

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2020

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.20545 of 2014 and
M.P.No.1 of 2014

1. N.Saravanan
2. Natarajan
3. Saraswathi Petitioner/Accused

Vs.

1. The Women Sub-Inspector
All Women Police Station,
Kancheepuram.R1/Complainant
2. Bama Respondent2/defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for entire records relating to F.I.R. In Crime No.02 of 2014 on the file of 1st respondent police and quash the same.

For Petitioner : Mr.Balaji Sankara Moorthy for
M/s.N.S.Sivakumar

For Respondents : Mr.R.Ravichandran
Govt. Advocate (Crl.Side) for R1
Mr.G.Vinothkumar for R2

ORDER

The first respondent police registered a case against this petitioner based on the complaint given by the second respondent in Crime No.02 of 2014. During pendency of investigation, the petitioner has approached this Court seeking to quash the same.

2 The learned counsel appearing for the petitioner would submit that the petitioner is husband of the second respondent and their marriage took place in the year 2007. The petitioner and the second respondent were lived together hardly for two months only and thereafter she left the matrimonial home. The petitioner filed a petition for divorce before the Sub-Court, Kanchipuram, in H.M.O.P.No.69 of 2008

and got ex-parte decree of divorce, since the second respondent refused to receive the notice. The second respondent, after the lapse of two year has filed a petition to set aside the ex-parte decree of divorce with an intention to harass the petitioner. The petitioner waited four years after the grant of divorce and thereafter only he got re-married.

3 The learned counsel would further submit that in the present complaint filed by the second respondent, she herself stated that she came to the house of the petitioner and there she was attacked by the petitioner and hence Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 does not attract, since it is not a public place. The second respondent has not stated any specific date that when she came to know about the second marriage of the petitioner and she only stated that recently she came to know, which is not reliable. To support his contentions, the learned counsel appearing for the petitioner has placed reliance on the decisions of the Hon'ble Supreme Court and this Court reported in the following cases

1. (2013) 3 Supreme Court Cases 330 (Rajiv Thapar and others vs. Madan Lal Kapoor)
2. (2019) 1 MLJ (Cr1) 352 (G.Logeswaran vs. State of Tamilnadu and others)
3. 2018 SCC OnLine Mad 1866 (I.Linga Bhaskar and others vs. State of Tamilnadu and another)
4. 2010 SCC OnLine Mad 5348 (Gouresh Mehra and another vs. State of Tamilnadu and another)

4 The learned counsel appearing for the second respondent would submit that even though, the petitioner got exparte decree of divorce, the second respondent/wife has filed a petition to set aside the same. However, without knowledge of the second respondent/wife, the petitioner has got second marriage and when she questioned the same, she was attacked by the petitioner and his family members. Therefore, the petitioner must be prosecuted and he should not be allowed to escape from the clutches of law.

5 Heard the learned counsel appearing on either side and perused the materials available on record.

6 It is the main contention of the learned counsel for the petitioner that Section 4 does not attract, since the alleged occurrence even as per the complaint, has taken place only in the dwelling house of the petitioner and not in a public place and also the second respondent has not stated any specific date of knowledge of second marriage of the petitioner. On a careful perusal of the complaint, it reveal that the second respondent has stated that after knowledge of second marriage of the petitioner, she questioned the same and

the petitioner and his family members attacked her and at that time neighbors came and rescued her. Therefore, whether Section 4 would attract or not would come to light only after investigation.

7 In the decisions referred to by the learned counsel appearing for the petitioner, cases were quashed only after filing of charge sheet and also in the decisions rendered by this Court and Madurai Bench of this Court, alleged harassment were made through mobile phone, but, in the present case on hand, the petitioner soon after registering FIR, rushed to this Court seeking to quash the same and also in this case, the second respondent wife has stated that she was assaulted by the petitioner and his family members and the neighbors have rescued her and hence the citations referred to by the learned counsel for the petitioner are not helpful to the present case on hand. Therefore, this Court is of the view that there is no reason to invoke Section 482 of Cr.P.C.

8 Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition is closed. The first respondent police is directed to investigate into the matter and file a charge sheet within a period of four months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The The Women Sub-Inspector
All Women Police Station,
Kancheepuram.

2. The Public Prosecutor, High Court of Madras.

+1cc to Mr.G.Vinothkumar , Advocate SR.No. 9670
+1cc to Mr.N.S.Siva kumar , Advocate SR.No. 9192

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A.SK(19/02/2020)