

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :13.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.24074 of 2009
and
M.P.Nos.1 and 2 of 2009

1. Thangasamy (Died)

2. Amalavarphavam Petitioners/A2 & 3

Vs.

1. The State represented by
Inspector of Police,
W 21, All Women Police Station,
Guindy, Chennai - 600 032. 1st Respondent/Complainant

2. T.P.Reena 2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to the charge sheet in C.C.No.10824 of 2009 on the file of IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.C.Vijaya Kumar

For 1st Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

For 2nd Respondent : Mr.I.Jenkins William

O R D E R

Invoking the provisions of Section 482 of Cr.P.C., the petitioners have filed this petition to quash the criminal proceedings of the calendar case in C.C.No.10824 of 2009, pending trial against them on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

2. The petitioners herein are the 2nd and 3rd accused in the above case.

3. Heard Mr.C.Vijaya Kumar, learned counsel appearing for the petitioners and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for the 1st respondent and Mr.I.Jenkins William, learned counsel appearing for the 2nd respondent.

4. On the strength of the complaint lodged by the 2nd respondent herein, the 1st respondent/Police had registered a case in crime No.14 of 2008 as against the petitioners and one T.John Peter, who has been arrayed as 1st accused in the above said case alleging that they had committed the offence punishable under Sections 498A, 406 and 342 of I.P.C. After completion of the investigation, the 1st respondent/Police had filed a final report before the learned IX Metropolitan Magistrate, Saidapet, Chennai and after taking cognizance of the offences under sections 498(A), 406 and 342 of I.P.C., the learned Judicial Magistrate had taken the charge sheet on his file in C.C.No.10824 of 2009.

5. Now, the case in C.C.No.10824 of 2009 is pending trial. Under this circumstance, the petitioners who are the accused A2 and A3 in the above said case have approached this Court to quash the criminal proceedings of the above said case pending against them as no grounds are available to proceed against them under Sections 498(A), 406 and 342 of I.P.C.

6. The 1st accused in the case is Mr.John Peter, who is none other than the husband of the 2nd respondent/complainant. The petitioners herein are his parents. As it is manifested from the records, the marriage of the 1st accused and the 2nd respondent/complainant was solemnised on 29.05.1998. Prior to their marriage, an engagement was performed between them on 17.04.1998. It is revealed that after the engagement, there was a demand on the part of her husband saying that unless and until a sum of Rs.5,00,000/- was given, the marriage would not be performed. His demand was fulfilled by depositing a sum of Rs.5,00,000/- in the name of the 2nd respondent by her parents. Besides this, the 2nd respondent's father had incurred the entire marriage expenses to the extent of Rs.2,00,000/-. After their marriage, the 1st accused John Peter had received a sum of Rs.40,000/- from the complainant for pursuing software course. Thereafter, the 1st accused had expressed his willingness to go to United States of America, for studying computer course, and for this reason, she had parted with a sum of Rs.1,10,000/- to her husband.

7. In the year 2000, she had been to her mother's house for

delivery. While the 1st accused was studying in America, the parents of the complainant used to send Rs.8000/- per month to him for his monthly expenses. Thereafter, the 2nd respondent had delivered a female child by name Khezia. After coming back to India from U.S.A., the 1st accused had demanded her to part with him a sum of Rs.2,50,000/- for running a computer centre. This amount was also paid by her after borrowing the same from her father.

8. Thereafter, for purchasing a mini bus, her father had helped the 1st accused and thereafter, he had begun to torture the 2nd respondent, pestering money often. It is also revealed that on one occasion during night time, when her husband was found chatting with somebody through phone, the 2nd respondent had questioned. While so, she was severely beaten up with shoe and due to the tortuous act of the 1st accused, she had sustained injury over head and subsequently, she was taken into hospital.

9. On 08.11.2008, her husband was found missing. On enquiry, she was informed that he had developed illicit intimacy with his colleague, one Ms.Raja Rajeswari, who is also working along with him in K.C.G.Engineering College. In this Connection, the 2nd respondent/complainant had lodged a complaint before J7 Velachery Police Station, Chennai on 21.11.2008. Based on her complaint, a case in Crime No.1629 of 2008 was registered and subsequently, after the completion of the investigation, further action of the case was dropped. Ultimately, her husband, who is the 1st accused in the above said case which is sought to be quashed, had been to Libya on 15.11.2008 along with the said Raja Rajeswari with whom, he developed illicit intimacy.

10. It is the specific allegation as against the petitioners, who are the parents of the 1st accused, that they had helped their son Mr.John Peter, to go to Libya along with the said Rajarajeswari. In this Connection, the learned counsel for the petitioners has submitted that except the said allegation that the petitioners being the parents of the 1st accused had allowed him to go abroad along with the said Rajarajeswari, no other allegations to attract the provisions of Sections 498(A), 406 and 342 of I.P.C., were levelled and therefore, he has urged to quash the criminal proceedings in the case in C.C.No.10824 of 2009 in respect of the petitioners, which is pending trial on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.

11. Mr.V.M.R.Rajentren, learned Additional Public Prosecutor has emphatically denied the submissions made by Mr.C.Vijaya Kumar, and contended that the trial proceedings were yet to begun and therefore, the prosecution would definitely prove the case as against the petitioners beyond all reasonable doubts as

sufficient grounds were available to proceed against the petitioners.

12. Mr.I.Jenkins William, learned counsel appearing for the 2nd respondent has also urged that the 2nd respondent must be given an opportunity to substantiate her case and that at the initial stage no necessity was arisen to quash the proceedings of the above said case as against the petitioners.

13. While advancing his arguments, Mr.C.Vijaya Kumar, learned counsel appearing for the petitioners has brought to the notice of this Court that the 1st petitioner Thangasamy, who is the 2nd accused in the case had passed away. The 2nd petitioner, who is the 3rd accused, alone is available. In this regard, he would submit that the case in C.C.No.10824 of 2009 had been foisted against the petitioners and since no specific over-tact was attributed as against them, by the 2nd respondent, no purpose was going to be served in keeping alive the criminal proceedings as against the petitioners. He would further contend that the entire criminal proceedings initiated as against the petitioners was nothing but a gross abuse of process of Court and only on this ground the entire criminal proceedings were liable to be quashed.

14. In support of his contention Mr.C.Vijaya Kumar, learned counsel has made reference to the following two decisions of the Apex Court.

- (i) State of Madhya Pradesh v. Dr.Krishna Chandra Saksena (1997 (1) Crimes 4 (SC).
- (ii) Chunduri Siya Ram Krishna & Anr. v. Reddi Ravindra Babu & Anr. (AIR 2009 SC 3250)

15. In Dr.Krishna Chandra Saksena cited 1st supra, Hon'ble Mr.Justice S.B.Majmudar while speaking on behalf of a Division Bench of the Apex Court has observed that Interference for quashing a criminal proceedings to be exercised sparingly and in exceptional cases.

16. His Lordship has also made reference to State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp.(1) SCC 335. In this case, the Apex Court has laid down the guidelines to quash the criminal proceedings by way of illustrations as to under what circumstances the High Court can be justified in interfering with the criminal proceedings under Article 226 of the Constitution of India or Section 482 Cr.P.C. The Apex Court has also given Seven illustrative circumstances under which such interference may be justified. They are enumerated as under:

- '(1) Where the allegations made in the first information report or the complaint, even if they

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and made out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

of the seven circumstances illustrated above the circumstances Nos.1, 5 and 7 are very much important and relevant to the facts of the given case on hand.

17. In the 1st circumstance, it is stated that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

18. In the 5th circumstance, it is stated that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

19. In the 7th circumstance, it is stated that where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

20. In the given case on hand also, the averments of the First Information Report do not disclose any prima facie case to constitute any offence or make out of a case against the petitioners under Sections 498(A), 406 and 342 of I.P.C., and this Court is therefore of view that it cannot reach a just conclusion that there are sufficient grounds to proceed against the petitioners and apart from this, the learned IX Metropolitan Magistrate, Saidapet, Chennai ought not to have taken cognizance of the offence under Sections 498(A), 406 and 342 of I.P.C., as against the petitioners as no specific over-tact is attributed against them and further, even if the case is allowed to proceed against the petitioners, the chance of conviction is bleak and therefore, this Court finds that it is a fit case for quashing the criminal proceedings in respect of the petitioners.

21. In Chunduri Siya Ram Krishna and another cited 2nd supra, Hon'ble Mr. Justice Dr. Mukundakam Sharma has also referred the decision of the Apex Court in State of Haryana & Ors. v. Bhajan Lal & Ors., 1992 Supp.(1) SCC 335.

22. This Court has carefully examined the charge sheet which is a part of the record and prepared on the basis of the F.I.R. lodged by the 2nd respondent. The charge itself does not disclose any prima facie as against the petitioners to proceed under Sections 498(A), 406 and 342 of I.P.C.

23. Having regard to relevant facts and circumstances of this case, this Court is of considered view that this petition is deserved to be allowed as the criminal proceedings in C.C.No.10824 of 2009 pending trial as against the petitioners is liable to be quashed.

24. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.10824 of 2009 pending against the petitioners, on the file of the IX Metropolitan Magistrate, Saidapet, Chennai are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssn
To

1. IX Metropolitan Magistrate,
Saidapet, Chennai
- 2 do thro The Chief Metropolitan Magistrate
Egmore, Chennai
3. Inspector of Police,
W 21, All Women Police Station,
Guindy, Chennai - 600 032.
- 4.The Public Prosecutor,
High Court, Madras.

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