

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 24.10.2017
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Crl.O.P No.20937 of 2011
and
M.P.No.1 of 2011

R.Mohanakrishnan

... Petitioner

vs.

R.Srinivasan

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the private complaint in C.C.No.2612 of 2011, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, to quash the same.

For Petitioner : Mr.R.Selvakumar

For Respondent : Mr.T.S.N.Prabhakaran

JUDGMENT

The petition is filed seeking to quash a private complaint filed by the respondent herein filed under Section 200 of Cr.P.C. before the Learned Chief Metropolitan Magistrate, Egmore in C.C.No.2612 of 2011 seeking to punish the petitioner for the alleged offence under Section 497 of Indian Penal Code.

2.It is the case of the petitioner is that the above private complaint is baseless and unsustainable in the eyes of law and fact. However, the Learned Chief Metropolitan Magistrate has taken cognizance of the above complaint in C.C.No.2612 of 2011 and issued Summons to the petitioner.

3.It is the further case of the petitioner is that the respondent herein filed the above private complaint alleging that the petitioner herein have illegal intimacy with the respondent's wife. The petitioner was habitual in visiting the respondent's house and having sexual intercourse with the respondent's wife. The main contention of the petitioner is that there is no any particular incident referred in the private

complaint. In such circumstance, the private complaint cannot be taken on file by the Learned Magistrate and the same is hence liable to be quashed.

4.Per contra, it is the case of the respondent is that the petitioner and the respondents are known to each other, since the father in law of the respondent worked as Sub Inspector of police and the petitioner is a constable. Therefore the petitioner used to visit the respondent's house and out of same there developed an illicit relationship with the wife of the respondent/defacto complainant. On coming to know about their illegal conduct, the respondent has preferred the above private complaint before the learned Chief Metropolitan Magistrate Court at Egmore, Chennai-600008, against this petitioner.

5.I heard Mr.R.Selvakumar, learned counsel appearing for the petitioner and Mr.T.S.N.Prabhakaran, learned counsel appearing for the respondent and perused the entire records.

6.It is the case of the respondent/complainant that his wife was having illegal intimacy with this petitioner/accused. It is the main ground of the respondent/complainant is that this petitioner/accused was habitually visiting the complainant's house and having sexual intercourse with the complainant's wife. But in the complaint filed in C.C.No.2612 of 2011, the complainant has not stated anywhere that he has directly seen or witnessed by any person.

7.Apart from this, the respondent/complainant has not made any complaint against this petitioner/accused before the Police Station at any point of time. It is made clear that the complainant has not referred any particular incident either seen by the complainant or by any witnesses, but, it simply stated that this accused have illegal intimacy with the complainant's wife.

8.Admittedly, the respondent/complainant and his wife are living together even today and there was no incident to show that due to the above illegal intimacy with the accused, the complainant has not taken any action either against the accused or against the complainant's wife.

9.On fair reading of the above complaint, it simply states that this petitioner/accused has habitually visited the complainant's house and having sexual intercourse with the

complainant's wife. To prove that the evidence only on verification of the complainant's wife cell phone, the petitioner/accused cell phone number found incoming and outgoing more than 90% calls by identifying by this petitioner/accused.

10. When the complainant has not made out any case stating by any specific date that this petitioner/accused was in specific position with his wife in the complainant's house. Apart from this, the respondent/complainant had not at all given any specific incident in his complaint except the allegation that he found the accused cell phone numbers in his wife's cell phone which alone would not constitute the offence.

11. The learned Magistrate also without noting of those things, he has simply taken cognizance of the complaint without any documents except the phone call register and the complainant also not given any person as witness except one Gokulram, who is an Advocate in profession. Therefore, on complaint itself is clearly shown that only on the personal vengeance against this petitioner/accused, this Court presumed that this false complaint has been lodged before the Court below.

12. The provision under Section 497 says as follows:

"497. Adultery.- Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punishable with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor."

As per the provision, it is the bounden duty of the respondent/complainant should give particular evidence to prove his complaint but in the entire complaint it is not stated so but bold allegations are thrown on this petitioner/accused.

13. Apart from this, if the complaint is put in trial, definitely either by the accused or the complainant should have put the complainant's wife in the witness box and make unnecessary questions, which will decide the family life of the complainant and his wife. Since as on date both the complainant and his wife are living together and there is no statement in the complaint by the complainant that the complainant has left his wife due to the illegal intimacy with the accused by his

wife. Therefore, the complaint has been unnecessarily filed only with an aim to harassing the petitioner/accused and defame the name of the complainant's wife, if the complaint is permitted to proceed, definitely it will be decided the good life of the complainant and his wife. Therefore, there is necessity warranting interference by this Court in the complaint and the same is liable to be quashed.

14.In the result:

(a) this Criminal Original Petition is allowed;

(b) the complaint in C.C.No.2612 of 2011, on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

vs

To

The Chief Metropolitan Magistrate,
Egmore, Chennai.

+1 cc to Mr.R.Selvakumar Advocate sr 74967

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and
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