

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.04.2019

CORAM:
THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL. O.P. No.2949 of 2019
and
CRL.M.P. No. 1969 of 2019

1. Tharvej Bhanu
2. Rehana

... Petitioners

-vs-

State, rep by the:

1.The Inspector of Police,
T-12, Poonamalee Police Station,
Poonamallee, Thiruvallur District.

2.Shilpa Dharshan

... Respondents

Prayer:- Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the entire records relating to C.C. No.338 of 2017 pending on the file of the Learned Judicial Magistrate-II, Poonamallee, Chennai and quash the same.

For Petitioner : Mr. Uma Vidyapathi

For Respondent -R1 : M.Mohamed Riyaz
Additional Public Prosecutor

For Respondent -R2 : No appearance

ORDER

This Criminal Original Petition has been filed to call for the entire records relating to C.C. No.338 of 2017 pending on the file of the Learned Judicial Magistrate II, Poonamallee, Chennai, for offence under Sections 448, 294(b) of I.P.C wherein the petitioners are arrayed as A1 and A2 respectively.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and there is no representation on the side of the second respondent.

3. According to the petitioners, since there was a dispute between the first petitioner and her husband named as Aboobakar Kaalim, the husband of the first petitioner has pronounced Talak and issued a Talaq Nama on 11.08.2012. Disputing Talaq Nama

issued by the husband of the first petitioner, the first petitioner has filed petitions before the Family Courts to declare the said Talaq as null and void and for restitution of conjugal rights. The same was allowed by the Family Courts. Further, the first petitioner has preferred M.C. No.65 of 2014 against her husband and in-laws and Crl. M.P. No.2828 of 2014 before XXIII Metropolitan Magistrate, Saidapet praying for certain interim orders under the Protection of Women from Domestic Violence Act., thereby the Trial Judge by order dated 31.12.2014 in Crl. M.P. No.2828 of 2014 in M.C. No.65 of 2014, directed the respondents therein (Husband and in-laws of the first petitioner) to pay a sum of Rs.55,000/- per month to both the first petitioner herein and her son towards monthly maintenance and medical expenses and not to disturb the first petitioner herein, to reside the first petitioner at the residence of No.Y1, Y Block, Parkwood Antony Enclave, 1/24 Adjacent Senthurpuram, Seetharamapuram, Aadidition Nagar, Kattupakkam. Aggrieved by this order, the husband and in-laws of the first petitioner filed C.A. No.7 of 2015 on the file of the XVII Additional Sessions Judge, Chennai thereby the Appellate Judge, by order dated 20.07.2015 set aside the order in respect of the quantum of maintenance alone remanding the matter back to the Trial Judge for taking evidence for the purpose of fixing the quantum of the maintenance and confirmed other reliefs passed by the Trial Judge.

4. Subsequent to the aforesaid orders of the Magistrate and the Session Judge, the first petitioner along with her close friend/the second petitioner herein went to the residence of her husband, at No.Y1, Y Block, Parkwood Antony Enclave, 1/24 Adjacent Senthurpuram, Seetharamapuram, Aadidition Nagar, Kattupakkam to occupy there. But, as the said residence was let-out under lease to the the de-facto complainant/second respondent herein, the first petitioner was not allowed to enter in the said house. Hence, as there was dispute between the first petitioner and the second respondent for not allowing the first petitioner into the residence, the Second respondent made complaint alleging that the first petitioner tried to trespass her residence and to take away articles from the House, on the file of the first respondent in Crime No.902 of 2015 for offence under Section 448 and 294(b) of I.P.C.

5. It is also seen that as against the order passed by the XVIII Additional Sessions Judge in Crl. A. No.7 of 2015, the first petitioner's husband and in Laws has filed M.P. No.1 of 2015 in Crl. R.C. No.837 of 2015 before this Court seeking interim stay, in which, this Court has passed conditional order directing the petitioner's husband and in-Laws to comply with the same. But , the order passed by this Court has not been complied with by the Husband of the first petitioner. Hence, this Court granted liberty to the first petitioner herein to

proceed against the concerned persons before the trial Court, in the manner known to law and in accordance with law. Therefore, it is seen that the first petitioner has tried to enter into the house of husband of the first petitioner as directed by the Trial Court to reside there along with her close friend/Second petitioner herein. At that time, as the aforesaid house was let-in to the Second respondent by the husband of the first petitioner, the dispute arose between the first petitioner and the de-facto complainant/Second respondent herein in entering into the house. Under this circumstance, it makes clear that the first petitioner has not tried to trespass the house with the Criminal intention to take away articles from the House. Based on the complaint made by the Second respondent, the first respondent/Police has investigated that matter and filed charge sheet against the petitioners. Therefore, the complaint cannot be sustained as against the petitioners herein.

6. Accordingly, the Criminal Original Petition is allowed and the proceeding in C.C. No.338 of 2017 on the file of the Judicial Magistrate II, Poonamallee, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

lbm

To:

1.The Inspector of Police,
T-12, Poonamallee Police Station,
Poonamallee, Thiruvallur District.

2.The Judicial Magistrate-II,
Poonamallee, Chennai

3.The Public Prosecutor,
High Court of Madras,
Chennai.

+2ccs to Mr.Bader Sayeed, Advocate, S.R.No.32554

CRL. O.P. No.2949 of 2019
and
CRL.M.P. No. 1969 of 2019

RGN(CO)
RRS(09/07/2019)