IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.19092 of 2015 and
Crl.M.P.Nos.1 of 2015 & 14052 of 2016

S.Kamatchi ...Petitioner/A3

-Vs-

R.Thiayagarajan ...Respondent/Defacto Complainant

Prayer:

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.212 of 2012 on the file of learned Judicial Magistrate-V, Salem and to quash the same.

For Petitioner : Mr.M.Babu Muthu Meeran

For Respondent : Mr.C.Rajan

O R D E R

This Criminal Original Petition has been filed seeking to quash the complaint in C.C.No.212 of 2012, dated 10.09.2012 order passed by the learned Judicial Magistrate-V, Salem.

2. The learned counsel appearing for the petitioner would submit that the petitioner is the daughter-in-law and the respondent/defacto complainant is the father-in-law. The petitioner got married with the son of the respondent viz., T.Sundararajan on 05.02.1994 and their marriage was arranged one out of their wedlock and a male child was born to them on 28.09.1996. Though there was misunderstanding between the petitioner and her husband and also with her in-laws on the allegation of demanding dowry and the petitioner's husband has fallen the AIDS [Acquired Immune Deficiency Syndrome], since the petitioner's husband had illegal relationship with other women. Thereafter, they got separated and the petitioner/wife filed a Original Petition in F.C.O.P.No.284 of 2005 as against her husband and to dissolve her marriage on the ground of cruelty and the order of amicable settlement passed by the learned

Family Court Judge, Salem, dated 19.12.2007. The petitioner has also filed another G.O.P.No.204 of 2005 for the custody of minor son viz., Bommana Sivaraman and another suit has been filed for partition in O.S.No.77 of 2006 on the file of the Fast Track Court - I, Salem.

3. Based upon the amicable settlement between them, the Memorandum of Understanding entered into between them and as per Memorandum of Understanding out of seven properties were belonged to her husband, only one property was allotted to her minor son by way of gift deed settlement in respect of O.S.No.77 of 2006 and thereafter, decree of divorce has been granted by way of mutual consent in respect of O.P.No.9 of 2007 and a sum of Rs.5,00,000/- was given for full and final settlement of permanent alimony to the petitioner. Further, it has been agreed by the petitioner's husband and father-in-law viz., the respondent herein to deposit a sum of Rs.9,00,000/- in the name of her minor son for the welfare his educational expenses. A common order has been passed by the Tamil Nadu Mediation and Conciliation Centre, Bench No.II, Salem District in M.C.No.426 of 2007, dated 01.09.2007 and all the suits have been disposed of by an order dated 01.09.2007. Thereafter, for the purpose of her minor son's educational expenses to the tune of Rs.3,00,000/- as Tuition Fees etc the petitioner had withdrawn. In fact, before decree of divorce, the petitioner had already been spent of Rs.3,50,000/- towards medical expenses of her husband. Therefore, the petitioner had withdrawn the amount of Rs.9,00,000/- after one year of the deposit. Thereafter, the petitioner has also got married with another one person viz., Raja, as such, the respondent/defacto complainant only with an intention to spoil the petitioner's marriage and the false complaint has been lodged before the Inspector of Police, Kondalampatti Police Station on 04.07.2011. Thereby, the respondent threatened the petitioner to repay a sum of Rs.5,00,000/- and the same was received by her in respect of permanent alimony and also threatened her to repay the amount of Rs.9,00,000/- which was deposited in her son's name. Based upon the amicable settlement between the respondent and the petitioner, the above said complaint was closed on 09.07.2011 and the petitioner re-conveyed the property and also handed over the original documents and returned the sum of Rs.9,00,000/- to the respondent/defacto complainant herein. Even then, the present impugned complaint filed under Section 200 CrPC., on the allegation that the petitioner misappropriated the money belonging to her own son and cheated the respondent/defacto complainant. In the meanwhile, the learned Judicial Magistrate-V, without considering the offences have taken the cognizance offence under Section 406 IPC in C.C.No.212 of 2012. Hence, the petitioner sought for quashing the private complaint.

4. Per contra, the learned counsel appearing for the respondent would submit that the petitioner is none other than his daughter-in-law and on mutual consent, the petitioner got decree of divorce. Further, a sum of Rs.5,00,000/- paid to the petitioner for her permanent alimony and sum of Rs.9,00,000/- was paid to her minor son. When the amount deposited in the name of her minor son by the respondent/defacto complainant and thereafter, the petitioner herself withdrawn the said amount without consent of the Court on spent unlawfully on her own. Thereby the petitioner cheated the respondent/defacto complainant and therefore, the respondent sought for dismissal of the above quash petition.

5. Heard Mr.M.Babu Muthu Meeran, learned counsel appearing for the petitioner and Mr.C.Rajan, learned counsel appearing for the respondent and perused all the materials available on record.

6. On a perusal of the documents the petitioner got married with the son of the respondent/defacto complainant. Admittedly, the respondent's son had suffered with AIDS [Acquired Immune Deficiency Syndrome] and subsequently, divorce petition filed by the petitioner in O.P.No.9 of 2007 before the Family Court, Salem and they arrived at amicable settlement and executed the Memorandum of Understanding. As per Memorandum of Understanding dated 01.09.2007, there are some settlement and one of the settlement is that the petitioner a sum of Rs.5,00,000/- was given as full and final settlement and a sum of Rs.9,00,000/- to be deposited in the name of minor son of the petitioner. The above said sum was deposited only for the welfare of minor son his educational expenses. Thereafter, the said sum has been withdrawn by the petitioner and spent for her minor son to meet out his educational expenses. It is also seen that thereafter, the respondent lodged a complaint in which there was another settlement between the petitioner and the respondent/defacto complainant. Accordingly, the respondent/defacto complainant submitted his acknowledgement before the Inspector of Police, Kondalampatti Police Station stating that all the relevant documents pursuant to the settlement and original R.C.Book of the two wheeler everything being received and a sum of Rs.9,00,000/- also received which was deposited in the name of petitioner's minor son. Further, the respondent has stated that he has no objection for a second marriage and he will also filed a separate case to recover the amount which was given as permanent alimony to the petitioner. Even then, it seems that the respondent filed the present impugned complaint and the same has been taken cognizable offence under Section 406 IPC. On a perusal of the impugned

complaint, the very same averments made and the respondent/defacto complainant conveniently suppressed the fact that the respondent received the original documents in respect of the settlement executed in favour of the petitioner's minor son and receipt of a sum of Rs.9,00,000/- from the petitioner. It is nothing but clear abuse of process of law.

7. In this regard, the learned counsel appearing for the petitioner relied upon the decision of the Hon'ble Supreme Court in Thermax Limited and Ors v. K.M.Johny and Ors., reported in (2011) 13 SCC 412, wherein the Hon'ble Supreme Court held:

> "43.The courts below failed to appreciate an important aspect that the complaint came to be filed in the year 2002 when the alleged disputes pertain to the period from 1993-1995. As rightly pointed out, the courts below ought to have appreciated that the first respondent was trying to circumvent the jurisdiction of the civil courts which estopped him from proceeding on account of the law of limitation.
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> 44.We have already pointed out that the first respondent had previously filed three complaints which were concluded after exhaustive enquiry with the respective police authorities. The first complaint was on 06.05.2000 being Javak No.974 of 2000 with Crime Branch II, Pune which registered the same in its Criminal Register No.11 of 2000. Pursuant thereto, the appellants were summoned and exhaustive enquiry was conducted by Crime Branch-II and after recording the statements and perusal of documents and after undertaking an extensive interrogation, Crime Branch II closed the case. The said closure of the case was informed to the first respondent by the police authorities by their letter dated 28.07.2000.
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> 45.The materials placed further show that notwithstanding the complaint dated 06.05.2000 which was closed by Crime Branch II, another complaint on the same facts, was filed by Respondent 1 at Bhosari Police Station being Javak No.3142 of 2001. It is pointed out that the appellant and its officers attended Bhosari Police Station, thereafter the said complaint was also closed after the facts were placed before the officers of Bhosari Police

Station.

46.Apart from these complaints, Respondent 1 once again filed a third complaint at the Commissioner's Office, Crime Branch, Pune being Javak No.100 of 2001. The officers of the appellant Company appeared before the Crime Branch, who after perusing the documents and the written statements of Appellant 1, informed the appellants that the matter was closed.

47.It is the grievance of the appellants that without disclosing these material facts and suppressing the fact that the complainant had previously filed three different complaints to various police authorities and that the said complaints were closed on being classified as civil disputes, the complainant had filed the aforesaid criminal complaint before the Magistrate being RCC No.12 of 2002.

48.Mr.K.T.S.Tulsi, learned Senior Counsel for Respondent 1 has pointed out that at this stage, namely, issuance of direction to the police for submission of report under Section 156(3) of the Code, the accused has no role and need not be heard. The said contention is undoubtedly in consonance with the procedure prescribed. However, in view of specific direction of the Division Bench of the High Court by a common order dated 10.06.2003 disposing of the cases by remitting the matter back to the Magistrate for reconsideration of the entire prayer as made by the complainant and to pass fresh orders, after giving adequate opportunity of hearing to both the sides, and decide afresh the application seeking direction under Section 156(3) by giving cogent reasons for coming to such conclusion, the procedure adopted by the Magistrate cannot be faulted with. Though the appellant Company/accused has no right to be heard at this stage in view of the direction of the High Court, no exception be taken to the order of the Magistrate hearing the complainant and the appellant Company/accused even at the stage of calling for a report under Section 156(3) of the Code.

49.The entire analysis of the complaints with reference to the principles enunciated above and the ingredients of Sections 405, 406, 420 r/w Section 34 IPC clearly show that there was inordinate delay and laches, the complaint itself is inherently improbable and contains the flavour of civil nature and taking note of the closure of earlier three complaints that too after thorough investigation by the police, we are of the view that the Magistrate committed a grave error in calling for a report under Section 156(3) of the Code from the Crime Branch, Pune. In view of those infirmities and in the light of Section 482 of the Code, the High Court ought to have quashed those proceedings to safeguard the rights of the appellants. For these reasons, the order passed by the Judicial Magistrate, First Class, Pimpri in C.C.No.12 of 2002 on 20.08.2007 and the judgment of the High Court dated 11.01.2008 in Criminal Writ Petition No.1622 of 2007 are set aside. The complaint filed by Respondent 1 herein is quashed."

8. In the case on hand, the respondent/defacto complainant suppressed the material fact that he had entered into compromise with the petitioner and also received a sum of Rs.9,00,000/- and also received the original documents in respect of the property and also a two wheeler. The entire analysis of the complaint, the ingredients of offence under Section 406 IPC is not made out and the complaint itself is civil in nature and taking note of the closure of the earlier complaint before the Inspector of Police, Kondalampatti Police Station, Salem, the learned Judicial Magistrate ought not to have taken cognizable for the offence under Section 406 IPC as against the petitioner.

9. In view of the above discussion, the proceedings in C.C.No.212 of 2012 on the file of Judicial Magistrate-V, Salem, is quashed.

10. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Crl.M.P.Nos.1 of 2015 and 14052 of 2016 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msm
To

1.The Judicial Magistrate-V, Salem.

2.-Do- Thro Chief Judicial Magistrate, Salem.

3.The Public Prosecutor, High Court, Madras.

+1cc to Mr.M.Babumuthu meeran, Advocate Sr.21094
+2cc to Mr.C.Rajan, Advocate Sr.20782

Crl.O.P.No.19092 of 2015

su[co]
srg 26/03/2019