



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.04.2018

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. OP (MD)No.16257 of 2013

Shabu C.Bennet

... Petitioner

Vs.

1. The State of Tamil Nadu,
Rep.by the Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

2. Y.Doss, Head Master,
S.T.A. Matric Hr.Sec. School,
Pullyerangudi, Thiruvattar Post,
Kanyakumari District.

... Respondents

Prayer : This Criminal Original Petition is filed Under Section 482 of Criminal Procedure Code to call for the records pertaining to the case in C.C.No.159 of 2013 on the file of the Judicial Magistrate, Padmanathapuram and quash the same.

For Petitioner : Mr.C.K.M.Appaji
For Respondents : Mr.Prabhu Ramachandran,
Government Advocate (Crl., Side)

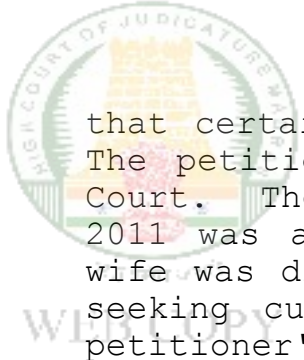
ORDER

The petitioner before this Court wants quashing of CC.No.159 of 2013 on the file of Judicial Magistrate, Padmanathapuram. The defacto complainant in this case is the second respondent herein. There is a matrimonial dispute between the petitioner and his wife. The child Shalin was studying in the second respondent school. The petitioner's wife had informed the school management not to entertain the father of the child. But then, the petitioner came to the school and took away the boy on 23.07.2012. That act of the petitioner had given rise to the impugned prosecution.

2.The first respondent herein registered a case in Crime No.632 of 2012 against the petitioner under Section 363 of IPC and later filed final report and also against his sisters and brothers in law under Sections 363, 362 and 109 of IPC.

<https://hcservices.courts.gov.in/hcservices/>

3.The learned counsel appearing for the petitioner would submit



that certain subsequent developments had taken place in this case. The petitioner's wife filed HCP (MD) No.937 of 2012 before this Court. The petition filed by the petitioner's wife in DOP.No.7 of 2011 was allowed and the marriage between the petitioner and the wife was dissolved. GWOP.No.342 of 2010 filed by the petitioner seeking custody of the minor son however went in favour of the petitioner's wife. The petitioner was however granted visitation rights. This order was passed on 28.02.2015.

4.Taking note of the fact that as on date the child's custody with the mother and the petitioner herein was given visitation rights and that the marital relationship between the parties has been dissolved, this Court is of the view that no purpose will be served in keeping the impugned prosecution alive. In any event, it was the father who took his minor son more out of love. Such an action cannot be said to be as an act of abduction. The impugned prosecution is therefore quashed not only for the petitioner but also in respect of all other accused also. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
2. Y.Doss, Head Master,
S.T.A. Matric Hr.Sec. School,
Pullyerangudi, Thiruvattar Post,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.C.K.M.APPAJI, ADVOCATE IN SR No. 60048

SKM

TE/JC/SAR-3 : 28/04/2018 : 2P/5C