

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2021

CORAM

THE HONOURABLE Mr. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.2395 of 2015

and

Crl.M.P.No.1 of 2015

M.Tamilvelan
S/o.Manickavel

...Petitioner

Vs.

1.The Inspector of Police
Ariyankuppam Police Station
Puducherry

2.Child Welfare Committee
Rep. By its Chairperson Ms.Vidhya Ramkumar
'C' Camp Office at OHSS
Ariyankuppam
Puducherry

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the First Information Report No.202 of 2014 dated 25.12.2014 on the file of 1st respondent the Ariyankuppam Police Station, Puducherry, under Section 188 and 294(b) of IPC and quash the same .

For Petitioner : Mr.R.Venkatesalu

For Respondent : Mr.Bharatha Chakravarthy

Additional Public Prosecutor, Puducherry

ORDER

(The case has been heard through video conference)

This petition has been filed to call for the records relating to the First Information Report No.202 of 2014 dated 25.12.2014 on the file of 1st respondent registered under Section 188 and 294(b) of IPC and quash the same .

2. The brief facts of the case as per the complaint given by the second respondent/The Chair Person and Child Welfare Committee, Puducherry Region is that on 15.12.2014 one Tamil Selvi had given a complaint to the Child Welfare Committee, Puducherry stating that the petitioner was working as a

Constable in Police Armed Force and he had married her after his first wife had committed suicide. Through the wedlock, they have got a female child aged 3 years. The further allegation is that the petitioner/her husband has illegal relationship with many women and he is living with one Sathya and had committed cruelty on her. Unable to bear the torture, she had shifted to another house and started living separately with the child. She used to put her child in a Creche situated near her home. While so, on 12.12.2014, she had dropped her child in the Creche and proceeded to work. When she had returned from her work, she found her child missing from the Creche and she was informed by the authorities in the Creche that her husband had taken the child. Thereafter, she had given a complaint before the Child Welfare Committee, Puducherry and the Child Welfare Committee had lodged a complaint before the Inspector General, Puducherry to rescue the child. Thereafter, summons were issued to the petitioner to be present before the Child Welfare Committee, Puducherry along with the child. On 22.12.2014, the petitioner, his wife Tamilselvi appeared before the Committee with the 3 year old child. After hearing both sides, the Committee considering the best interest of the child, directed the petitioner Tamil Velan to hand over the child to his wife. Whereas, the petitioner had started abusing and shouting at the Chair Person and the Members of the Child Welfare Committee and ran away with the child disrespecting the orders of the Child Welfare Committee. Thereby, the complaint was preferred by the second respondent to the first respondent based on which, the case in Crime No.202 of 2014 was registered against the petitioner for offence under Sections 188 and 294(b) IPC.

3. The learned Counsel for the petitioner would submit that the case registered against the petitioner for offence under Sections 188 and 294(b) is illegal and not maintainable. Even assuming the complaint to be true, no case for offence under Section 188 IPC has been made out against the petitioner/accused. The second respondent had only called the petitioner and that the second respondent is not lawfully empowered to pass such an order to hand over the custody of the child. He would submit that in order to attract the provisions of Section 188 IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

- i. there must be an order promulgated by the public servant;
- ii. That such public servant is lawfully empowered to promulgate it;

ii. that the person with knowledge of such order and being directed by such order to abstain from being certain act or to take certain order with certain property in his possession and under his management, has disobeyed and;

iv. that such disobedience causes or tends to cause;

a) obstruction, annoyance or risk of it to any person lawfully employed or;

b) danger to human life, health or safety or;

c) a riot or affray.

The learned Counsel for the petitioner would further submit that in this case when no lawful order has been passed by the second respondent, the registration of F.I.R. under Section 188 IPC is illegal. Further, no offence under Section 294(b) I.P.C. has been made out against the petitioner since, the petitioner had not uttered any abusive words or used any sexually coloured remarks against the second respondent causing annoyance attracting offence under Section 294(b). In support of his contention, the learned Counsel would rely on the Judgement of this Court reported in Crl.O.P.No.1356 of 2018 (Jeevanandham Vs. State). He would further submit that the petitioner is the natural guardian of the child and that if at all, there had been any dispute between the petitioner and his wife with regard to custody of the child, the proper forum to decide the custody would be the Civil Court. Whereas, the second respondent has no authority to deal with the complaint.

4.Mr. Bharath Chakravarty, learned Additional Public Prosecutor, appearing for the respondents would submit that the petitioner was directed to appear for an enquiry by the second respondent with regard to the custody of the child. During the enquiry, the committee considering the best interest of the child, had directed the petitioner to hand over the child to his wife and at that time, the petitioner/accused had started abusing and shouting at the Chair Person and the other members of the Committee and had ran away with the child disrespecting the orders of the Child Welfare Committee. However, he would fairly submit that no sexually coloured or lewd remarks were made against the second respondent or the other members of the Child Welfare Committee. He would submit that only oral orders were passed by the second respondent.

5.Heard the learned Counsels on either side. Perused the materials on record.

6. The entire reading of the complaint does not disclose any offence under Section 188 IPC or under Section 294(b) IPC. Further, without any lawful order being passed by the second respondent and without there being any complaint filed before the Jurisdictional Magistrate, the case has been registered under Section 188 IPC. The case on hand is covered under the order passed by this Court in CrI.O.P.No.1356 of 2018 (Jeevanandham Vs. State).

7. In view of the above, this Criminal Original Petition is allowed and the F.I.R. in Crime No.202 of 2014 dated 25.12.2014 registered for offence under Section 188 and 294(b) IPC, on the file of the first respondent is hereby, quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police
Ariyankuppam Police Station
Puducherry

2.Child Welfare Committee
Rep. By its Chairperson Ms.Vidhya Ramkumar
'C' Camp Office at OHSS
Ariyankuppam
Puducherry

3.The Public Prosecutor,
High Court, Madras. सत्यमेव जयते

+1cc to Mr.Usha Ramman, Advocate, SR.No.4705

CrI.O.P.No.2395 of 2015 and
CrI.M.P.No.1 of 2015

RLD(CO)
KKV/26/02/2021