

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.12.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.Nos.19652 of 2017 and 9941 of 2018
and CRL.M.P.Nos.11861 of 2017 & 9299 of 2018
and 5095, 5096 of 2018

M.Saravanakumar

... Petitioner/Accused
in both Crl.Ops

Vs.

1. State rep by,
Inspector of Police,
Mathikonam Palayam,
Police Station,
Dharamapuri District.

...Respondent/Complainant in
both Crl.O.Ps

2. K.Senthilkumar
Respondent/Defacto Complainant

...

in both Crl.Ops

PRAYER IN CRL.O.P.No.19652 of 2017: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in Crime No.162 of 2017 pending investigation on the file of Inspector of Police Mathikonam Palayam Police Station Dharmapuri District and quash the same.

PRAYER IN CRL.O.P.No.9941 of 2018: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records in pending trial before the Judicial Magistrate No.1, Dharmapuri in C.C.No.57 of 2018 and quash the same.

For Petitioner : Mr.C.D.Johnson
in both Crl.Ops

For Respondents : Mr.M.Mohamed Riyaz, for R1
in both Crl.Ops Additional Public Prosecutor

Mr.M.Ganesh, for R2

COMMON ORDER

The petitioner initially filed Crl.O.P.No.19652 of 2017, before this Court seeking to quash the FIR in Crime No.162 of 2017, pending on the file of the second respondent police.

2. During the pendency of the said Criminal Original Petition, a final report came to be filed, inspite of an order of stay granted by this Court, by the respondent police and the same has also been challenged by filing an independent petition in Crl.O.P.No.9941 of 2018. The allegations that have been made in the complaint is that the second respondent had married one Vannamalar. There was difference of opinion between them and she started living separately in her parents house. At that point of time, she seems to have developed a relationship with the petitioner. This came to be known to the second respondent and when he questioned about the same to the petitioner, the petitioner had abused the second respondent and they were also attacked. Therefore, the complaint came to be filed before the respondent police and an FIR was registered in Crime No.162 of 2017 for an offence under Section 341, 497, 294(b), 323, 506(ii) IPC.

3. After investigation was completed, a final report has been filed before the Court below as against the petitioner and the above said Vannamalar for an offence under Section 498, 494, 341, 294(b), 497, 323 and 506 (ii) IPC.

4. The learned counsel for the petitioner would submit that the entire allegations made in the final report do not constitute an offence against this petitioner. The learned counsel would further submit that there are absolutely no materials with regard to the alleged bigamy and therefore the offence under Sections 498 and 494 has not been made out. The learned counsel would further submit that Section 497 IPC has already been struck down by the Hon'ble Supreme Court as unconstitutional. Insofar as the other offences are concerned, the learned counsel would submit that he was not present in the scene of occurrence and he was on his duty as an invigilator in Tamil Nadu Dr. M.G.R Medical University and therefore, the entire complaint is false, and consequently the final report filed based on the false complaint should also be quashed.

5. The learned counsel for the second respondent would submit that sufficient allegations have been made against the petitioner in the complaint. The learned counsel would further submit that the plea of alibi taken by the petitioner cannot be gone into at this stage and the same can be decided only in the course of the trial. The learned counsel would further submit that the petitioner had threatened and attacked the second respondent when he was questioned about the illegal relationship with his wife, and therefore an offence is made out as against the petitioner.

6. The learned Additional Public Prosecutor would submit that the allegations made in the final report, and the materials on record

make out a prime facie case against this petitioner, and therefore this Court should not interfere with the proceedings at this stage.

7. This Court has carefully considered the submissions made on either side. The initial complaint given by the petitioner was only as against the petitioner for an alleged incident that took place on 24.05.2017. The complaint proceeded on the basis that the second respondent had questioned the petitioner regarding the illegal relationship between the petitioner, and the wife of the second respondent. At that point of time, it is stated in the complaint that the petitioner had abused the second respondent in filthy language and the petitioner also attempted to attack the second respondent with a stone. However, during the course of investigation, it is found that a different case has emerged wherein the respondent police have proceeded to file a final report by including the offence under Section 498 and 494 of IPC. In fact, in the final report, the wife of the second respondent has also been made as an accused.

8. On the allegations made in the complaint as well as in the final report, no offence has been made out under Section 494 and 498 IPC. There are absolutely no particulars regarding the bigamous relationship of the petitioner with the above said Vannamalar. Insofar as the offence under Section 497 IPC is concerned, the Hon'ble Supreme Court has struck down the said provision as unconstitutional. The offence under Section 294(b) is also not made out since the incident has not taken place in public view. Offence under Section 323 of IPC is also not made out since the second respondent has not sustained any injury and even as per his allegation, an attempt was made by the petitioner to attack him with a stone. Similarly, no offence has been made out under Section 341 IPC since there is no material to show that the second respondent was wrongfully restrained. In fact, it was the second respondent who had gone to the house of the petitioner in order to question him about the illegal relationship with his wife. Therefore, there is no question of wrongful restraint in this case. The mere usage of words, without anything more, will not attract the offence of criminal intimidation and the allegations do not satisfy the requirements of Section 503 of IPC.

9. In view of the above, this Court is of the considered view that no useful purpose will be served by keeping the proceedings pending as against this petitioner, and therefore this Court has to necessarily exercise its jurisdiction under Section 482 of Cr.P.C.

In the result, the proceedings in C.C.No.57 of 2018, on the file of the Judicial Magistrate No.I, Dharmapuri is hereby quashed. Accordingly, these Criminal Original Petitions are allowed. Consequently, the Connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

KP/gbi

To

1. The Judicial Magistrate No.1,
Dharmapuri.

2. Inspector of Police,
Mathikonam Palayam,
Police Station,
Dharmapuri District.

3. The Public Prosecutor,
High Court, Madras.

+1 Cc to Mr.C.D.Johnson, Advocate sr 85593.

+1 CC to Mr.M.Ganesh, Advocate sr 85681.

CRL.O.P.Nos.19652/2017 & 9941/2018

SP(21/12/2018)

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