

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.6.2019

CORAM

THE HONOURABLE DR.JUSTICE VINEET KOTHARI
AND
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No.781 of 2013

D.Mubarak ... Appellant/Petitioner

Versus

1. The Sub Inspector of Police,
W7-All Women Police Station,
Anna Nagar, Chennai 600 040.

2. P.K.Aamirasamarin ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the order of this court dated 18.7.2012 in W.P.No.18077 of 2012.

Prayer in W.P.18077 of 2012: This Writ Petition Nos.18077 of 2012 is filed Under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorari to call for the records in Criminal C.C.No.287 of 2011 dated 20.11.2010 pending on the file of the 5th Metropolitan Magistrate Egmore Chennai-600 018 and quash the same.

For appellant : No appearance.

For R1 : Mr.S.Udhayakumar, AGP

For R2 : No appearance

JUDGMENT

(Judgment of the court was made by C.V.KARTHIKEYAN, J.)

The Writ Appeal is filed calling in question the correctness of the order passed by the learned Single Judge in W.P.No.18077 of 2012 dated 18.7.2012 whereby the learned Single Judge had

dismissed the Writ Petition. Subsequently, it appears that the appellant herein also filed Review Application No.186 of 2012 which also came to be dismissed by order dated 15.11.2012.

2. The appellant/petitioner had questioned the final report filed by the first respondent Sub Inspector of Police, All Women Police Station, Anna Nagar, Chennai, who had taken on file the complaint given by the second respondent-wife of the appellant herein alleging cruelty committed on her. The police, after investigating the matter, thought it fit to lay a charge sheet against the appellant herein. It was taken cognizance in C.C.No.287 of 2011 which was pending before the V Metropolitan Magistrate Court, Chennai. Challenging the said proceedings, the writ petitioner has filed the present Writ Appeal.

3. The learned Single Judge has observed in his order as under:-

"4. It is seen from the records that the final report was filed by the Sub Inspector of Police, All Women Police Station, Anna Nagar under Section 173(2) of Cr.P.C. In the report, the petitioner was arraigned as third accused and there were other six accused. It has got a list of witnesses who are to depose on the basis of the statements given by them. A perusal of the report alongwith the statements of witnesses show that there are materials on the side of the police to file the final report and cognizance has been correctly taken by the learned Magistrate. At this stage without trial if the final report is quashed, it will not only derail the process of criminal law, but also cause injustice to the second respondent who made efforts to prosecute the petitioner. The materials produced by the petitioner as well as averments made are only in the nature of defence. It is open for the petitioner to take such defence that are available to him and defend himself in the trial. At this stage this court is not inclined to entertain the writ petition. Hence, the writ petition will stand dismissed. No costs."

4. The Review Application, which was filed subsequently also came to be dismissed.

5. It is seen that there is no appearance on behalf of the petitioner, who is shown as party in person. The name of the petitioner is reflected in the cause list.

6. Normal criminal procedure initiated when a complaint is lodged and a competent Magistrate has taken cognizance of the offence and commenced Trial, it would not be appropriate for this court to interfere with the proceedings of the criminal trial which is in progress and it is for the Metropolitan Magistrate to decide the Trial in accordance with law. The Appellant has to subject himself to the authority of the Magistrate Court and put forth his defence during Trial. We do not find any merit in the Writ Appeal. Accordingly, it is dismissed. Copy of this judgment may be forwarded to the appellant D.Mubarak, residing at No.45, 1st Floor, 2nd Street, N.S.K.Nagar, Arumbakkam, Chennai 600 106. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssk.
To:

1. The Sub Inspector of Police,
W7-All Women Police Station,
Anna Nagar, Chennai 600 040.

2. D.Mubarak,
No.45, 1st Floor, 2nd Street,
N.S.K.Nagar, Arumbakkam,
Chennai 600 106.

+1cc to the Government Pleader Sr.48686, 49125

W.A.No.781 of 2013

rsi[co]
srg 02/08/2019