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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17510 of 2021

M.Sangeetha
D/o.Mr.Manickavelu

...Petitioner

Versus

1. State rep by
The Inspector of Police,
All Women Police Station.
Tindivanam, Villupuram District.

2. Mohan Chettiar

3. Tmt.Prema

4. Geethai Priyan

5.Rajavelu

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in the order dated 06.12.2018 in C.M.P.No.3104 of 2018 in C.C.No.119 of 2014 on the file of the Judicial Magistrate Court No.1, Tindivanam, Villupuram District and set aside the same.

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.A.Damodaran
Addl.Public Prosecutor

ORDER

(This case has been heard through video conference)

The petitioner / defacto complainant in Crime No.3 of 2013 on the file of the All Women Police Station, Tindivanam, Villupuram District, lodged a complaint against her ex-husband and in-laws. They were arrayed as accused 1 to 5 in this case. Thereafter, on conclusion of the investigation, charge sheet has



been filed before the lower court for offences under Sections 294-b, 498-A and 506(i) of IPC and Section 4 of Dowry Prohibition Act during September, 2014 against all the five accused. In the meanwhile, Accused No.1 in this case, had left to Australia and settled down there. For his non appearance, Non-Bailable Warrant was issued and the case has been kept pending in C.C.No.119/2014 for the past five years and the case is kept idle. Thereafter, the lower court finding that despite the issuance of the Non-Bailable Warrant, the same could not be executed within a reasonable time since A1 in this case has settled in Australia and hence, the case against A1 was split up from the Accused 2 to 5 by an order dated 06.12.2018 made in CMP.No.3104/2018 and had assigned C.C.No.32 of 2019 against which the present petition has been filed by the defacto complainant. The apprehension of the defacto complainant is that due to the split up of the case, the case against the main accused would get dissolved and no action would be taken against him and he would go scot free. On the other hand, the other accused A2 to A5, would shift blame on A1, and will escape from the case. The explanation given by the A2 to A5, that they have no contacts with A1 is not at all acceptable.

2. The learned Additional Public Prosecutor (Crl.side) appearing for the 1st respondent would submit that the case has been registered in the year 2013 and thereafter, charge sheet has been filed in the year 2014. Since there was no progress, Non-Bailable Warrant was issued against A1 and thereafter, necessary steps have been taken to secure the A1 by way of executing the warrant issued by the Court and the Inspector of Police also produced an affidavit filed by the petitioner before the lower court seeking a direction to forward the arrest warrant along with the same to the Ministry of the External Affairs for extradition of 1st accused from Australia to India. A copy of the affidavit produced which has been extracted here under:

I am a petitioner herein and as such I am well Acquainted with the facts and circumstances of this case.

I humbly submit that F.I.R was registered against the respondent/Accused in Crime No.03 of 2013 on 09.10.2013 for the offence under Section 294(b), 494-A.506(i) IPC and Section 4, 6(2) of Dowry Prohibition Act 1961 based on the information given by Mrs.Sangeetha, D/o. Tr.Manickavelu who is the defacto complainant in this case.



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I humbly submit that the investigation was conducted by Pramila Sasikumari, Sub-Inspector of Police, Sudhakar, Inspector of Police and Prabavathy, Inspector of Police. After completion of investigation, the Inspector of Police Prabhavathy has filed the Charge before the Hon'ble Judicial Magistrate Court No.I, Tindivanam on 18.06.2014 against this respondent by Accused for the offence Under Section 294(b), 498-A, 506(ii)IPC and Section 4 of Dowry Prohibition Act. The learned Judicial Magistrate Court has taken the cognizance against the accused 2 to 5 on 02.09.2014 and issued the warrant against A1 who is the respondent/Accused in this case.

I humbly submit that the NBW is /has been pending against this Accused Thirumurugan from 26.11.2014. The concerned Police has taken the steps to secure the presence of accused before the Hon'ble Court by the way of executing warrant issued by this Hon'ble court. In spite of due diligence taken by the concerned police, the Accused could not be produced before this Hon'ble Court. However, warrant could not be served to the Accused.

I humbly submit that the Superintendent of Police, Villupuram requested in his proceedings bearing C.No.F1/048674-A/LOC/VPM/2014 dated 02.12.2014 in which he requested the Foreigners Regional Registration Office, Chennai to open the Lookout circular Notice against this Accused. The Lookout Notice issued by the concerned authority in C.No.F1/5178/2019/LOC/VPM/2017, dated 14.02.2017 is existing against this Accused as on date.

I humbly submit that the Hon'ble Judicial Magistrate Court has split up the case by assigning CC.No.32 of 2019 against this Accused in CMP.No.3104 of 2018, dated 06.12.2018.

I humbly submit that I came to know that the absconding Accused Thirumurugan has been permanently residing in Australia and became a Australian Citizen having Passport No.N5291204, Name in Passport: MOHAN THIRUMURUGAN , DATE OF BIRTH: 10.06.1978. AUSTRALIAN CITIZENSHIP: Name : THIRUMURUGAN MONA , EVIDENCENO: 01885503228, Issue date: 27/01/2010. DRIVING LICENCE NO: R03108 Class "C" - South Australia.

I humbly submit that the Accused Thirumurugan is a fugitive Criminal in this case. I further submit



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that the Government of India and Australia are signed and extradition treaty in 2008 which came in force 2011 . The Indian Govt. Ministry of External Affairs has published the notification in the Gazette of India GSR 192(E), dated 23.06.2008. The treaty entered with Australia came into force with effect from 20.01.2011.

I humbly submit that the Accused has completed the extradition offence. I further submit that the investigation reveals that the Prima facie cases made out against the Accused for the offence under section 294(b), 498-A, 506(ii) and section 4 of Dowry Prohibition Act. The deposition given by the witnesses, 161(3) Statement of the witness and document produced before the Court are sufficient for invoking Extradition Act.

I humbly submit that the presence of the Accused before this Hon'ble Court is required as per Law. His presence is necessary in the interest of justice. I further submit that under section 16 of the Extradition Act, the Magistrate may issue the provisional warrant for the apprehension of the fugitive Criminal from any foreign state with which Government of India is having extradition treaty or extradition arrangement , who is suspected to be in the foreign state against whom a Criminal case is pending prosecution. Such warrant shall be transmitted either through Interpol or through diplomatic channel.

I humbly submit that the prosecution will not seek death penalty against the accused in this case as it is not provided in IPC. I further submit that the fugitive offender will only be tried for the extradition offences when extradited to India.

I humbly submit that the offences against the accused are not barred by the period of limitation, since cognizance taken by the court and trial is pending before the Hon'ble Court.

I humbly submit that the prima facie case is made out prima facie evidences available as per records for extradition of Thirumurugan from Australia.

I pray that this Hon'ble Court may be pleased to direct the Ministry of External Affairs, CPV Division, Patiala House annexe, Tilak Marg, New Delhi-110 001 for the extradition of Thirumurugan Mohan from Australia to India by issuing provisional arrest warrant and forward him for the purpose of trial proceedings pending on the file of the Judicial



Magistrate Court No.I, Tindivanam in CC.No.32 of 20199(Old CC.No.119 of 2014) and thus render justice.''

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3. Finding that the 1st respondent police are taking necessary steps to secure the main accused A1 in this case, further, splitting up of the case against the other accused A2 to A5 would not affect the case of the petitioner, this court does not inclined to entertain the present petition. However, a direction is given to the lower court to complete the extradition formalities and to take earnest steps to secure the absconding 1st accused. It is made clear that the trial court can proceed with the split up case against A2 to A5 in C.C.No.119/2014 with the materials available and to complete the trial within a period of six months from the date of receipt of a copy of this Order.

4. With the above direction and observation, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tsi/nr

To

1. The Judicial Magistrate No.1,
Tindivanam, Villupuram.
2. The Inspector of Police,
All Women Police Station.
Tindivanam, Villupuram District.
3. The Public Prosecutor (Crl.side),
High Court, Madras.

CRL.O.P.No.17510 of 2021

SRA (CO)
K.RK. (13.10.2021)