavali in India. During the stay in the petitioner's in-laws house, the demand for dowry in terms of cash and jewellery took the shape of harassment by the in-laws and husband of the petitioner. However, after stay for some time in India, the petitioner and her husband left India to their matrimonial home in America. In the meanwhile, on 10.05.2008 the petitioner delivered a male child at Sibley Memorial Hospital, Washington D.C. U.S.A. Thereupon, the petitioner along with her child had come to India to complete her studies on 16.08.2008 and also for taking rest during the post-natal period. The petitioner's husband assured her that he would come to India for taking back the petitioner and the child to U.S.A and also send necessary invitation/documents/papers for the renewal of Visa for the petitioner and their child. However, since the demand for dowry in cash and jewellery made by the petitioner's husband and her in-laws were not fulfilled by the petitioner's parents, at the instigation of her in-laws, the petitioner's husband refused to send such papers for renewal and avoided to take back the petitioner and the child, who is a USA/Indian-dual citizen by birth, to the matrimonial home in USA.

2-4.The petitioner's husband Gopalakrishnan Subramanian also joined hands with his parents and brother Damodharan and harassed the petitioner by refusing to take back the petitioner and the child to the matrimonial home. In fact, the petitioner sent a mail to her husband stating that she plans for USA visit with her son, but her husband threatened the petitioner through email dated 30.03.2009 stating that he had made all steps to deport the petitioner and her son from USA. The harassment and demand for dowry by the in-laws, her husband and brother-in-law Damodharan were highly unbearable and caused a lot of mental and physical agony to the petitioner and the child. Hence, left with no other option, the petitioner lodged a complaint with the Commissioner of Police, Sub-Urban, Chennai, which was forwarded to the 2nd respondent-Police. The 2nd respondent-Police issued a communication dated 17.08.2009 to the petitioner's husband who is residing in U.S.A, directing him to appear for an enquiry on or before 05.10.2009; but, the petitioner's husband did not appear before the 2nd respondent-Police. Subsequently, the petitioner's in-laws avoided police enquiry and got anticipatory bail from the Court.

2-5.The petitioner filed a maintenance case in M.C.No.93 of 2010 before the Family Court, Chennai, in which the Family Court passed an order directing the petitioner's husband to pay a sum of Rs.50,000/- to the petitioner and a sum of Rs.25,000/- to the petitioner's child.

2-6.Based on the report from Protection Officer, Domestic Violence, a case in Crime No.15 of 2010 was registered by the 2nd respondent-Police under Sections 417, 420, 406, 498A IPC r/w sections 3 & 4 of Dowry Prohibition Act, against the petitioner's husband and her in-laws. On completion of investigation, chargesheet was filed and the same was taken as C.C.No.163 of 2011 on the file of the learned Judicial Magistrate, Tambaram. The learned Judicial Magistrate issued summons to the accused persons for three times dated 19.11.2010, 21.08.2012 & 03.09.2012. The 1st accused/petitioner's husband is aware of the entire case proceedings through his parents (A2 & A3) and younger brother

(A4), who is instrumental and nucleus part for causing the harassment and sufferings to the petitioner. The 1st accused/petitioner's husband by taking undue advantage of his occupation in USA, avoided the appearance before the learned Judicial Magistrate, Tambaram in the case in C.C.No.163 of 2011. Hence, the learned Judicial Magistrate, Tambaram issued two 'Non-Bailable Warrants' against the 1st accused/petitioner's husband and 4th accused Damodharan on 19.05.2011. The delay tactics of the accused persons forced the petitioner to approach this Court for speedy execution of the said two non-bailable warrants, by filing Crl.O.P.No.7988 of 2012. Pursuant to the direction given by this Court, the petitioner filed a direction petition in C.M.P.No.4829 of 2012 before the learned Judicial Magistrate, Tambaram, on 11.05.2012. Thereafter, on 30.03.2013, a news paper publication of proclamation, in Trinity Mirror English Daily, Chennai Edition, was given requiring the appearance of the two accused viz., A1-Gopalakrishnan Subramanian and A4-Damodharan. Similar notices/hand bills were pasted at their residences at Tambaram and Amabattur and other prominent places in Chennai. The said English daily publications were sent by post and E.Mail to both residence and office address of A1 at USA. The parents of A1 refused to divulge the whereabouts of A1 & A4 in USA.

2-7.While so, the accused 2 & 3 had filed a split petition in C.M.P.No.1612 of 2012 before the learned Judicial Magistrate at Tambaram. A counter petition was given by the petitioner opposing the split process, by stating the indispensable presence of A1 for justice. The Assistant Public Prosecutor of the Court below in his counter reiterated the presence of A1, who is the root cause of the case. Hence, after hearing the parties, the learned Judicial Magistrate dismissed the split petition filed by the accused 2 & 3. On 26.09.2012, the petitioner filed a petition before the learned Judicial Magistrate, Tambaram requesting the Court to write to Indian Embassy for extradition of A1, but the said petition was dismissed on the same day. The petitioner had also filed a petition before the learned I Additional Family Court, Chennai for the maintenance arrears amount to Rs.33 lakhs from 05.03.2010 to 25.10.2013. Thereafter, the petitioner filed many petitions on 25.11.2014, 02.12.2014, 16.12.2014, 29.12.2014 and 20.04.2015 before the learned Judicial Magistrate, Tambaram, for the extradition of A1-Gopalakrishnan Subramnian. Since the 2nd respondent-Police delayed the process of executing the Non-bailable Warrant, the petitioner has come forward with the present petition before this Court, for the relief as stated supra.

3.When the matter is taken up for consideration, the learned counsel for the petitioner submitted that the 1st accused Gopalakrishnan Subramanian is a proclaimed offender and he is aware of the entire legal proceedings pending before the learned Judicial Magistrate, Tambaram; the presence of the

1st accused is very much required in this case; but, he is totally avoiding the proceedings with an intention to drag on the proceedings; that because of the attitude of the 1st accused, the petitioner is suffering lot along with her child. In this regard, the learned counsel for the petitioner has also relied upon a judgment reported in CDJ 2011 MHC 2724 (Tmt.Jayashree Vs. The Inspector of Police & others), and submitted that in an identical case, this Court by dealing with the provisions of the Extradition Act, 1962, and Extradition Treaty signed by the Government of India and Government of Unites States of America and Ministry of External Affairs and also Chapter VIIA of the Code of Criminal Procedure, has entertained the petition filed by the petitioner therein/wife. Thus, by relying upon the said judgment, the learned counsel for the petitioner sought for a direction to the respondents-Police from this Court.

4.The learned Additional Public Prosecutor has contended that since the offence is only relating to the matrimonial dispute, the prayer made in the petition by the petitioner cannot be entertained; however, a direction may be given to the Court below to split up the case in respect of the accused 2 & 3 and to proceed with the trial.

5.Keeping the submissions made on either side, I have carefully gone through the materials available on record and also the judgment relied upon by the learned counsel for the petitioner reported in CDJ 2011 MHC 2724 (Tmt.Jayashree Vs. The Inspector of Police & others) and I find that the said judgment is squarely applicable to the present facts of the case. From the said Judgment, it could be seen that an Extradition Treaty was signed by the Government of India and Government of United States of America and Ministry of External Affairs had published the same on 14.09.1999 in the Gazette of India. To give a direction to the respondents-Police to execute the Non-bailable Warrant against the 1st accused herein, under the Extradition Act, the offence should be an extradition offence. Section 2(c) of the Extradition Act defines 'extradition offence', which reads as follows:-

> "extradition offence means _
> (i)in relation to a foreign State, being a treaty State, an offence provided for in the extradition treaty with that State;
> ii)in relation to a foreign State other than a treaty State an offence punishable with imprisonment for a term which shall not be less than one year under the laws of India or of a foreign State and includes a composite offence;

The relevant portion in the above said judgment reads as follows:-

> "12.Therefore, to invoke the provision of Extradition Act, the following are the conditions precedent:

1.An offence shall be an extradition offence, if it is punishable under the laws in both Contracting States by deprivation of liberty, including imprisonment, for a period of more than one year or by a more severe penalty.

2.There must be an extradition treaty or arrangements between the Government of India and the foreign State in which the fugitive criminal is said to be residing.

3.There must be an extradition request from the Government of India through displomatic channel to the foreign State. A request for extradition shall also be supported by

(a)a copy of the warrant or order of arrest, issued by a judge or other competent authority

(b)a copy of the charging document, if any, and

(c)such information as would justify the committal for trial of the person if the offence had been committed in the requested stated (all the documents in English).

4.A request for provisional arrest may be made and such warrant of arrest may be transmitted through Interpol or through the diplomatic channel to their counterpart for the apprehension of the fugitive criminal pending extradition proceedings."

13.Under Sec.16 of the Act, the Magistrate may issue a provisional warrant for the apprehension of the fugitive criminal from any foreign State with which Government of India is having extradition treaty or extradiition arrangement, who is suspected tobe in the foreign State against whom a criminal case is pending prosecution Such warrant shall be transmitted either through Interpol or through diplomatic channel."

In the said case, this Court by dealing with the relevant provisions of the Extradition Act and also taking note of the Extradition Treaty signed by the Government of India and United States of America published on 14.09.1999 in the Gazette of Government of India and also by considering the applicability of Chapter VII A of the Code of Criminal Procedure, has entertained the petition filed by the petitioner therein for the offence under Section 406, 498A, 494 506(ii) IPC r/w 6(ii) of Dowry Prohibition Act. Since the present case is also on the identical set of facts, I am of the opinion that following the said judgment, in the present case also similar directions could be given fore more than one reasons. The case is pending for more than five years. The split up petition filed by the accused 3 & 4 was already dismissed by the learned Magistrate. Even according to the prosecution, the presence of A1 is necessary. Further, factual aspects of the case would show that the 1st accused is aware of the pendency of the present case and he is purposely avoiding the proceedings only with an intention to drag on the proceedings. The 1st accused has also been declared as Proclaimed Offender. If the prayer of the petitioner is not entertained, the present proceedings will drag on for years together.

6.Hence, following the said judgment, this Criminal Original Petition is allowed with the following directions:

1.The petitioner is directed to file an application as per Section 16 of the Extradition Act and Art.12 of the Extradition Treaty between Government of India and U.S. Dated 14.09.1999, furnishing all particulars for issuance of provisional arrest warrant before the learned Magistrate and to issue a direction to the Ministry of External Affairs, Government of India to make a request for the Extradition of the fugitive criminal viz., the 1st accused Gopalakrishnan Subramanian in C.C.No.163 of 2011 on the file of the learned Judicial Magistrate, Tambaram. The petitioner shall furnish all the particulars about the accused.

2.On receipt of such application, the learned Magistrate is directed to issue provisional arrest warrant of the said accused pending extradition proceedings and forward the same to Interpol, Delhi and also to the external Affairs Ministry to transmit the same to their counterparts for execution.

3.The learned Magistrate is also directed to address the External Affairs Ministry to make a request for extradition of the said accused No.1 who is sought for prosecution and forward

(a)a copy of the warrant or order of arrest, issued by him,

(b)a copy of the charging document,

(c)such information as would justify the committal for trial of the person if the offence had been committed in the requested State.

4.Since in cases of urgency, a Contracting State may request the provisional arrest of the person sought pending presentation of the request for extradition, a request for provisional arrest may be transmitted through the diplomatic channel. The facilities of the International Police Organisation (Interpol) may be used to transmit such a request.

5.All documents shall be in English.

6.On receipt of such request, for extradition, the Ministry of External Affairs is directed to initiate the extradition proceedings under the Act as well as the extradition treaty dated 14.9.1999.

7.The Interpol at New Delhi and also the External Affairs Ministry are directed to transmit the provisional arrest duly authenticated by them to their counterpart to be dealt with in accordance with the land and procedure of the foreign state.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssv

To,
1.The Judicial Magistrate, Tambaram.

2.-do- Thro The Chief Judicial Magistrate, Kancheepurm.

3.The Additional Director General of Police/
Liaison Officer (Crime),
No.220, Pantheon Road,
Egmore, Chennai-80.

4.The Commissioner of Police,
O/o The Commissioner of Police,
Vepery, Chennai.

5.The Inspector of Police,
W-3, Tambaram All Woman Police Station,
Tambaram, Chennai-600 045.

6. The Ministry of External affairs,
Government of India, New Delhi.

7. The International Police Organisation
(Interpol) New Delhi.

8.The Public Prosecutor,
High Court, Madras.

+ 1 cc Mr.A. Suresh, Advocate Sr.6004

Crl.O.P.No.20427 of 2015

SKV(CO)
EU 04.03.16