

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6696 of 2020
and Crl.M.P.No.3691 of 2020

1. Gnanasuriyan
S/o.Muthamizhmani

2. Muthamizhmani
S/o.Late Pavadaisamy

...Petitioners

Vs.

Umadevi
W/o.Ganasuriyan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the proceedings in D.V.C.No.60 of 2019 on the file of the Additional Mahila Court, Egmore and quash the same as against the petitioners.

For Petitioners : Mr.M.Babu Muthu Meeran
For Respondent : No appearance

ORDER

This petition has been filed to quash the domestic violence proceeding in D.V.C.No.60 of 2019 on the file of the Additional Mahila Court, Egmore, as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that the first petitioner is a husband and the second petitioner is a father-in-law of the respondent herein. He further submitted that the complaint lodged by the respondent is barred by limitation, since the respondent left the matrimonial home long back and filed this complaint after the period of one year. The impugned proceeding is a counter blast for the complaint lodged as against the respondent by the first petitioner herein. He further submitted that the respondent now is living with one Manikandan, who had links with national political party and influenced the respondent herein that he knew top leaders of the said political party and he will arrange a seat to contest in the election of legislative assembly or to the member of parliament in Tamilnadu in the said party, thereby the respondent and the said Manikandan developed illicit relationship.

2.1. He further submitted that the respondent and the said Manikandan used to administer sleeping pills to the children in the milk and put the children inside the room and locked the door, since they were disturbing their relationship inside the house. When it was questioned by the first petitioner on 14.01.2018, the said Manikandan attempted to assault the first petitioner with intention to do away with his life. Thereafter, the respondent had also taken all the jewels to the tune of 78 sovereign and Rs.2.5 lakhs cash from the first petitioner with the connivance of the said Manikandan and their whereabouts not known. Therefore, the first petitioner lodged a complaint before the Inspector of Police, Anna Nagar Police Station and the same was registered in Crime No.717 of 2018 for the offences under Sections 294(b), 342, 406, 506(ii) of IPC and under Section 75 and 77 of Juvenile Justice Act, now culminated in C.C.No.8014 of 2018 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai, in which the respondent is arrayed as A1 and the said Manikandan is arrayed as A2.

2.2. In fact, the respondent also filed a quash petition before this Court in Crl.O.P.No.27883 of 2018 and the second accused in Crl.O.P.No.29665 of 2018 to quash the proceedings. This Court dismissed both the petitions by an order dated 16.04.2019. Against which, the respondent also filed a Special Leave Petition before the Hon'ble Supreme Court of India in S.L.P.No.5089 of 2019 and obtained interim order of stay. In the meanwhile, she also filed guardianship petition in G.W.O.P.No.893 of 2019 seeking custody of the children before the II Additional Family Court, Chennai, and it is pending. After filing those proceedings, now the respondent filed the impugned complaint under the Domestic Violence Act in D.V.C.No.60 of 2019.

2.3. He further submitted that in guardianship petition, the respondent categorically stated that she holds a doctorate in physical education and she has secured all India second rank in National Eligibility Test and employed as Director of Physical Education in Ethiraj College, Chennai. Further she stated that she has been able to maintain her children and provide a comfortable and decent life including quality education and proper medical care to her children and to fulfil their needs and requirements. She also stated that she is drawing salary more than 1½ lakhs per month. When it being so, now the respondent filed complaint under the Domestic Violence Act for the relief of maintenance for a sum of Rs.1 lakh per month along with other reliefs. He further submitted that the complaint has been filed on 03.05.2019 under the Domestic Violence Act. Whereas she left the matrimonial home in the month of January 2018 itself. It is categorical admitted by her in the divorce

petition filed in H.M.O.P.No.4734 of 2018 on the file of the II Additional Family Court, Chennai. Therefore, the present complaint is nothing but clear abuse of process of law and counter blast to the complaint lodged by the first petitioner as against the respondent and her paramour Manikandan. Therefore he sought quashment of the entire proceedings as against the petitioners.

3. Heard Mr.M.Babu Muthu Meeran, learned counsel appearing for the petitioners. Though notice served to the respondent and her name printed in the cause list, no one is appeared on behalf of the respondent by person or through pleader.

4. The first petitioner got married with the respondent on 06.07.1997. Due to their wed lock, they gave birth to two daughters. Thereafter, she had illegal intimacy with one Manikandan. When it was questioned by the first petitioner he was attacked by the said Manikandan with the instruction of the respondent herein. She also administered sleeping pills in the milk to their kids while both were in the house. Therefore, the first petitioner lodged complaint and the same has been registered in Crime No.717 of 2018 for the offences punishable under Sections 294(b), 342, 406, 506(ii) of IPC and under Sections 75 & 77 of Juvenile Justice Act as against the respondent and the said Manikandan, on the file of the Inspector of Police, Anna Nagar Police Station, Chennai, in which the respondent is arrayed as A1. After completion of investigation the Inspector of Police has filed a final report and the same has been taken cognizance in C.C.No.8014 of 2018 on the file of the V Metropolitan Magistrate, Chennai and it is pending for trial.

5. It is also seen that the respondent and the other accused Manikandan have filed quash petitions before this Court in Crl.O.P.Nos.27883 and 29665 of 2018 respectively and this Court by an order dated 16.04.2019, dismissed both the quash petitions. However, it is under challenge before the Hon'ble Supreme Court of India in S.L.P.No.5089 of 2019 and granted interim stay of the proceedings in C.C.No.8014 of 2018. The respondent also filed a divorce petition in H.M.O.P.No.4734 of 2018 on the ground of cruelty and it is pending for trial on the file of the II Additional Family Court, Chennai. The respondent also filed a petition seeking custody of children in G.W.O.P.No.893 of 2019 on the file of the II Additional Family Court, Chennai and it is also pending.

6. In the divorce petition, the respondent stated that during the month of January 2018 itself she got separated from the matrimonial home. The present impugned complaint lodged on 03.05.2019. In this regard, it is relevant to relay upon the

order dated 04.04.2019 passed by this Court in Crl.O.P.No.11087 of 2017, in the case of V.Nagarajan and ors Vs. B.P.Thangaveni, which reads as follows:-

"6. In this regard the learned counsel appearing for the petitioners relied upon the judgment reported in 2012 Crl.L.J.309 in the case of Inderjit Singh Grewal Vs. State of Punjab & Anr., which reads as follows:-

"24. Submissions made by Shri Ranjit Kumar on the issue of limitation, in view of the provisions of Section 468 Code of Criminal Procedure, that the complaint could be filed only within a period of one year from the date of the incident seem to be preponderous in view of the provisions of Sections 28 and 32 of the Act 2005 read with Rule 15(6) of The Protection of Women from Domestic Violence Rules, 2006 which make the provisions of Code of Criminal Procedure applicable and stand fortified by the judgments of this Court in Japani Sahoo v. Chandra Sekhar Mohanty AIR 2007 SC 2762; and Noida Entrepreneurs Association v. Noida and Ors. (2011) 6 SCC 508.

25. In view of the above, we are of the considered opinion that permitting the Magistrate to proceed further with the complaint under the provisions of the Act 2005 is not compatible and in consonance with the decree of divorce which still subsists and thus, the process amounts to abuse of the process of the court. Undoubtedly, for quashing a complaint, the court has to take its contents on its face value and in case the same discloses an offence, the court generally does not interfere with the same. However, in the backdrop of the factual matrix of this case, permitting the court to proceed with the complaint would be travesty of justice. Thus, interest of justice warrants quashing of the same."

The Hon'ble Supreme Court of India held that under Sections 28 and 32 of the Act 2005 r/w Rule 15(6) of the Protection of Women from Domestic Violence Rules, 2006 which make the provisions of the Code of Criminal Procedure applicable. Accordingly, the respondent ought to have been lodged complaint within a period

of one year from the date of incident. The above judgment is squarely applicable to the case on hand, since the present complaint lodged only after the period of one year and four months from the date of their separation. That apart, the present impugned complaint is nothing but after thought and only to harass the petitioners, the present complaint has been lodged as against the petitioners.

7. On perusal of the guardianship petition seeking custody of the minor children, the respondent stated as follows :-

"32. The petitioner submits that she holds a doctorate in Physical Education and she has secured All India 2nd rank in National Eligibility Test (NET). She has been employed as the Director of Physical Education in Ethiraj College, Chennai and she has been able to generate sufficient income to maintain herself and to provide a comfortable and decent life including quality education and proper medical care to her children and to fulfil all their needs and requirements. The petitioner, as the mother and natural guardian of the children, can have no adverse interest to that of the minors. The petitioner submits that she alone could be the proper and fit person to take care of the children and to bring them up in a good and proper manner."

Admittedly, the children are living with the first petitioner and the first petitioner is looking after them. The first petitioner lodged complaint as against the respondent herein in the year 2018 itself alleging that the respondent had taken away 78 sovereign of gold jewels and also Rs.2.5 lakhs of cash from the first petitioner's house along with one Manikandan. The said complaint has been culminated and the same has been taken cognizance in C.C.No.8014 of 2018 on the file of the V Metropolitan Magistrate, Egmore and it is pending for trial. Therefore, the prayer sought for in the impugned domestic violence complaint is after thought and it is nothing but counter blast to the complaint lodged by the first petitioner herein.

8. Further the respondent also filed a divorce petition and guardianship petition seeking custody of the children as against the first petitioner, as such the present proceedings is nothing but clear abuse of process of law. In this regard, it is relevant to extract the judgement reported in (1992) SCC CrI. 426 in the case of Bajanlal v. State of Haryana, wherein the Hon'ble Supreme Court of India has listed out the following category of case in which the criminal proceedings can be

quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:-

"102.....

.....

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

The above judgment is squarely applicable to the case on hand and the entire proceedings is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

9. Accordingly, this Criminal Original Petition is allowed and the proceeding in D.V.C.No.60 of 2019 on the file of the Additional Mahila Court, Egmore, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional Mahila Court,
Egmore

CRL.O.P.No.6696 of 2020
and CrI.M.P.No.3691 of 2020

RSV(CO)
RV(11/11/2020)

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