

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.156 of 2018
and
Crl.M.P.No.1240 of 2018

M.Ashok Kumar

.. Petitioner

Vs.

1. State rep. by
Inspector of Police,
E2, Royapettah Police Station (Crime),
Royapettah,
Chennai - 600 014.

2. Shree Vidhya
(Defacto complainant)

.. Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure, against the order passed by the Principal Sessions Judge, Chennai, by its order dated 13.07.2017 made in Crl.M.P.No.5983 of 2017 in Crl.M.P.No.551 of 2017 by allowing the petition filed by the Respondent under Section 439(2) of Cr.P.C.

For Petitioner : Mr.P.Chandrasekar

For Respondent : Mr.G.Harihara Arun Soma Sankar(for R1)
Government Advocate (Criminal Side)

Mr.Stalin Abhimanyu (for R2)
(for Defacto complainant)

O R D E R

The accused in Crime No.1 of 2017, on the file of the 1st respondent Police is the criminal revision petitioner before this Court, challenging the order passed in Crl.M.P.No.5983 of 2017 in Crl.M.P.No.551 of 2017, dated 13.07.2017 passed by the learned Principal Sessions Judge, Chennai.

2.The case of the petitioner is that he was falsely implicated in the case in Crime No.1 of 2017 for the alleged offence under Section 467, 468, 471 and 472 of I.P.C.

3. According to the prosecution case is that the petitioner/accused and the defacto complainant/2nd respondent herein are husband and wife. Their marriage was solemnized in the year 1998 and from their wedlock a male child was born to them in the year 2000. Due to misunderstanding between the petitioner and the defacto complainant, they got divorce in the year 2007. It is alleged that the petitioner created a forged letter in which it is stated that he is an Advisor of Malaysian Prime Minister and threatened the defacto complainant by showing the said letter dated 25.09.2013 and also he filed the said fake letter in the High Court of Madras and High Court of Madras at Madurai Bench. Therefore, pursuant to a complaint given by the defacto complainant, a case was registered against him in Crime No.1 of 2017 for the offences under Sections 467, 468, 471 and 472 of I.P.C.

4. It is the case of the petitioner is that the defacto complainant is none other than the estranged wife and she was falsely stated that she was threatened by the petitioner under a forged letter dated 25.09.2013, but the petitioner has not fabricated the alleged document. This petitioner/accused is a Ph.D. holder in Economics of Malaysia, he is a Chief Executive Officer of PEMM Consulting Limited.

5. Though their marriage was solemnized in the year 1998, the said marriage was dissolved in the year 2007 on a petition filed by the defacto complainant/wife and the said order was passed an exparte decree and hence this petitioner has filed a petition to set aside with a delay petition and the same was dismissed by the learned 1st Additional Judge, Family Court, Chennai. Thereafter, visiting rights along with custody petition was filed by this petitioner in I.A.No.2238 of 2016 seeking custody of his minor son, the Court ordered ad-interim visiting rights to the petitioner on 16.09.2016 for the 1st Sunday of every month as monthly once between 10.00 a.m. to 1.00 p.m. and also directed the defacto complainant to produce their son on 24.09.2016 to the Child Care Centre at Family Court.

6. Taking vengeance against this petitioner, the said complaint was falsely given by the defacto complainant alleging that the petitioner presented a letter purportedly issued to him by the Prime Minister of Malaysia bearing reference No.PMP/Consultant 2014 (02/31) dated 25.03.2013 effective for the period of 3 years.

7. Due to the above said false complaint, the petitioner was arrested, thereafter, the petitioner was filed a bail petition before the learned Principal Sessions Judge, Chennai, under Section 439 of Cr.P.C.

8.Considering the petitioner's case, on 12.01.2017, the learned Principal Sessions Judge, Chennai was pleased to grant bail on condition that the petitioner is ordered to release on bail to executing a bond for Rs.10,000/- with two sureties each for a like sum to the satisfaction of the learned XVIII Metropolitan Magistrate, Chennai and the petitioner also directed to appear before the Investigating Officer daily at 10.30 a.m. until further orders.

9.After granting bail, the prosecution has moved the cancellation of bail in Crl.M.P.No.572 of 2017 in Crl.M.P.No.551 of 2017, on the ground that though the bail was granted on 12.01.2017 in Crl.M.P.No.551 of 2017 and while bail was granted to the petitioner/ accused, the Court below has imposed the condition that the accused shall execute a bond for Rs.10,000/- with two sureties each and also appear before the Investigating Officer daily at 10.30 a.m. until further orders.

10.As per the condition to report before the Investigation Officer has not been complied with by the petitioner/accused, though the petitioner/accused moved twice before the learned Principal Sessions Judge, Chennai, for modification of the condition, but the same was dismissed and directed to comply the conditions, but without complying the conditions was alleged that the petitioner/accused was left to Malaysia.

11.Due to the non co-operation of the petitioner, the investigation also not completed, therefore, considering the prosecution case, the petitioner filed Crl.M.P.No.5983 of 2017 for cancel the bail granted in Crl.M.P.No.551 of 2017 dated 12.01.2017 and the bail was cancelled on 13.07.2017. Challenging the said order, the petitioner has filed this Criminal Revision Case before this Court.

12.I heard Mr.P.Chandrasekar, learned counsel for the petitioner, Mr.G.Harihara Arun Soma Sankar, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.Stalin Abhimanyu, learned counsel for the defacto complainant and perused the entire records before this Court.

13.At the time of argument, one Mr.Stalin Abhimanyu, learned counsel who appeared for the defacto complainant, this Court impleaded the defacto complainant suo moto as the 2nd respondent in this petition.

14.It is the case of the petitioner is that though the bail was granted on 12.01.2017 in Crl.M.P.No.551 of 2017, but without giving any notice by the said Court and the prosecution filed the cancellation of bail petition filed in Crl.M.P.No.5983 of 2017 and the learned Judge also without directing to issue

notice to the petitioner, as ordered to cancel the bail on 13.07.2017.

15.The learned counsel for the defacto complainant, who is the 2nd respondent strongly objected that the learned Principal Sessions Judge, Chennai was pleased to imposed the condition that the petitioner shall report before the Investigation Officer daily at 10.30 a.m. was not properly complied with by the petitioner/accused and he was left to Malaysia. Therefore, the learned Principal Sessions Judge having power to cancel the order in CrI.M.P.No.5983 of 2017 is well considered order. Therefore, the learned counsel for the defacto complainant has strongly objecting for allowing the Criminal Revision Petition.

16.The learned Government Advocate (Criminal Side) for the 1st respondent has also objected for allowing the Criminal Revision Case filed by the petitioner/accused on the ground that though the learned Principal Sessions Judge, Chennai has granted bail on 12.01.2017 with a condition to report before the Investigating Officer every day at 10.30 a.m., but the petitioner/accused has not complied the same. Therefore, the cancellation of bail was filed and the same was ordered.

17.It is admitted fact that the petitioner was granted bail in CrI.M.P.No.551 of 2017 on 12.01.2017, on condition that the petitioner should report before the Investigation Officer daily at 10.30 a.m.

18.The 1st respondent police having every right to file cancellation of bail for non compliance of the condition imposed in CrI.M.P.No.551 of 2017 by the petitioner, but the 1st respondent police should intimate the petitioner about the filing of the cancellation of bail and the Court should issue notice to the petitioner for the appearance of the petitioner in CrI.M.P.No.5983 of 2017, but on fair reading of the order dated 13.07.2017 in CrI.M.P.No.5983 of 2017, there is no mentioning about the issuance of the notice to the petitioner/accused, who is the respondent in the said petition in CrI.M.P.No.5983 of 2017.

19.During the course of arguments, the learned counsel for the petitioner/accused has filed an additional typed set in page No.4, an Advocate by namely Mr.Rajkumar has issued a lawyer notice dated 11.05.2017 to the Inspector of Police, stating that though the notice was issued to the sureties in the bail order in CrI.M.P.No.551 of 2017, but the lawyers were informed the 1st respondent/police, E2 Royapettah Police Station (Crime), Chennai, that the petitioner Mr.Ashok Kumar has went to Malaysia and the service of notice to him may be sent, who is residing at Malaysia, but even after the said letter, the Court also not

looked into the facts of the case that though the prosecution has filed the bail petition in CrI.M.P.No.5983 of 2017 for cancellation of bail, but without issuing proper notice to the petitioner/accused, the order of the cancellation of bail dated 13.07.2017 is totally wrong. Therefore, this Court warranting interference in the order passed in CrI.M.P.No.5983 of 2017, dated 13.07.2017, on the file of the learned Principal Sessions Judge, Chennai and the same is liable to be set aside.

20.In the result:

(a) this Criminal Revision Case is allowed by setting aside the order passed in CrI.M.P.No.5983 of 2017, dated 13.07.2017, on the file of the learned Principal Sessions Judge, Chennai;

(b) the petitioner is ordered to be released on bail on his executing a bond for Rs.10,000/- with two sureties each for a like sum to the satisfaction of the learned XVIII Metropolitan Magistrate, Chennai;

(c) the petitioner shall appear before the Investigation Officer daily at 10.30 a.m. until further orders. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Principal Sessions Court,
Chennai.
2. The XVIII Metropolitan Magistrate,
Saidapet, Chennai-15

+5ccs to Mr.P.Chandrasekar, Advocate, S.R.No.9518

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CS/08/02/18