

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.Nos.28810 and 28813 of 2017
and Crl.M.P.Nos.5814 and 5813 of 2017

K.Gowthaman .. Petitioner in Crl.O.P.28810/2017
S.Kumar .. Petitioner in Crl.O.P.28813/2017

Vs

1.The State of Tamil Nadu
Rep. by Inspector of Police
F-3, Nungambakkam Police Station
Nungambakkam, Chennai 600 034.

2.S.Reha Banu .. Respondents in both petitions

Criminal Original Petitions filed under Section 482
Cr.P.C. to call for the records on the file of the respondent
in FIR No.2721 of 2017 dated 28.11.2017 and quash the same
against the petitioners herein.

For Petitioner : Mr.Shanmugavelayutham
in Crl.O.P.28810/2017 Senior Counsel
for Mr.R.Sagadevan

For Petitioner : Mr. Ar.L. Sundaresan,
in Crl.O.P.28813/2017 Senior Counsel
for Mr.S.Thiruvengadam

For R1 : Mrs.Kritika Kamal, P.
in both petitions Government Advocate (Crl.Side)

O R D E R

These petitions have been filed to call for the records
on the file of the first respondent in Cr.No.2721 of 2017
dated 28.11.2017 and quash the same as against the petitioners
herein.

2. On the complaint lodged by Reha Banu, the respondent
police have registered a case in Cr.No.2721 of 2017 on
28.11.2017 under Sections 384, 385 and 506(ii) IPC against one
Kumar and Gowthaman, for quashing which, these applications
have been filed.

3. Heard the learned Senior Counsel appearing for the
petitioners and the learned Government Advocate (Crl.Side)
appearing for the State.

4. On a reading of the complaint that forms the basis of the FIR, it is seen that, the de facto complainant is a widow with two small children; her husband was a businessman and that he had to receive lot of money from various persons, but, unfortunately, his death was untimely and therefore, the de facto complainant approached Kumar [A1] Advocate, to help her in the litigation. It is alleged by the de facto complainant that Kumar had extracted around Rs.50 lakhs in the guise of paying fees to various Senior Advocates and had cheated her. She has also alleged that Gowthaman [A2] was assisting Kumar [A1] in the illegal activities.

5. Learned Senior Counsel submitted that a criminal prosecution cannot be launched against an Advocate in respect of a dispute relating to professional service and fees. They submitted that such an action can be initiated only by the Bar Council and not by the police.

6. One can have no two opinions on this aspect, because, an Advocate requires protection from unscrupulous clients in discharge of his onerous duties. Under normal circumstances, the police cannot be allowed to decide the professional capability of an Advocate. However, this is not a simple case of professional misconduct, but the allegations clearly make a prima facie case of cheating and extortion. The de facto complainant has alleged that on 07.08.2016, the accused demanded Rs.65 lakhs from her by threatening her. By no stretch of imagination, this would fall within the ambit of professional duties of an Advocate. She has also alleged that the Advocate and his companion were following her from 01.10.2017 onwards at various places and had been harassing her.

7. Since there are prima facie materials against the petitioners, this is not a fit case to quash the prosecution at the threshold in the light of the law laid down in State of Haryana v. Bhajan Lal [AIR 1992 SC 604]. However, this Court directs the Assistant Commissioner of Police, Nungambakkam Police Station to investigate the case in Cr.No.2721 of 2017.

Accordingly, these petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Inspector of Police
F-3, Nungambakkam Police Station
Nungambakkam
Chennai 600 034.

2.The Public Prosecutor,
High Court, Madras.

+ 2 ccs to Mr. V. Shivalingam, Advocate Sr.36715
+ 1 cc to Mr.Thiruvengadam, Advocate Sr.10614
+ 1 cc to Mr. Sagadevan, Advocate Sr.10613

Crl.O.P.Nos.28810 and 28813 of 2017

BR(CO)
EU(03/07/2018)



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