

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP.No.18763 of 2018

and

Cr1.MP.Nos.9922 & 9923 of 2018

1.Krishnamoorthy
2.Banumathi

... Petitioners

Vs

1.The State Rep. by
The Inspector of Police
All Women Police Station
Vellore, Vellore District.

2.Yogambigai

... Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pending on the file of the learned Judicial Magistrate No.I, Vellore, Vellore District in C.C.No.219 of 2018 and quash the criminal proceeding.

For Petitioners : Mr.E.Kannadasan
For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor
for R1

O R D E R

This Criminal Original Petition has been filed to call for the records pending on the file of the Judicial Magistrate No.I, Vellore, Vellore District in C.C.No.219 of 2018 and quash the same.

2. Today, Mrs.N.Dhamayanthi, W.Gr.I 890, All Women Police Station, Vellore, Vellore District, is present before this Court.

3. On the complaint lodged by the second respondent, the first respondent police registered a case in Crime No.1 of 2016 and after completing the investigation, has filed a charge sheet in C.C.No.219 of 2018 before the Judicial Magistrate No.I, Vellore District, for the offences under Section 406 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 2002, against the petitioners herein, for quashing which, the petitioners are before this Court.

4. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent-State.

5. On a reading of the charge sheet, it is seen that the second respondent is none other than the widowed daughter-in-law of the petitioners herein. It is the case of the second respondent that she got married to one Ashok kumar, the son of the petitioners on 16.05.2005; that Ashok Kumar served in the Indian Army and was discharged from service in the year 2012; that Ashok Kumar was very sick and the petitioners prevented the second respondent from living peacefully with her husband; that the petitioners were illegally withholding their son's Identity card, service register and 15 sovereign gold jewellery and had not returned the same to the second respondent. Hence, the FIR and consequent charge sheet.

6. The learned counsel for the petitioners submitted that Ashok Kumar died on 09.08.2016 and the entire allegations are false.

7. In the opinion of this Court, that there are prima facie materials in the charge sheet and therefore, this Court cannot go into disputed question of fact and quash the entire prosecution.

8. The learned counsel for the petitioners submitted that if the matter is referred to the mediation centre, there is possibility of arriving at settlement between the parties.

9. Hence, this Court directs the petitioners to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order and execute a bond for Rs.5,000/- each under Section 88 Cr.P.C. without sureties. The trial Court shall send the de facto complainant and the accused to the local Mediation Centre, for arriving at settlement. The mediation proceedings shall be completed within one month from the date of reference of the parties to the Mediation Centre by the trial Court. If the mediation process fails, the trial Court shall proceed with the trial in C.C.No.219 of 2018. If the parties arrived at settlement before the Mediation Centre, liberty is given to the petitioners to approach this Court for quashing the prosecution, based on the mediation report.

10. The learned counsel for the petitioners submitted that the presence of the first petitioner (A1) may be dispensed with, since he is 70 years old.

11. Accepting the submission of the learned counsel for the petitioners, the first petitioner-Krishnamoorthy (A1) is directed to appear before the trial Court for framing charges, at the time of 313 questioning and on the date of judgment. For the other hearings, the first petitioner/accused shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit

will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Cr1) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the first petitioner adopts any dilatory tactics, it is open to the trial Court to insist upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the first petitioner absconds, the trial Court shall direct registration of an FIR against her under Section 229-A IPC.

With the above directions, this petition is closed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

// True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Vellore, Vellore District.

2.The Inspector of Police
All Women Police Station
Vellore, Vellore District.

3.The Public Prosecutor
High Court, Madras.

सत्यमेव जयते

+lcc to Mr.E.Kannadasan, Advocate SR.No.50298

PA(CO)
SMI/10.08.2018

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