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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on
28.09.2020

Delivered on
23.04.2021

CORAM :

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.OP.No.14795 of 2015
and Crl.MP.No.1 of 2015

R.Venkatasubramanian

... Petitioner

Vs.

1. The State of Tamil Nadu
by the Sub Inspector of Police,
Law and Order,
B-1, North Beach Police Station,
Chennai-600 001.
(Crime No.314 of 2013)

2. R.U.Vasanthi

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.844 of 2014 on the file of the learned Judicial Magistrate, Alanthur, Kancheepuram District and quash the same.

For Petitioner : Mr.J.Selvarajan

For Respondents : Mr.Mohamed Riyaz R1
Additional Public Prosecutor
for the first respondent R2

Mr.R.Krishnamoorthy,
for second respondent

ORDER

This petition has been filed by the petitioner/accused seeking to quash the proceedings in C.C.No.844 of 2014 on the file of the learned Judicial Magistrate, Alandur, Chennai, for offences under Sections 294(b), 323, 506(ii) IPC altered as 341, 294(b), 323 and 506(i) of IPC.

2. The case of the prosecution as seen from the final report is that on 20.12.2013 at about 11 am, when the second respondent/defacto complainant was proceeding to attend a case in XVI Metropolitan Court, Chennai in C.C.No.3058 of 2009, the



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petitioner, along with two other unknown persons, restrained her and questioned marriage which was of her own choice against the family wish. Thereafter, she has been regularly harassed by the petitioner questioning her acts, since she is an advocate while she can take independent decision and threatened her that she would be done away, in the same place and slapped on her cheek and threatened her by showing knife. Thereafter, the defacto complainant lodged a complaint before the first respondent police, the respondent police assigned CSR No.40 of 2013. Thereafter, since the respondent police failed to register a case, the defacto complainant filed a petition under Section 156(3) of Cr.P.C. in C.M.P. No.2214 of 2013 which was forwarded to the first respondent, who registered a case in Crime No.314 of 2013, for the offences under Section 294(b), 323 and 506(ii) of IPC. On completion of investigation, the respondent police filed a charge sheet before the learned VII Metropolitan Magistrate, George Town, Chennai in C.C.No.3198 of 2013, against the petitioner, listing witnesses and marked documents. Thereafter, the petitioner filed a transfer petition in CrI.O.P.No.31054 of 2014 and this Court had ordered transfer of the case C.C.No.3198 of 2013, from the file of the learned VII Metropolitan Magistrate, George Town, Chennai, dated 06.6.2014 to the file of the learned Judicial Magistrate, Alandhur, Chennai and re-numbered as C.C.No.844 of 2014 and the case is pending.

3. The contention of the petitioner is that the complaint is highly imaginary. The second respondent, who is the sister of the petitioner, is an Advocate by profession, she married one Umashankar, an Advocate. The marriage was her own choice. The family members objected to the marriage and, from the year 2003, she is living separately. The petitioner is the only son of the family and he has four sisters viz., Shanthi, Sumathi, Malathi and Vasanthi. The second respondent is the youngest sister of the petitioner. The petitioner's father settled his property during his lifetime in favour of the petitioner, against which, the second respondent has filed a civil suit in O.S.No.3254 of 2012, pending on the file of the XVI Assistant City Civil Court, Chennai. The petitioner already filed a written statement during July, 2013. The second respondent, taking advantage of being an Advocate, regularly creating nuisance and problems to the petitioner whenever he attended courts and other family members, by lodging false cases through her husband's friends against the petitioner. Earlier, the second respondent filed a case in C.C.No.3048 of 2009 against the petitioner. On 20.02.2013, he had attended the court proceedings in George Town Court in connection with the above case. On that day, the alleged occurrence has taken place. The petitioner's father died on 04.11.2004 and during his life time, he settled the property in favour of the petitioner. The petitioner's sisters demanded partition of



the house property situated at Nandanam, measuring about 1200 sq. ft. Thereafter, the petitioner with great struggle, arranged a sum of Rs.12,00,000/-, by mortgaging the said house property and also selling his wife's jewels and arranged a sum of Rs.16,00,000/-. On 01.02.2007, he had paid Rs.4,00,000/- each to his sisters. Not satisfied with the same, the second respondent, preferred a complaint before the Tondiarpet Police Station during the year 2011. At that time, the petitioner again arranged jewels and cash and the same was settled to the second respondent. Thereafter, the complaint lodged by the second respondent, was closed. Whenever the petitioner attended the Court proceedings in C.C.No.3198 of 2013 which is pending before the learned VII Metropolitan Magistrate, Chennai, the second respondent used to create problems through her colleagues and threatened the petitioner with dire consequences, due to which, the petitioner filed a Criminal Original Petition in CrI.O.P.No.31054 of 2014, before this Court for transferring the case to some other court and the said original petition was disposed of with a direction. The learned counsel further submitted that from the statement of witnesses and materials, it is seen that no offence is made out against the second respondent. The second respondent being an Advocate, the respondent police had no other alternative and to avoid the unpleasantness, had mechanically filed the final report.

4. Mr.R.Krishnamoorthy, learned Counsel appearing on behalf of the defacto complainant, submitted that the second respondent/defacto complainant is an Advocate by profession and she is the youngest sister of the petitioner. Since she married on her own, the petitioner and his family members objected to the said marriage, and enmity arose between them, due to which, she was denied of her rightful share in the family property. The second respondent was unable to visit any of her relatives and attend family functions. Further, the second respondent filed a civil suit seeking partition in the property which is pending before the XVI Assistant City Civil Court, Chennai, in O.S.No.3254 of 2012, to wreak vengeance, the petitioner along with two of his friends, had threatened the defacto complainant at knife point and assaulted her. Earlier, there was another case filed against the petitioner which is pending in C.C.No.3198 of 2013. The petitioner, due to the inaction of the police, got emboldened, harassing and assaulting the defacto complainant. Hence, the learned counsel prays to dismiss the quash petition filed by the petitioner.

5. The learned Additional Public Prosecutor appearing on behalf of the State submitted that the defacto complainant is an Advocate, assaulted while she was proceeding to the Court. The defacto complainant lodged a complaint dated 20.02.2013 against the petitioner, later filed a petition under Section



156(3) of Cr.P.C. before the VII Metropolitan Magistrate, Egmore, Chennai, and the case was forwarded to the respondent police. Thereafter, the respondent police registered an FIR, conducted enquiry, visited the scene of occurrence, prepared observation mahazar and rough sketch and, enquired the witnesses present in the scene of occurrence and recorded their statements. On conclusion, the respondent police filed a charge sheet before the learned VII Metropolitan Magistrate, Chennai and later, on the orders of this Court, the said case was transferred to the file of the learned Judicial Magistrate, Alandur, which is now pending trial. Now, the petitioner has approached this Court to quash the case filed against him.

6. Heard the learned counsel for the petitioner, the learned counsel for the second respondent and the learned Additional Public Prosecutor.

7. Considering the rival submissions made by the respective counsel and on perusal of the materials, it is seen that the petitioner and the defacto complainant are siblings. The defacto complainant is the youngest daughter in the family and she is an Advocate by profession. She got married to one Umashankar, who is also an Advocate, at her will. But the family members of the defacto complainant objected to the said marriage. The relationship of the defacto complainant with her family got strained. Therefore, from the year 2003, she is living with her husband separately. The petitioner's father had two properties and the same were settled in favour of the petitioner by way of a registered settlement deed dated 25.02.2004, which is registered as document No.547 of 2004 before the SRO, T.Nagar. The said property, purchased by the petitioner's father viz., Raghupathy, and the same is not in dispute. The petitioner's father died after settlement deal, which is also not in dispute. The contention of the defacto complainant is that she was not aware about the settlement and questioned the same to the petitioner and she caused a legal notice dated 11.02.2012 to the petitioner and the petitioner sent a reply on 13.03.2012. Thereafter, the defacto complainant filed a civil suit in O.S.No.3254 of 2012, the written statement filed by the petitioner. It is for the Civil Court to decide the rights of the petitioner as well as the defacto complainant. As regards the assault which is said to have taken place on 20.02.2013, it is seen that the complaint came to be registered after it was referred under Section 156 (3) of Cr.P.C. It is seen from the statement of witness that the petitioner assaulted the defacto complainant in a public place and the witnesses cited are platform vendors at the at the mercy of police. As contended by the petitioner, how the witnesses knew the petitioner's identity and his name and details are highly doubtful. Further, there exists enmity between the defacto complainant and the petitioner due to the



marriage at strained relationship. The defacto complainant now objecting sharing of the property. It is seen that the petitioner already settled the share of the properties to his sisters. As regards the defacto complainant, the petitioner settled more than other sisters, which is completely denied by the defacto complainant, now. The civil Court to decide this dispute. As regards the above case from the facts and materials produce it is seen that no tangible materials available to produce against the petitioner. It is a dispute between the brother and sister over sharing of property. The occurrence appears to be an exaggerate version.

8. Considering the facts and circumstances of the case and also averments, this Court is of the view that the continuation of the proceedings would amount to abuse of process of law. In view of the same, the proceedings in C.C.No.844 of 2014 on the file of the learned Judicial Magistrate, Alandhur is quashed and accordingly, this Criminal Original petition is allowed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate, Alanthur,
Kancheepuram District

2. The Sub Inspector of Police,
Law and Order,
B-1, North Beach Police Station,
Chennai-600 001.

3. The Public Prosecutor
High Court of Madras
Chennai - 600 104.

Cr1.OP.No.14795 of 2015
and Cr1.MP.No.1 of 2015

SV(CO)
B.VC(22.07.2021)