



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.03.2018

Delivered on : 15.03.2018

CORAM

THE HONOURABLE MR. JUSTICE R. PONGIAPPAN

Crl.O.P. (MD) No.5239 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

C.Harihara Subramanian ...Petitioner/Accused(single)

Vs.

1. State Rep. by,
The Inspector of Police,
Shencottai Police Station,
Tirunelveli District.
Cr.No.84/2012 ... 1st Respondent/Complainant

2.K.Prabha ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to admit this quash petition on file, to call for the records in C.C.No.244 of 2012 on the file of the Judicial Magistrate Court, Shencottai, Tirunelveli District and quash the same.

For Petitioner : Mr.V.Prakash
Senior Counsel
for Mr.K.Sudalaikannu

For R1 : Mr.A.Robinson
Government Advocate
(Criminal side)

For R2 : Mr.R.Alvin Manoj Raj
for M/s.Jacob and Jacob Associates

ORDER

The petitioner is the sole accused in C.C.No.244 of 2012 on the file of the Judicial Magistrate Court, Shencottai, Tirunelveli District. He filed this Criminal Original Petition under Section 482 Cr.P.C, seeking to quash the abovesaid the case, as illegal.

2.The case of the prosecution is that in 2003, the petitioner herein married the second respondent. Out of the wedlock, they were blessed with one male child, by name, Lakshmikanth. After some time, the marriage between the petitioner and the second respondent was dissolved and thereafter, the second respondent married one Santhanam. Thereafter, the said Lakshmikanth is under



the care and custody of the second respondent. On 09.04.2012, at 15.00 hours, when the second respondent, the witness - Santhanam and one Lakshmi were standing in the Tea Shop situated in Shencottai Bus Stand, the petitioner herein forcibly taken the said Lakshmikanth with an intention to detain him. When the same was prevented by the second respondent, so, the petitioner abused the second respondent by saying that “பிராஸ்டியூட் நாயே உங்கிட்ட என் மகன் வளரக்கூடாது என்றும் இவனைப்போல் எத்தனை பேர் உனக்கு புருஷன் ஆகப் போறாங்களோ என்றும் நீ ஒரு மானங்கெட்டவ” and thereafter, he confined the said child Lakshmikanth, which constitute the offences punishable under Section 365 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

3.Now, the learned Senior Counsel appearing for the petitioner made a submission as the alleged incident had not taken place as stated in the charge sheet. He further added that at when the time, which was mentioned in the charge sheet, the child Lakshmikanth was standing in the Tea Shop with the servantmaid. After seeing them, being the natural guardian, the petitioner, as per the request of the child, take him to the house and informed the matter to the second respondent through the Inspector of Police, Chrompet Police Station, Chennai. While things are being so, in order to take revenge, the second respondent lodged a false complaint after the delay of nearly 10 days. If really, the alleged offence had happened as stated by the second respondent, there is no necessity for the petitioner for sending a Telegram to the Inspector of Police, Chrompet Police Station, Chennai. Further, in 2012 itself, the petitioner herein filed a petition before the District Court, Tirunelveli, for custody of the child. Accordingly, the abovesaid facts clearly will prove as the case of the prosecution is a false one and therefore, in order to avoid the abuse of process of law, it is necessary to allow this Criminal Original Petition.

4.On the other hand, the learned Government Advocate (Criminal side) appearing for the State and the learned counsel appearing for the second respondent made a submission as immediately after commission of the offence, the second respondent went to the stage of unstable mind and searched her child all over Tirunelveli and therefore, the complaint has not been lodged immediately. Only on considering the paramount welfare of the child, the child is now under the custody of the second respondent. So, in order to obtain the custody of the child, the petitioner committed the offence. Further, they added as the grounds raised by the petitioner are not at all sufficient to hold his case.

5.It is an admitted fact that the child, now alleged to be kidnapped by the petitioner, is born to the petitioner and the second respondent. Admittedly, their marriage was dissolved on 24.07.2009. Thereafter, the second respondent has married one Santhanam. At the time of occurrence, the second respondent



herein was working as Assistant Professor at Chennai. In the above circumstances, on going through the copy of the entire charge sheet filed by the petitioner, it is seen that except the second respondent and her husband, the persons who are all present when the occurrence was happened, had not stated anything about the offence committed by the petitioner. So, in order to complete the case of the prosecution, the evidences of the second respondent and her husband alone are available. Moreover, now, on going through the FIR, it reveals that the second respondent has lodged a complaint on 17.04.2012 at 18.45 hours, in which, she mentioned as the alleged offence was happened on 09.04.2012 at 3.00 p.m. So, after 8 days from the date of occurrence, she lodged a complaint before the first respondent police. Before that, on going through the copy of the Telegram filed by the petitioner, it shows that on 08.04.2012 itself, the petitioner herein sent a Telegram to the Inspector of Police, Chrompet Police Station, Chennai, in which, he mentioned as the abandoned child viz., Lakshmikanth, is with him. The said Telegram was received by the said Inspector of Police on 09.04.2012 at 09.28 hours. Further, the petitioner produced the Telegram Cash Receipt, Postal Receipt and Proof of Delivery, which are all dated 08.04.2012. In the above circumstances, if really the alleged offence was happened as stated by the second respondent, there is no necessity for the petitioner for sending Telegram to the Inspector of Police, Chrompet, in whose jurisdiction, the second respondent was residing. Moreover, it is the case of the petitioner that at the time of occurrence, the child now claims by them, is under his custody. Secondly, as per the complaint given by the second respondent, at the time of occurrence, the said child was aged about 7 years. So, the petitioner herein, who is happened to be the natural guardian, taking the child with him, is not an offence. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in **Sehnaz alias Santosh Gupta Vs. State of Punjab and another** reported in **2006 SCC Online P & H 1601**, wherein it has been held as follows:

'6. A natural guardian cannot be accused of an offence of kidnapping and in this regard, reference can be made to decision of Hon'ble Supreme Court in the case of Chandrakala Menon Vs. Capt. Vipin Menon, 1993 (2) RCR (Criminal) 5 (SC). This was a case where girl child aged 7-1/2 years was residing with maternal grandparents when her father came to see her and took her to Bombay. A complaint was lodged with the police. Magistrate took cognizance of the matter and directed the father to produce the child on a particular date. He did not do so claiming that he was held up in Bombay due to unavoidable reasons. Adjournment sought by the



father was declined and he was directed to hand over the custody of the child to the police so that it could be restored to the grandparents. When the father failed to produce the child before the police, a case was registered and father was declared proclaimed offender. This order was challenged under Section 482 Cr.P.C. The High Court quashed the order of Magistrate by recording a finding that accused being natural guardian could not be charged with an offence of kidnapping. This order of the High Court was challenged before Hon'ble Supreme Court by the wife and her parents and it was held by the Hon'ble Supreme Court that in view of the facts and circumstances of the case, the High Court was justified in quashing the criminal proceedings against the respondent-father. It was further held that no fault can be found with the High Court order and the same was upheld. Even this Court in Harbans Singh and others Vs. Jaswant Singh, 1987 (1) RCR (Criminal) 628 (P & H) had the occasion of dealing with a similar case''

6. So, applying the principles laid down by the Hon'ble Supreme Court in the abovesaid judgment to the case on hand, this Court cannot come to the conclusion that the petitioner had committed the offence of kidnapping. So, the entire circumstances shows that filing a charge sheet for the occurrence mentioned in the complaint lodged by the second respondent, is clear abuse of process of law. Accordingly, I have no hesitation to quash the proceedings in C.C.No.244 of 2012 pending on the file of the Judicial Magistrate Court, Shencottai, in order to provide substantial justice. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.244 of 2012 pending against the petitioner shall stand quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Shencottai,
Tirunelveli District.



2. The Inspector of Police,
Shencottai Police Station,
Tirunelveli District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.S.Siva Ilayaraja, Advocate Sr.No.55429

SMN2

VB/KKR/SAR1/26.03.2018/5P/5C

order in
Crl.O.P. (MD) No.5239 of 2013
15.03.2018