

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 04.07.2018
Pronounced on : 11.07.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.21896 of 2011
and
M.P.No.1 of 2011

S.Rafika,
W/o.A.Sagubar @ Sadique. ... Petitioner/Respondent
No.3

Vs.

Parveen,
W/o.Name not known. ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings so far as the petitioner is concerned in C.C.No.1852 of 2011 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioner : Mr.K.Elangovan
For Respondent : Not ready in notice

O R D E R

This Criminal Original Petition is filed to call for the records and quash the proceedings so far as the petitioner is concerned in C.C.No.1852 of 2011 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai.

2.The petitioner herein, who has been arrayed as respondent No.3 on the complaint of one Parveen of Union Carbide Colony, Everedy Colony, Kodungaiyur, who had filed a complaint before the Protection Officer, Chennai District, which was forwarded to the X Metropolitan Magistrate, Egmore, Chennai which was taken on file as C.C.No.1852 of 2011 under the Protection of Women from Domestic Violence Act 2005 in short hereinafter referred as "DV Act".

3.The contention of the learned counsel appearing for the petitioner is that the respondent, who claims herself to be married to the petitioner's husband namely Sadiq on 12-8-2010 at

Andhra Pradesh as per Mohamedian Law. Thereafter, as the marriage between Sadiq and the respondent was not known to anybody, the respondent and the said Sadiq had set up a separate home at Raghavan Nagar, Kodungaiyur Chennai from 06-01-2011. It is alleged in the complaint that on 26-01-2011, the petitioner along with mother, sister, and brother of her husband Sadiq went to the residence of the respondent threw her out of the house, where she has been living with Sadiq, the husband of the petitioner and thereafter, admitted the said Sadiq at a Rehabilitation Centre for alcoholism.

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4.The Further contention of the petitioner is that the law under D.V. Act is to protect the wedded wife from any violence against her husband or the family members of her husband and there is no prima facie evidence against the petitioner and materials placed are groundless. The petitioner is a third person to the respondent and being a third person she is not connected with the respondent's personal life. The petitioner will not come under Domestic relationship with the respondent as she had no relationship with the respondent, they have not lived together at any point of time. They have not shared any households and they have no relationship in the nature of marriage, adoption. The petitioner and the respondent are not family members living together as a joint family and hence, Section 18, 19 and 20 of the DV Act relief sought by the respondent are not maintainable against the petitioner and the case against her to be quashed.

5.Notices have been sent to the respondent and the private notice addressed to the respondent returned "addressee left". The affidavit of service in proof of the same has been filed on 28-06-2017. Thereafter, name of the respondent was printed. Despite the same, the respondent had not appeared.

6.The petitioner was married to Sadiq on 07-09-1997 at the Madras Haj Service Society, which was an arranged marriage and admittedly, the petitioner is the 1st wife of the said Sadiq. The marriage of the respondent to the said Sadiq is on 12-08-2010, in Andhra Pradesh and thereafter, the said Sadiq and the respondent seem to have set up a separate home from 06-01-2011 and the petitioner and the respondent had never lived together or shared common households at any point of time. In view of the above, this Court proceeded further in the above case on the materials available.

7.On perusal of the complaint dated 06-04-2011 of the respondent to the Protection Officer, it is seen that the respondent has stated that the said Sadiq had represented to her that he is unmarried and he is willing to marry her. Believing

his words, she had married him on 12-08-2010 at Andhra Pradesh. It is further admitted by the respondent that the marriage is not known to either of the families and from 06-01-2011 they are living separately at Raghavan Nagar, Kodugaiyur. Thereafter, the respondent came to know that about the subsistence of 1st marriage of the said Sadiq with the petitioner. When she questioned the same, Sadiq is said to have stated as per Mohamedian law, he is entitled to have more than one wife. When the petitioner came to know about the marriage of the Sadiq with the respondent on 26-01-2011 the petitioner is said to have trespassed into the respondent's house and chased her away and taken the said Sadiq to a Rehabilitation Centre for treatment for alcoholism. Further, the marriage of the respondent with the said Sadiq was not accepted by the petitioner's family and they were threatening her.

8. The further averment in the complaint is that on 03-04-2011, the family members of Sadiq have come and forced her to vacate the house knowing about the respondent being pregnant. These are the averments against the petitioner in the complaint. Based on the complaint, the Protection Officer had arrayed this petitioner as R3 along with four others namely the respondent's husband Sadiq, Brother-in-law, Sister-in-law and Mother-in-law. On perusal of the Domestic Incident Report, it is seen that the finding of the Protection Officer as against the petitioner is that the petitioner had called upon the relatives of the respondent over phone and had defamed her and also threatened to damage her belongings.

9. Further, it is seen that the petitioner herein has filed a Divorce petition as per Mohamedian Law in O.S.No.16 of 2011 in the Family Court, Chennai, in which she stated about the addiction of alcoholism of her estranged husband Sadiq and the earnest steps taken by her to reform him failed. Further, the petitioner and her parents have taken earnest steps to set up business namely "Fathima Foot wears", but the said Sadiq was not taking care of the business have been squandering the wealth of the petitioner and he had continued to be alcoholic in company with bad association, further, he had been indulging in extra marital affairs.

10. From the year 1997, there have been no issues, hence, she had taken treatment and had delivered a test tube baby by ICSE method on 12-09-2010. Unable to bear any further act of Sadiq, the petitioner had filed a divorce petition. It could be seen from the copy of the plaint that the petitioner had given birth to a child on 12-09-2010 and the contention of the respondent in the complaint is that on 26-01-2011, the petitioner along with the family members of the said Sadiq had come to her house and had threatened her and chased her away which is an highly

improbable one to expect a person, who had delivered a baby. After prolonged gynecological treatment, she had delivered a test tube baby through ICSI method at that point of time and she was under constant medical care nursing the infant baby, who was only of four months old and that the petitioner could have been confined to bed after post child birth. It is highly improbable that the petitioner would have gone to the respondent's house on 26-01-2011, along with the other family members as alleged in the complaint.

11. Further to the incidence on 03-04-2011, the petitioner's name does not find place. For the above said reason, the petitioner could not have been present as alleged by the respondent. This is a case in which the respondent to spite vengeance with an ulterior motive have foisted a false complaint against the petitioner. It is strange to see that the Protection Officer had not conducted any enquiry with regard to the respondent before recommending action against the petitioner and other respondents to the trial court in the DV Act case. More so, when the respondent herself had admitted that she and the said Sadiq had second marriage without the knowledge of the petitioner's first wife and the family members of the said Sadiq. The place of marriage itself is doubtful.

12. In view of the above, this Court comes to a conclusion that to prevent abuse of process and to secure the ends of justice, where a criminal proceedings is manifestly attended with mala fide, which is maliciously instituted with an ulterior motive for wrecking vengeance with a view to spite for private and personal grudge as contemplated in the case of BHAJANLAL. This Court has no hesitation to quash the case as against the petitioner in C.C.No.1852 of 2011 pending on the file of X Metropolitan Magistrate Court, Saidapet, Chennai.

13. In the result, this Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The X Metropolitan Magistrate,
Egmore, Chennai.

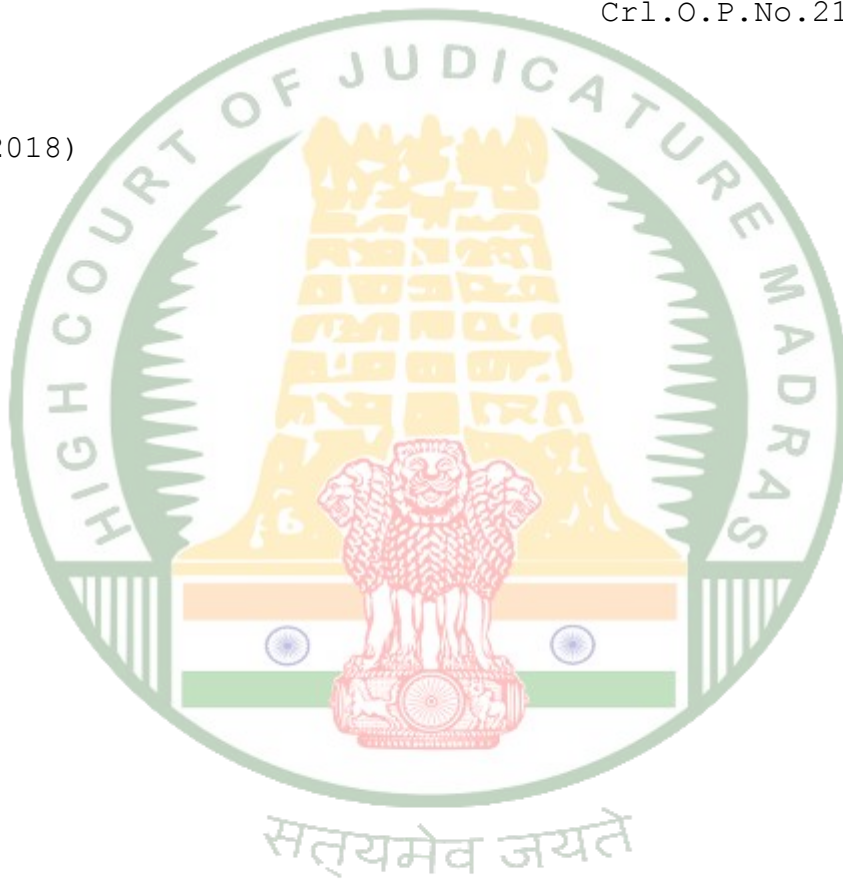
2. Do Thro The Chief Metropolitan Magistrate
Egmore, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.K. Elangovan, Advocate sr 46021.

Crl.O.P.No.21896 of 2011

NRI (CO)
SP(23/07/2018)



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