

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2017

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Contempt Petition No.37 of 2017

L.Gayathri

..Petitioner

Vs

Mrs.Jayalakshmi,
The Inspector of Police,
All Women Police Station,
Adayar,
Chennai - 600 020.

.. Respondent

Prayer:- Contempt Petition has been filed under Section 11 of the Contempt of Court Act, 1971 to initiate contempt proceeding against the respondent Police for the non-compliance of order of this Court dated 08.08.2016 in CrI.O.P.No.16664 of 2016.

For Petitioner : Ms.Rajeswari Karthikeyan
For Respondent : Mr.C.Emalias,
Additional Public Prosecutor

ORDER

One Ms.L.Gayathri filed a petition in CrI.O.P.No.16664 of 2016, for a direction to the respondent Police to conduct investigation on her complaint dated 04.05.2016 in CSR No.50 of 2016. In CrI.O.P.No.16664 of 2016, this Court has passed the following order on

08.08.2016:-

"3. For the sake of convenience, the parties will be referred to by their name. Gayathri got married to one Balagurunathan on 22.01.1999 and they have two children through wedlock. While so, their marriage ran into rough weather. Gayathri filed HMOP.No.3009 of 2014 and obtained ex parte decree of divorce on 27.07.2015 before the I Additional Family Court, Chennai.

4. It is her allegation that even after divorce, Balagurunathan is coming and staying in her house and harassing her. It is her contention that the house in which she resides is her ancestral property and does not belong to Balagurunathan, despite which Balagurunathan is harrassing her. In this regard, Gayathri gave a complaint dated 04.05.2016, based on which, petition enquiry was conducted in CSR.No.50 of 2016, during which Balagurunathan appears to have given an undertaking to the Police that he will vacate the house within one month time, despite which, he has not vacated.

5. On the strength of the undertaking given by Balagurunathan, the respondent Police have closed the enquiry in CSR.No.50 of 2016. Taking into consideration the fact that Balagurunathan has not vacated the house, the closure report of CSR.No.50 of 2016 is set aside and the respondent

Police is directed to reopen the case and conduct enquiry and take action in accordance with law."

2. Thereafter, Ms.L.Gayathri has filed the present Contempt Petition alleging that the Police have not implemented the order dated 08.08.2016 passed by this Court in CrI.O.P.No.16664 of 2016.

3. On 19.01.2017, this Court has passed the following order:-

"Today when the matter is taken up for hearing, Ms.N.Jayalakshmi, Inspector of Police, All Women Police Station, Adyar, Chennai, the respondent herein, is present.

2. The learned Additional Public Prosecutor submitted that pursuant to the order dated 08.08.2016 passed by this Court in CrI.O.P.No.16664 of 2016, the respondent Police re-opened the enquiry in CSR No.50 of 2016 and recorded the statement of Balagurunathan. When the Police had issued summons to the petitioner to appear before them, the petitioner did not appear. In the statement given by Balagurunathan he has stated that he was forced to live in the house to take care of his two children and that the

children also, according to the Police, wants their father's company.

3.The respondent Police is directed to produce Mr.Balagurunathan, before this Court, on 31.01.2017, at 2.15 pm.

4.Post this matter on 31.01.2017 at 2.15 pm."

4.Today, Mrs.N.Jayalakshmi, the Inspector of Police, All Women Police Station, Adyar, Chennai produced Mr.Balagurunathan and also his daughter Ms.B.Hamsa. When this Court enquired, Ms.B.Hamsa said that she and her other twin sister Ms.B.Maya are studying XII standard and their Board examination is to begin shortly. She also stated that she wants to be in the company of her father.

5.In the considered opinion of this Court, the children should not be a victim of the cross-fire between the parents and it is the duty of both Ms.L.Gayathri and Mr.Balagurunathan to provide a peaceful environment for the two children to study and write the Board examination.

6.Ms.S.Vidhya, learned counsel for Mr.Balagurunathan submitted that applications have been filed in I.A.No.2270 of 2016 and I.A.No.1285 of 2016 in H.M.O.P.No.3009 of 2015, before the I Additional Family Court, Chennai, to set aside

the exparte decree and divorce obtained by Ms.L.Gayathri.

7.Ms.L.Gayathri, submitted that she has no other option but to approach this Court for a direction to the Police to implement the order dated 08.08.2016 passed by this Court and to ensure that Mr.Balagurunathan is removed from her house.

8.In the considered opinion of this Court, such a direction cannot be granted by this Court either under Section 482 Cr.P.C., or under the exercise of contempt jurisdiction. Even in the order dated 08.08.2016, in Cr1.O.P.No.16664 of 2016, this Court had only directed the Police to set aside the closure report and conduct enquiry in accordance with law. In a case of this nature, where the dispute is essentially between the spouses and further, when the matter is seized of by a competent Court, the Police should keep away unless a matrimonial offence occurs and not otherwise.

9.This Court asked both Ms.K.Gayathri and Mr.Balagurunathan to bear in mind the paramount interest and the future of their children and not precipitate the issue further and patiently wait for the outcome of the verdict of the Family Court in the pending litigations.

10. With the above observation, this Court is of the view that this is not a fit case to issue a statutory notice to the Police. Accordingly, this Contempt Petition is closed.

Sd/-

JOINT REGISTRAR (OS)

//Certified to be true copy//

Dated at Madras this the day of 2017.

COURT OFFICER(O.S.)

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CO/15/02/2017

One CC to Mrs. Rajeswari karthikeyan, Advocate, Sr.No.1494

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