

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.15871 of 2010

and

M.P.No.1 of 2010

Apollos David

.. Petitioner

Vs

T.Joseph Sundaraj

... Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure to call for the entire records pertaining to C.C.No.447 of 2010 on the file of the learned Judicial Magistrate, Tambaram and quash the same.

For Petitioner : Mr.P.Suresh

For Respondent : No appearance

ORDER

The petitioner has filed this original petition under Section 482 of the Criminal Procedure Code to quash the proceedings pending in C.C.No.447 of 2010 on the file of the learned Judicial Magistrate, Tambaram.

2. The facts in brief are as under: The petitioner is the eighth accused and the respondent is the complainant. The respondent complainant is stated to have married the first accused, Anwen Jescinth Ofra Crystal. Their marriage was a love marriage and the same was performed as per Christian rites. The respondent complainant claims that he spent huge sum for the education of the first accused (wife) and for setting up a dental clinic, which was opened on 2.10.1997. Thereafter, the respondent complainant is stated to have left abroad in search of greener pastures.

3. It is the grievance of the respondent complainant that on his return from abroad, when he visited the clinic of the first accused, she refused to identify him and on enquiry, he came to know through the house owners that the first accuse (wife) lived with her husband in three address and stated that her husbands

are Arumai Joseph (sixth accused), the petitioner (eighth accused), Gopi (ninth accused), Abraham (seventh accused), Johnson @ Nelson (tenth accused), one Balasubramaniam and one Senthil kumar, and she had illicit relation with them.

4. It is stated that the respondent complainant sent a legal notice to the accused on 23.9.2006 for reunion and that the first accused (wife) lodged a police complaint against the respondent complainant and the same was registered in Crime No.22 of 2006 under Section 498(A) of the Indian Penal Code and pending on the file of the learned Judicial Magistrate I, Tambaram. That apart, a petition filed by the complainant for divorce, being I.D.O.P.No.89 of 2009, is stated to be pending before the Principal Judge, Chengalpattu.

5. It is further stated in the complaint that the first accused (wife) was represented through her counsel - A.Vijay, S.Anand Raj and J. Ganesh and they have been arrayed by the respondent complainant as accused 3, 4 and 5 respectively. It is also alleged that one Babu Muthu Meeran, a common friend, had demanded a sum of Rs.20 lakhs to set right all the pending cases. It is finally alleged that the daughter of the respondent complainant cannot be allowed to be in the custody of the first accused (wife).

6. Seeking quashment of the proceedings pending in C.C.No.447 of 2010 on the file of the learned Judicial Magistrate, Tambaram, the present criminal original petition is filed.

7. The learned counsel appearing for the petitioner submitted that there is no material to implicate the petitioner and the allegations are vague, baseless and the complaint only states that on enquiry from house owners, it is learnt that the petitioner lived with the first accused (wife of the complainant) in the address stated by him. He added that except making such bald allegation, no iota of material is placed before the learned Judicial Magistrate and taking cognizance of such complaint is an abuse of process of law.

8. It is further contended that while the learned Judicial Magistrate had taken cognizance of the alleged offences under Sections 327, 398, 420, 498 read with Section 120B of the Indian Penal Code, none of the ingredients of Sections 327, 398, 420 or 498 of the Indian Penal Code are made out against the petitioner herein and, therefore, the entire proceedings is liable to be set aside.

9. There is no representation on behalf of the respondent and till date the respondent complainant had not chosen to file a counter affidavit.

10. I heard Mr.P.Suresh, learned counsel for the petitioner and perused the documents available on record.

11. At the outset, it needs to be noted that at the time of admission of this petition an order of interim stay was granted and till date the same is in force and the respondent complainant had not taken any steps to vacate the same.

12. It is trite that jurisdiction under Section 482 Criminal Procedure Code has to be exercised sparingly and with circumspection. In exercising that jurisdiction, the High Court would not embark upon an enquiry, whether the allegations, in the complaint, are likely to be established, by the evidence or not, as the same is the function of the trial Court, where evidence is adduced. However, when the High Court is called upon to exercise this jurisdiction to quash the proceedings at the stage of the Magistrate taking cognizance of an offence, it is guided by the allegations, whether those allegations set out in the complaint or charge-sheet do not in law constitute or spell out any offence and that resort to criminal proceedings would amount to an abuse of the process of the Court or not.

13. The Hon'ble Supreme Court time and again held that in following categories of cases, the High Court in exercise of its powers under Section 482 of the Code of Criminal Procedure may interfere in the proceedings relating to cognizable offences, to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. However, this power should be exercised sparingly, and that too, in the rarest of rare cases:

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 make 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. Where allegations in the complaint did constitute a cognizable offence justifying registration of a case and investigation thereon and did not fall in any of the categories of cases, enumerated above, calling for exercise of extraordinary powers or inherent powers, quashing of FIR was not justified.

14. Now adverting to the facts of the instant case, let us see, as to whether, the allegations, contained in the complaint, do not disclose the commission of an offence, or whether the same are so absurd, as no prudent man, would be able to act upon the same, so as to come to the conclusion, that an offence had been committed, by a particular person. There are only general and vague allegations of illicit intimacy of the complainant's wife with the petitioner, the knowledge of which the respondent complainant claims to have received from the house owners. As to on what basis the the learned Judicial Magistrate has taken cognizance of offences under Sections 327, 398, 420 and 498 is not known. None of the ingredients are attracted on a bare perusal of the complaint.

15. In the case on hand, civil litigation is pending between the parties and the first accused (wife) had also lodged a police complaint against the respondent complaint. It is a matter of common experience that a tendency has developed that when the relations, between the husband and wife become strained they try to implicate as many members as they can with a view to wreak vengeance. This practice should not be encouraged. The complaint, and the summoning order, if allowed to continue, shall certainly amount to sheer abuse of the process of the Court. The same, are, thus, liable to be quashed.

For the foregoing reasons, this criminal original petition is allowed and the proceedings pending in C.C.No.447 of 2010 on the file of the learned Judicial Magistrate, Tambaram, are quashed insofar as the petitioner is concerned. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

To

The Judicial Magistrate,
Tambaram.

CRL.O.P.No.15871 of 2010 and
M.P.No.1 of 2010

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