

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM

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

CRL.O.P.No.28720 of 2009

and

M.P.No.1 of 2009

Mary Julian

.. Petitioner

Vs

1.N.U.Pradeep Kumar

2.Meena Kumari

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records of the proceedings in C.C.No.999 of 2001 pending on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.B.Raviraja

For Respondents : No Appearance

ORDER

The petitioner is the wife of the 1st respondent herein. She has come up with the present Criminal Original Petition seeking to quash the criminal proceedings in C.C.No.999 of 2001 on the file of the Learned XVII Metropolitan Magistrate, Saidapet, Chennai which was lodged by the 1st respondent alleging criminal trespass and theft over 1st respondent's house.

2.According to the petitioner the allegations made in the complaint is untrue and unsustainable for the simple reason that she was also co-owner of the above house property said to have trespassed and more so she has taken only her belongings from 1st respondent's house. It is also her contention that the delay of 3 years in lodging the above complaint as if the petitioner has trespassed the 1st respondent's house would by itself show that the averments in the complaint is intended to rope the

petitioner in a false case. It is also her contention that the 1st respondent despite due knowledge over the petitioner's actual address of residence but by giving yet another address made the service over the above complaint pending for about 10 years. Therefore the cognizance of the above complaint by the Learned Judicial Magistrate is unsustainable.

3.I heard Mr.B.Raviraja, learned counsel for the petitioner and there is no representation on behalf of the respondents.

4.On perusal of the case records it is seen that according to respondent /complainant on 20.02.1998 the petitioner trespassed into his house and unauthorisedly removed things, therefore the articles worth of Rs.5,00,000/- was taken away dishonestly. Thereupon the 1st respondent lodged a complaint before the Inspector of Police, R3 Ashok Nagar Police Station, Chennai and CSR was issued.

5.The said Complaint is said to be previously closed by the police and the same was agitated before this Court and this Court directed the police to take appropriate action, Whereby it was reported that an enquiry was conducted and as it disclosed that no offence had taken place, has directed the petitioner to pursue his remedy before the appropriate forum. Thereupon the present complaint is being filed according to petitioner.

6.Before dealing with the facts of the case, at the outset it is seen that the 1st respondent/complainant has got a Decree dissolving his marriage on 25.02.2003 made by the Principal Family Court, Madras, Therefore it is needless to say that till 24.02.2003 there was a valid marriage existed between the 1st respondent and petitioner. In the said circumstance I am unable to accept the allegation of trespass attributed against the petitioner. As being the legal wife she will be entitled to ingress and egress and it is equally important to state that the petitioner and the 1st respondent after their marriage has lived as husband and wife and also a co-owner in the above house property in which the trespass by the petitioner is said to have happened.

7.In as much as the other facet of allegation as to theft it is seen that the petitioner has taken a car which was under the custody of the 1st respondent/complainant and surrendered the same to financier for settling the loan amount availed towards

the car purchase. In any angle the above act of the petitioner cannot be construed as theft.

8. On careful perusal of the complaint as well on appraisal of the matrimonial dispute between the petitioner and the 1st respondent, it is obvious for this Court to see that the complaint is intended to harass the petitioner. In this regard it would be useful to say that the petitioner has settled her share in favour of her daughter living along with the 1st respondent. It is further seen that the 1st respondent has married one another lady subsequent to above divorce decree she is living separately. It is also seen that the decree is an ex-parte decree.

9. The most important fact appears in the case is that the petitioner to safeguard her daughter living in the 1st floor of the above house has filed a suit in O.S.No.5942 of 2009 before the Learned VII Assistant City Civil Court, Chennai and has obtained an order of injunction in I.A.No.11722 of 2009 restraining the 1st respondent from disturbing the possession.

10. It is further seen that the petitioner is employed abroad and she has taken part in the above legal battle through her power agent and at the time of institution of above complaint she was employed at Saudi Arabia. Therefore there is no doubt that that the present Criminal Original Petition is intended to harass the petitioner and to settle the issue in his favour by 1st respondent. Only on appraisal of the said fact this Court has granted interim stay of the proceedings at the time of admission itself.

11. Therefore for the foregoing reasons, the Criminal Original Petition stands allowed by quashing the complaint of the 1st respondent in C.C.No.999 of 2001 on the file of learned XVII Metropolitan Magistrate, Saidapet, Chennai. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

vs

To

The XVII Metropolitan Magistrate,
Saidapet, Chennai.

+1cc to Mr.B.Raviraja, Advocate, S.R.No.23414

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CS/09/01/2019



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