

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :28.11.2018

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.No.27425 of 2010 and

M.P.No.1 of 2010

1.Banjit Das

2.Bulu Das

... Petitioners/Accused 1 & 2

Vs.

1.State by,

the Sub Inspector of police,

W-7, All Women Police Station,

Anna Nagar, Chennai.

: Respondent/Complainant

2.Sunitha Singh

: Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to C.C.No.4137 of 2010 on the file of the V Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioners : Mr.Baskaran

For Respondent : Mr.T.Shanmugarajeswaran,
No.1 Government Advocate (crl side)

For Respondent : No appearance
No.2

ORDER

This petition is filed to quash the proceedings pending against the petitioners in C.C.No.4137 of 2010 on the file of the V Metropolitan Magistrate Court, Chennai.

2.The second respondent lodged a complaint that she is a native of Assam and also working as a Makeup Artist and during the year 1996 while she was preparing for civil service examination at Gowhathi, first accused met her in the class, developed friendship and also visited her home often on the pretext of study. In the year 1997, both went to Delhi and the first petitioner arranged for her studies at Jawaharlal Nehru University. In the meantime the first petitioner got a job at Bhilai and he also arranged a job for the defacto complainant at Sanjeevan Medical Research Centre. On 15.02.1998 the first petitioner married the second respondent in Jaganath Temple at Bhilai before the priest and in the presence of his distant relative one Mukul Shahariya. Thereafter, they started their life in the quarters at Bhilai. The first petitioner has not informed the marriage to his parents that his father was a heart

patient. But, the de facto complainant insisted the marriage to be registered. While so, in the year 1999, when they were travelling in a scooter, the second respondent insisted for registering their marriage. A problem started between them and the first petitioner rode the vehicle rashly and deliberately dropped her from the scooter and out of which, the second respondent / complainant suffered injury on her spine. She was treated at Jawaharlal Nehru Hospital of Bhilai Steel Plant and continued her treatment in Appallo Hospital at Pune. The first petitioner and the second respondent after their marriage lived at various places in Bhilai, Delhi and Koimbedu and Arumpakkam in Chennai. In view of the injury, she could not give birth to a child and the first petitioner abused and assaulted her that she is incapable of giving birth to a child. He also destroyed their marriage photos, when she was away from home. In an occasion when they were residing at Besant Nagar, there was a wordy quarrel, on account of which, she got fainted, the first petitioner gave water and after drinking the same, the second respondent felt nausea and assuming overdose of some medicine, she was taken to Isabella Hospital and she was provided with treatment. On 04.03.2005 the first petitioner said to have married one Sayanika and the second respondent lodged a complaint before the Commissioner of Police, Chennai. The complaint was forwarded for enquiry to the Assistant Commissioner of Police, Anna Nagar Range, and since there was no documentary evidence available to the marriage between the first petitioner and the second respondent, her earlier complaint was closed. The second respondent after collecting the required documents lodged the present complaint on 29.10.2009 before the State Commission for Women and the same was forwarded to the Deputy Superintendent of Police, Annanagar, vide letter No.3127/WC/2009, who in turn forwarded the same to the respondent Police and accordingly, a case was registered on the file of the respondent Police in Crime No.14 of 2009 for the offence under Section 498(A) IPC and the respondent Police after investigation filed a final report as against these petitioners for the offence under Sections 498(A), 323 and 506(i) IPC.

3.The final report was originally filed before the V Metropolitan Magistrate Court, Egmore and was also taken on file in C.C.No.437 of 2010 and pending this application, the case was transferred to the Additional Mahila Court, Allikulam and is pending in C.C.No.6 of 2017.

4.The learned Counsel for the petitioners would submit that there is no material for the marriage said to have solemnised between the first petitioner and the second respondent and for the occurrence said to have taken place in the year 2005, the complaint was made in the year 2009 and the complaint is barred by limitation. The charge sheet as well as the records filed in

support of the final report would show the case of the complainant is a concocted story, filed with malafides for wrecking vengeance and causing harassment and torture to the petitioners.

5.It is further contended that the second respondent has sent several e-mails to the first petitioner and his wife that she filed a false complaint and the first petitioner is an innocent person. All these e-mails have been sent from the email ID of the de facto complainant and with an evil desire a false complaint has been filed to harass them.

6.Per contra, the learned Government Advocate (Crl Side) would submit that 16 witnesses have been examined by the respondent Police through their investigation and all the 16 witnesses have corroborated the version of the second respondent in their respective statements and the Sub Inspector of Police has also enquired the witnesses at Bhilai and found the second respondent had been declared as the first petitioner's wife in the personal file of the first petitioner in March 1998 itself. In the year 2006, the first petitioner married another woman and thereafter, he absconded and her earlier complaint lodged in the year 2006 was closed for want of evidence and thereafter, the complaint was lodged on 31.12.2009 and after examining all the witnesses, a final report was filed on 22.09.2010.

7.The available evidence as well the material documents collected in this case would show that the first petitioner and the second respondent were living together as husband and wife and treatment was provided by the first petitioner to the second respondent at Bhilai as well as at Chennai for the injuries sustained by her and there was an attempt made by the first petitioner to tamper the treatment documents from the Isallella Hospital at Chennai. The first petitioner approached the Doctor, who treated the second respondent in Isabella Hospital and requested for the case history of the second respondent and the Doctor refused to part with the same and has also given a statement in this regard.

8.This Court has paid its best anxious consideration to the rival submissions and also perused the available records.

9.A complaint was lodged by the de facto complainant as against the first petitioner in the year 2009. The Assistant Commissioner of Police, Anna Nagar, Chennai conducted enquiry on the complaint and closed the complaint as follows:

"During the enquiry Mr.Banjit Das has assured the following:

1.That he would not interfere and disturb the life of Sri Sunitha Singh in future.

2.That he has no objection for waiving out the title 'Das' put in the LIC Policy of Sunita Singh.

3.That he owes the responsibility of the loan amount of Rs.2.5 lakhs obtained from HDFC, Bank Ltd, Chennai.

Hence, Mr.Banjit Das is hereby advised to keep up his undertakings without fail and to desist from interfering and interrupting the life of the petitioner Sri.Sunita Singh in any manner directly and indirectly. He is warned that violation of his undertakings will be liable to action according to law. Similarly, Sri Sunitha Singh is also advised not to disturb the counter petitioner Banjit Das."

10.Thereafter, the present complaint was lodged in the year 2009. One Doctor David Chellaraj, Consultant and Physician at Isabella Hospital at Mylapore, Chennai has provided treatment to the second respondent in the year 2006 and a statement was also recorded from him by the Sub Inspector of Police, All Women Police Station, Anna Nagar. According to Dr.David Chellaraj, the second respondent/complainant came to his hospital on 28.02.2006 and she had consumed Alprazolam and Ciproflizacin and she could not stand and she was provided treatment in the hospital and discharged from the hospital on 01.03.2006. On 06.03.2006, a person approached him that Sunitha Singh is his wife and he wanted the medical records pertaining to her and the Doctor, refused to furnish those medical records to the person that it is a medico legal case, he would not furnish the same without appropriate authority.

11.During the course of investigation, the Sub Inspector of Police has also gone to the Bhilai Steel Plant and collected certain materials that the first petitioner has worked at Bhilai Steel Plant and the second respondent has also lived with him as his wife. The second respondent was also provided treatment at Bhilai Steel Plant and the treatment at Bhilai Steel Plant Hospital, can be availed only by the family members and it shows that the second respondent took treatment at Bhilai Steel Plant hospital as wife of the first petitioner and the relative of the first petitioner one Mukul Shahariya, in whose presence the marriage was solemnised in the year 1998 at Jeganat Temple was also examined by the investigation officer and he was also cited as LW4 in the final report.

12.The petitioners mainly relied upon the earlier complaint

enquired by the Assistant Commission of Police, Anna Nagar, Chennai and referring the same as it was already closed as mistake of fact and therefore, this present complaint is not maintainable and several e-mails were sent by second respondent through the wife of the first petitioner. The respondent Police claim that the first petitioner and the second respondent have married at Jeganath Temple in the year 1998 and thereafter lived as husband and wife at Bhilai Steel Plant, where the second respondent was provided treatment in the hospital as wife of the first petitioner. The Sub Inspector of Police had also made investigation at Bhilai Steep Plant and found that the second respondent was declared as first petitioner's wife in the personal file of the first petitioner in March 1998 itself. Apart from the same, they also examined Mukul Shaharia, in whose presence the marriage was solemnised.

13.The evidence of Doctor would disclose that there was an attempt made by the first petitioner to collect the medical records from the Doctor, who treated the second respondent. The grounds raised by the petitioner can be considered only during the trial and there cannot be a ground for quashing the complaint. However, it is the case of the complainant that the first petitioner though married the second respondent in the year 1998 has suppressed the same to his parents and when she insisted him to inform his parents, the first petitioner evaded that his father is a heart patient, it would affect his health and therefore, the second respondent has insisted for registration of their marriage. Except bald allegations as against the second petitioner, there is no other allegation that the second petitioner has lived together along with the first petitioner and the second respondent and has also demanded dowry and harassed the de facto complainant and therefore, the petition is allowed insofar as the second petitioner is concerned and the petition is dismissed insofar the first petitioner is concerned.

14.In the result, the criminal original petition is partly allowed and the final report in C.C.No.4137 of 2010 as against the second petitioner is quashed and the final report as against the first petitioner is sustained. Consequently, connected M.P.No.1 of 2010 is closed.

Sd/-
Assistant Registrar(JJ Act)

// True Copy//

Sub Assistant Registrar

dsk/ska/vji

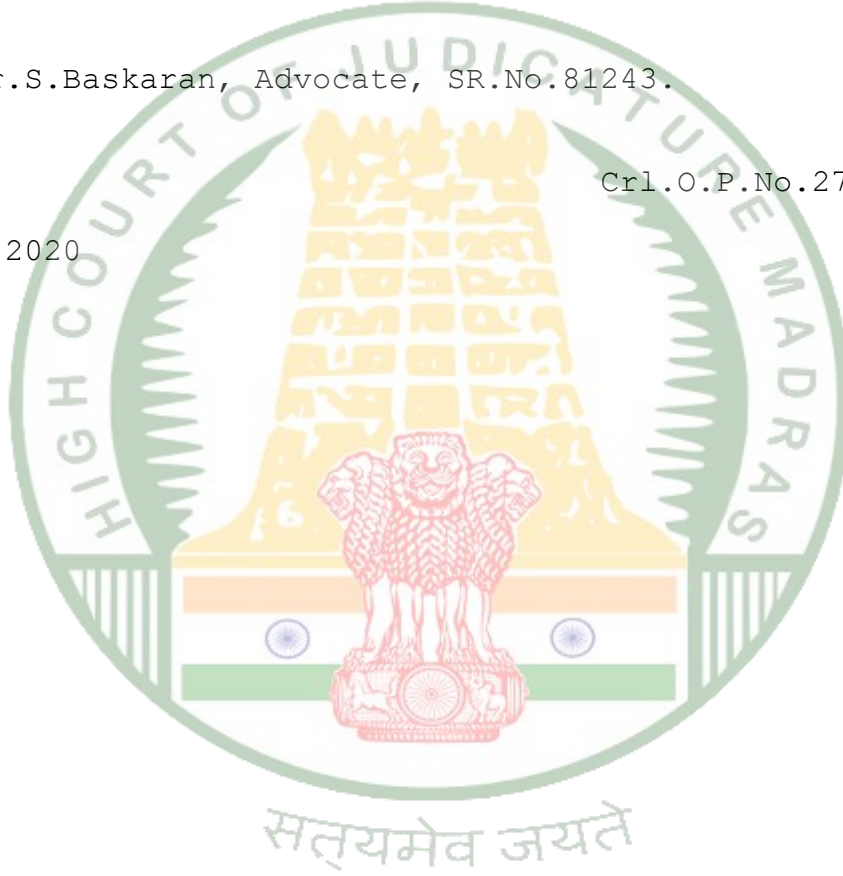
To

1. The V Metropolitan Magistrate, Egmore,
Chennai.
2. The Sub Inspector of police,
W-7, All Women Police Station,
Anna Nagar, Chennai.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.S.Baskaran, Advocate, SR.No.81243.

Crl.O.P.No.27425 of 2010

SSI (CO)
CSR:12.02.2020



WEB COPY