

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.NO.1826 OF 2018

&

CRL.M.P.NOS.706 & 707 OF 2018

Shamitha Gandhi,
W/o.K.P.Gandhi

.. Petitioner

vs.

1. State represented by
The Inspector of Police,
W1, All Women Police Station,
Thousand Lights, Chennai District
(Ref. Crime No.3/2017)
2. Mrs.Eva Durairaj, W/o.Mr.V.S.Durairaj
(2nd Respondent is impleaded as per the
order of this Court dated 24.06.2019 made
in rl.M.P.No.8082 of 2019)

.. Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.245 of 2017 pending on the file of the learned Additional (Mahila Court) Metropolitan Magistrate, Allikulam (Egmore), Chennai, quash the same as against the petitioner.

For Petitioner : M/s.R.Baskar

For Respondents: Mr.M.Mohamed Riyaz
Addl. Public Prosecutor for R1
M/s.S.P.Arthi for R2

ORDER

This petition has been filed to quash the proceedings in C.C.No.245 of 2017 on the file of the Additional (Mahila Court) Metropolitan Magistrate, Allikulam (Egmore), Chennai.

2. The case of the prosecution is that the husband of the petitioner (A1) and the defacto complainant were employed in the same company and they seemed to have become friends in the course of time. Thereafter, both the family started knowing each other. According to the second respondent, taking advantage of the relationship, the husband of the petitioner and the petitioner had collected various amounts to the tune of Rs.10 lakhs and also collected 50 sovereigns of gold jewelery from the defacto complainant. The further case of the second respondent is that this was given by her without the knowledge of her husband. Thereafter, the relationship got strained and when the second respondent was demanding for the amount and the gold jewels, the accused persons are said to have abused her in filthy language and threatened her with dire consequences. Based on this complaint given by the second respondent, an FIR came to be registered before the respondent police in Crime No.3 of 2017 for an offence under Section 323, 420, 506(ii) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

3. The FIR was registered against the husband of the petitioner and the petitioner and the petitioner was arrayed as A2. On completion of investigation, a final report came to be laid before the Court below for the very same offence and the same has been taken cognizance by the Court below. Aggrieved by the same, the petitioner has filed the present petition to quash the proceedings.

4. Heard Mr.R.Baskar, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for the first respondent and M/s.S.P.Arthi, learned counsel for the second respondent.

5. The final report has been laid for an offence under Sections 420, 323, 506(ii) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. In the first place, the offence under Section 4 of the Tamil Nadu Prohibition of Harassment Act cannot be maintained against the petitioner, since she is a woman. The same is clear from a combined reading of Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 2(a) of Tamil Nadu Prohibition of Harassment of Women Act. The law on this issue is well settled. Therefore, the charge under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act against the petitioner is unsustainable.

6. In order to maintain the charge under Section 420 of IPC, there must be a deception played against the second respondent right from the inception. The complaint given by the second respondent clearly shows that she had voluntarily given the money and jewels by taking into consideration the relationship between her and the husband of the petitioner. The petitioner who is A2 did not play any role in the said relationship and therefore, there was no occasion for the petitioner to practice deception against the second respondent and take away the money and jewels. Therefore, even if the allegations made in the final report along with the statement recorded under Section 161 Cr.P.C. is taken as it is, no offence under Section 420 of IPC is made out against the petitioner.

7. The next charge that has been made against petitioner is for an offence under Section 323 of IPC. In order to establish the said offence, the ingredients of Sections 319 and 321 of IPC must be satisfied. In short, there must be an intention to cause 'hurt' or 'voluntarily causing hurt'. In the case on hand, even if the allegations are taken to be true, there is absolutely no material to establish that the second respondent had suffered 'hurt'. No doctor has been examined in the course of investigation and no medical certificate has been produced to substantiate that the second respondent suffered hurt in the hands of the petitioner. Therefore, this charge is also not sustainable against the petitioner.

8. Insofar as the charge under Section 506(ii) of IPC is concerned, it is now settled that 'empty threat' without there being any overt act on the part of the accused can never satisfy the requirements of criminal intimidation. In the present case, the allegations made against the petitioner are completely vague and there are no supporting materials to sustain the charge under Section 506(ii) of IPC.

9. Apart from the above facts, it is very clear that the petitioner has been unnecessarily roped as an accused in this case. There seems to be some relationship between the defacto complainant and A1, who is the husband of this petitioner. This relationship seems to have strained at a later point of time and therefore, the second respondent thought it fit to rope in the wife of A1 also in this case. The entire criminal proceedings against the petitioner is an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

10. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.245 of 2017 on the file of the Additional (Mahila Court) Metropolitan Magistrate, Allikulam, (Egmore), Chennai, is hereby quashed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional (Mahila Court) Metropolitan Magistrate, Allikulam (Egmore), Chennai,
2. The Inspector of Police, W1, All Women Police Station, Thousand Lights, Chennai District
3. The Public Prosecutor, High Court of Madras, Madras.

+2cc to M/s.R.Baskar, Advocate, S.R.No.11636

+1cc to M/s.S.P.Arthi, Advocate, S.R.No.11806

CrI.O.P.No.1826 of 2018

AJB (CO)
CS/26/03/2021

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