

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.12546 of 2020

G.Saravana Kumar @ Yeshwanth

...Petitioner

Vs.

1. The State by,
The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam,
Chennai.
Cr.No.20 of 2018
 2. The Deputy Commissioner of Police,
Office of the Deputy Commissioner of Police,
Annanagar, Chennai
 3. M.Amala
(3rd respondent impleaded as per order of
this Court in Crl.MP.No.5289 of 2020
in 12546 of 2020 dated 18.09.2020)
- ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to direct the respondent police to withdraw or cancel the look-out circular issued to the Airports and Immigration Authorities in and around Union of India in connection with the Crime No.20 of 2018 on the file of the respondent Police.

For Petitioner : Mr.G.Anbumani
for Mr.A.Gokulakrishnan

For Respondents
For R1 & 2 : Mr.S.Karthikeyan,
Additional Public Prosecutor.
For R3 : Mr.N.Manokaran

O R D E R

This petition has been filed for direction directing the first respondent to withdraw or cancel the look-out circular issued to the Airports and Immigration Authorities in pursuant to Cr.No.20 of 2018 on the file of the first respondent.

2. Mr.G.Anbumani, learned counsel appearing for the petitioner submitted that the petitioner got married with the third respondent herein on 02.07.2009. They both went to Dubai and lived there. Thereafter she left the matrimonial home and lodged a complaint against the petitioner and his parents and the same has been registered in Cr.No.506 of 2010 for the offences under Sections 498(a) and 406 of IPC. Thereafter she withdrew the complaint and got reunion with the petitioner. Again, in the year 2013, she lodged complaint under Domestic Violence Act and the same ended in acquittal in the year 2018. Again in order to harass the petitioner and his parents she lodged another complaint and the same was registered in Cr.No.20 of 2018 on the file of the first respondent. In pursuant to the said crime, look-out circular was issued as against the petitioner. When the petitioner visited India, he was arrested and remanded to judicial custody. He incarcerated imprisonment from 29.11.2018 to 06.12.2018. The petitioner filed petition to quash the FIR in Cr.No.20 of 2018. In the meanwhile, the third respondent also filed petition for cancellation of bail before this Court in Crl.OP.No.31693 of 2019. This Court dismissed the quash petition filed by the petitioner in Crl.OP.No.1865 of 2019 by order dated 25.01.2019 and directed the first respondent to complete the investigation and filed final report. This Court dismissed the petition filed by the third respondent for cancellation of bail granted to the petitioner by order dated 27.02.2020. However, this Court directed the petitioner to appear before the first respondent for interrogation and also shall cooperate for investigation and till the completion of investigation and file final report, he shall not leave India, and the first respondent is directed to complete the investigation within a period of three months in Cr.No.20 of 2018. The first respondent failed to comply the direction issued by this Court and as such the petitioner was constrained to file contempt petition in Cont.P.No.492 of 2020. While pending contempt petition, the first respondent filed final report and recorded the said submission, the said contempt petition was closed. Though the first respondent filed final report, the same was returned for certain correction and re-presented for taking cognizance.

2.1 The learned Counsel further submitted that now the petitioner has fully cooperated with the first respondent for investigation and the first respondent filed final report. While being so, the visa issued by his employer is about to lapse since he could not able to visit his employer for reporting his duty for the reason already the first respondent issued look-out circular in the year 2018 and it is pending. Though it is valid upto only one year, subsequently on the instruction of the first respondent, it was extended for further one year by the second

respondent. Now he has to save his job and so that he can maintain the third respondent herein. He further submitted that the petitioner filed petition for divorce in HMOP.No.274 of 2014 on the file of the Sub Court, Poonamallee and it is pending. In the said divorce petition, the respondent filed petition for maintenance in IA.No.190 of 2015, in which the petitioner was directed to pay monthly maintenance of Rs.20,000/- per month by order dated 21.04.2016. As ordered by the Family Court, the petitioner deposited a sum of Rs.12,20,000/- through NEFT on 14.09.2020 as arrears of maintenance. He further submitted that the petitioner's presence is required for completion of investigation as directed by this Court. Now the entire investigation has been completed and the first respondent filed final report. Therefore, he may be permitted to visit abroad to save his job. Therefore, the learned counsel sought for direction directing the second respondent to withdraw the look-out circular issued as against the petitioner herein. In support of his contention, he relied upon the following judgments:

- (i) S.Martin Vs. The Deputy Commissioner of Police, Central Crime Branch, Egmore, Chennai and two others reported in 2014 SCC Online Mad 1651
- (ii) R.Suriyaprabha Vs. The Superintendent of Police, Madurai District and another in Crl.OP.(MD).No.1922 of 2018 dated 06.09.2019
- (iii) Arockia Jeyabalan Vs. The Regional Passport Officer, Mount Road, Chennai and others reported in 2014-4-LW-841, and
- (iv) P.Yoganandhan Vs. State of Tamil Nadu rep. by the Superintendent of Police and others reported in 2019 SCC Online Mad 28716

3. Per contra, the learned counsel for the third respondent filed counter and submitted that on the complaint lodged by the third respondent, the first respondent registered case in Cr.No.20 of 2018 for the offences under Sections 498(a), 313 and 494 of IPC as against the petitioner and others. The petitioner was arrested and remanded to judicial custody and subsequently released on bail. Thereafter the petitioner filed petition for seeking permission to visit abroad in Crl.MP.No.4127 of 2018 and the same was allowed by order dated 09.01.2019 on condition that the petitioner is permitted to leave India for six months. Thereafter, he is directed to report before the first respondent. Aggrieved by the same, the third respondent challenged the said order in Crl.OP.No.1992 of 2019, in which this Court by order dated 12.02.2019 modified the condition that the petitioner is directed to return India on or before 01.08.2019 and report before the first respondent on 02.08.2019 for interrogation. The petitioner did not comply the

said order and thereafter he got married illegally one, Ramya and also gave birth to a male child on 29.06.2017.

3.1 He further submitted that the third respondent filed petition for interim maintenance in HMOP.No.274 of 2014 filed by the petitioner, and by order dated 21.04.2016, the Sub Court Poonamallee ordered maintenance of Rs.20,000/- per month to the third respondent payable by the petitioner herein. It was also confirmed by this Court in CRP.No.3267 of 2016. Even then, the petitioner herein did not comply the said order. Therefore, the third respondent was constrained to file petition for cancellation of bail granted to the petitioner herein in Crl.OP.No.31693 of 2019, and only on the direction issued by this Court in Crl.OP.No.31693 of 2019, the petitioner returned to India on 01.02.2020 and appeared before the first respondent. Therefore, the petitioner never obeyed the direction issued by this Court and as such he is not entitled to any relief as sought for in the petition by the petitioner herein. He further submitted that when this Court dismissed the quash petition, directed the first respondent to complete the investigation and file final report within a period of three months. Since the FIR has been registered for offences under Section 494 of IPC, the first respondent necessarily have to subject the petitioner for DNA test to examine about the birth of male child through his second wife, Ramya. Therefore, the first respondent filed petition in Crl.MP.No.131 of 2020 before the Additional Mahila Court, Egmore, Chennai for the purpose of getting DNA test and it is pending. While pending such application, the petitioner filed contempt petition for non filing of final report in Cr.No.20 of 2018. In the contempt petition in Cont.P.No.492 of 2020, only to avoid contempt of court proceedings, the first respondent without subjecting the petitioner for DNA test, filed final report and the same has been returned by the trial court. Therefore, the investigation is still pending and not yet completed. If the petitioner is permitted to go abroad, definitely he will not return to India and the life of the third respondent will be in peril. Therefore, he prayed for dismissal of this petition.

4. The learned Additional Public Prosecutor submitted that the petitioner is an accused in Cr.No.20 of 2018 on the complaint lodged by the third respondent registered for the offences under Sections 498(a), 313, 494 of IPC. The petitioner was arrested and remanded to judicial custody and subsequently released on bail. Thereafter he was also permitted to visit abroad for six months and thereafter directed to return back to India on or before 01.08.2019 by order dated 12.02.2019 by this Court in Crl.OP.No.1992 of 2019. The petitioner did not comply the order and as such the third respondent filed petition to cancel the bail granted to the petitioner. As directed by this

Court the petitioner returned to India and appeared before the first respondent on 01.02.2020. In the quash petition filed by the petitioner to quash the FIR in Cr.No.20 of 2018, this Court directed the first respondent to complete the investigation and file final report within a period of three months. The first respondent has to investigate in respect of birth of male child through other accused namely Ramya and to collect material to substantiate charge under Section 494 of IPC. Therefore, the first respondent filed petition in Crl.MP.No.131 of 2020 on the file of the Additional Mahila Court, Chennai and it is pending.

4.1. He further submitted that due to covid-19, the trial court could not able to summon order. In the meanwhile, the petitioner filed contempt petition in Cont.P.No.492 of 2020 before this Court for non complying the direction issued by this Court as against the first respondent. Therefore, the first respondent was constrained to file final report without subjecting the petitioner for DNA test. However final report was returned by the trial court and it is pending for re-presentation. Only after getting the report of DNA test, the first respondent can re-present the final report in Cr.No.20 of 2018. He further submitted that this Court specifically directed the petitioner that the petitioner shall not leave India till the completion of investigation. Therefore, though the look-out circular is valid for one year, subsequently it was renewed for another year and it is pending. If the petitioner is permitted to leave India, he will not return to India and the entire investigation will be standstill. Therefore, he vehemently opposed for the prayer sought for in this petition and prayed for dismissal of this petition.

5. Heard Mr.G.Anbumani, learned counsel for the petitioner, Mr.S.Karthikeyan, Additional Public Prosecutor for the respondents 1 and 2, and Mr.N.Manokaran, learned counsel for the third respondent.

6. The petitioner is one of the accused in Cr.No.20 of 2018 registered for the offence under Sections 498(a), 313, 494 of IPC. He was arrested and subsequently enlarged on bail in Crl.MP.No.3861 of 2018 subject to certain conditions. Thereafter the petitioner was permitted to go abroad for six months. Aggrieved by the same, the third respondent filed petition challenging the said order in Crl.OP.No.1992 of 2019 and this Court by order dated 12.02.2019 directed the petitioner to return to India on or before 01.08.2019 and report before the first respondent on 02.08.2019. Even then, the petitioner did not return to India as directed by this court and as such the third respondent filed petition to cancel the bail granted to the petitioner in Crl.OP.No.31693 of 2019. In the meanwhile, the petitioner also filed petition to quash the FIR in

Crl.OP.No.1865 of 2019, which was dismissed by this Court and directed the first respondent to complete the investigation and file final report within a period of three months by order dated 25.01.2019.

7. This Court in the cancellation of bail petition filed for cancellation of bail in Crl.OP.No.31693 of 2019, directed the petitioner to appear before the first respondent for interrogation and he shall cooperate for interrogation and till completion of investigation and file final report, he shall not leave India. However directed the first respondent to complete the investigation within a period of three months and file final report in Cr.No.20 of 2018. The first respondent could not comply the direction issued by this Court since the first respondent filed petition in Crl.MP.No.131 of 2020 for seeking permission to subject the petitioner herein for DNA test, and it is pending. In the meanwhile, the petitioner filed contempt petition before this Court in Cont.P.No.492 of 2020 for non complying the direction issued by this Court in Crl.OP.No.1865 of 2020. Therefore, the first respondent without subjecting the petitioner for DNA test filed final report and the same is also now returned for certain corrections. Therefore, the investigation is not yet completed for the reason that the petition in Crl.MP.No.131 of 2020 is pending on the file of the Additional Mahila Court, Egmore, Chennai. That apart, due to covid-19, the trial court could not able to pass order on the petition in Crl.MP.No.131 of 2020. When this Court specifically directed the petitioner that he shall not leave India till the completion of investigation, the prayer sought for in this petition cannot be considered. Therefore, judgments cited relied upon by the learned counsel for the petitioner are not helpful to the case on hand.

8. That apart, the Sub Court, Poonamallee in the divorce proceedings ordered interim maintenance of Rs.20,000/- per month in IA.No.190 of 2015 by order dated 21.04.2016 payable by the petitioner to the third respondent herein. For the past four years, the petitioner did not comply the said order and while pending this petition complied the order only on 14.09.2020. It shows that the petitioner is always in the habit of disobeying the order passed by this Court as well as the court below. Further, in fact though this Court directed the petitioner to appear before the first respondent on or before 01.08.2020, the petitioner did not return back to India. Therefore, the third respondent was constrained to file petition to cancel the bail granted to the petitioner in Crl.OP.No.31693 of 2019 and this Court specifically directed him to appear before the first respondent on 01.02.2020. Only thereafter he returned to India and appeared before the first respondent for investigation. Therefore, if the petitioner is permitted to

leave India, he will not cooperate for investigation and the first respondent could not complete the investigation in Cr.No.20 of 2020.

9. In view of the discussion, this petition is devoid of merits as such this Criminal Original Petition is dismissed. However, the trial court namely the learned Additional Mahila Court, Egmore, Chennai is directed to pass orders in CrI.MP.No.131 of 2020 within a period of four weeks from the date of receipt of copy of this order.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The learned Additional Mahila Court,
Egmore, Chennai
2. The Inspector of Police,
W-8, All Women Police Station,
Thirumangalam,
Chennai.
Cr.No.20 of 2018
3. The Deputy Commissioner of Police,
Office of the Deputy Commissioner of Police,
Annanagar, Chennai
4. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate in SR.NO..30662

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CrI.O.P.No.12546 of 2020

VSN-II (CO)
RV(22/10/2020)