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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.09.2021

PRONOUNCED ON: 20.09.2021

CORAM

THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

CRL.O.P.NO. 7649 OF 2017

AND

M.P.NOS. 5536 & 7844 OF 2017

1. Imran Khan
2. Jainul Arab
3. Syed Kasim Ali
4. Thowvik Ali
5. Syed Ibrahim
6. Yasmin

... Petitioners/Accused 1 to 5 & 7

Vs.

1. State rep. by
The Inspector of Police
W-3 All Women Police Station
Egmore, Chennai - 600 008
(Crime No. 9 of 2016)

... 1st Respondent/complainant

2. Jeshima Parveen

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for records pertaining to the first information report in Crime no. 9 of 2016 pending investigation on the file of the first respondent police and quash the same.

For Petitioners : Mr.K.Elangovan

For 1st Respondent : Mr.E.Raj Thilak
Government Advocate
(Cr1.Side)



For 2nd Respondent : Mr. Abdul Azeez

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ORDER

This Criminal Original Petition has been filed by the accused Nos. 1, 2, 3, 4, 5 & 7 in Crime No. 9 of 2016 on the file of the Inspector of Police, W-3, All Women Police Station, Egmore, Chennai, under Section 482 of the Code of Criminal Procedure to quash the FIR in the said Crime No. 9 of 2016 in so far as the present petitioners are concerned.

2. A complaint had been given by the second respondent on 01.10.2016 to the Chennai City Police Commissioner against the petitioners herein and also the husband of the 6th petitioner alleging that she had married the first petitioner and at that time, it was informed that he was working in London and was aged about 28 years but he was actually aged about 40 years. She had thus been cheated. There were several marital discords between them and all the other accused joined with him and treated her as a slave. She was also degraded in front of her father. Thereafter, she was sent away to her parents' house. Complaining that the petitioners herein and also the husband of the 6th petitioner had committed offences under Section 498(A), 417 and 406 of IPC, she had as aforesaid given a complaint to the Chennai City Police Commissioner.

3. In the complaint, she stated that she had given an earlier complaint before the W-28, All Women Police Station, Ambattur, who had issued C.S.R.No. 291 of 2016 but had not taken any further steps. She also sought that the complaint may be transferred to W-3, All Women Police Station, Egmore.

4. This complaint was thereafter forwarded to the Inspector, W-3 All Women Police Station, Egmore, Chennai, by the Chennai City Police Commissioner and First Information Report in Crime No. 9 of 2016 had been registered under Section 498(A), 417, 406 of IPC against the petitioners herein and also the husband of the 6th petitioner. By way of this Criminal Original Petition, the said First Information Report in Crime No. 9 of 2016 is sought to be quashed.



5. The main ground urged is that the second respondent had given an earlier complaint before All Women Police Station, Ambattur, on 05.07.2016 and C.S.R.No. 291 of 2016 had been issued and enquiry was pending. She had also filed CrI.O.P.No. 14960 of 2016 before this Court seeking a direction against the said police, namely, W-28, All Women Police Station, Ambattur, to register a case on the complaint given by her on 05.07.2016. A learned Single Judge of this Court had observed that the first petitioner herein had gone to England and therefore, further observing that a temporary closure report had been given, had granted liberty to the second respondent herein to press the complaint as and when the first petitioner herein / her husband returns.

6. It is argued by the learned counsel for the petitioner that when that complaint is still pending, the second respondent had only given a representation on 01.10.2016 to the Commissioner of Police, Chennai City, seeking to transfer the complaint to the first respondent police and it is stated that the Commissioner of Police has no power to transfer the investigation to another police station. It is on these grounds that the First Information Report in Crime No. 9 of 2016 sought to be quashed.

7. In this connection, the learned counsel for the petitioner also relied on 2015 SCC Online Kar 6642 [Mr.Magadi Shankar Rao Krishna Murthy and Others Vs. The Commissioner of Police, Bangalore City Police and Others], wherein a learned Single Judge of the Karnataka High Court had examined the following proposition of law:-

"Whether a police officer exercising his power under Section 36 of Cr.P.C. while taking out the investigation of a case from an officer in charge of police station, can transfer the investigation to another police officer inferior to him?"

8. In that case, the fourth respondent therein had filed a private complaint before the jurisdictional Magistrate under Section 200 read with 109 Cr.P.C., in respect of offences punishable under Sections 403, 406, 409, 420, 464, 468, 471, 477A, 385 and 120(b) IPC and the jurisdictional Magistrate



acting under Section 156(3) of the Code of Criminal Procedure had referred the matter for investigation by order dated 01.10.2014 to the first respondent/Commissioner of Police, Bangalore City Police. A case had been registered in Crime No. 447 of 2014 on 11.10.2014. A representation had been given by the wife of the defacto complainant and the Commissioner of Police/first respondent, transferred the investigation to the Central Crime Branch. Questioning that particular order, the accused had approached the Karnataka High Court. The learned Single Judge of Karnataka High Court examining the provision under Section 36 and Section 157(1) of the Code of Criminal Procedure, had held as follows:-

"14. The Commissioner of Police could have exercised his jurisdiction under Section 36 of the Code and could have conducted the investigation by himself. But in the absence of any statutory authority to delegate the power of investigation to an inferior Officer, he could not have assigned the case to the CCB unit. Power to delegate investigation to some extent is vested with the Station House Officer who is acting under Section 157(1) of the Code, whereby on receipt of the information he can depute his subordinate officer not below of such rank as the State Government, may direct to proceed to investigate the fact and circumstances of the case and if necessary, to take measures for the discovery and arrest of the offender. Except the provision at Sub- section (1) of Section 157 of the Code, the concept of delegation of power cannot be perceived either from the Code or Karnataka Police Act. That answers the question raised supra in the beginning of the discussion. Thereby, the order passed by the Commissioner at Annexure 'D' is without authority and propriety. Intervening and transferring the case in the middle of investigation which would have been concluded by this time is illegal."

9. Placing reliance on the above said Judgment, the learned counsel for the petitioner herein stated that the Commissioner of Police in the instant case also has no power to



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transfer investigation from All Women Police Station, Ambattur to All Women Police Station Egmore and therefore, sought to quash the First Information Report in Crime No. 9 of 2016 registered by All Women Police Station, Egmore.

10. Mr. E.Raj Thilak, learned Government Advocate (Crl. Side) however stated that on receipt of a complaint from the second respondent, dated 05.07.2016, the All Women Police Station, Ambattur, had not registered any First Information Report. They had only issued C.S.R.No. 291 of 2016. Thereafter, the second respondent had filed Crl.O.P.No. 14960 of 2016. A closure report had been given. A learned Single Judge had given liberty to press the complaint as and when the first petitioner / husband returns. The learned Government Advocate (Crl.Side) therefore stated that the complaint under which the First Information Report in Crime No. 9 of 2016 had been registered has to be taken as a fresh complaint and on the basis of such complaint, First Information Report had been registered and therefore, there was no irregularity in the same.

11. Mr. Abdul Azeez, learned counsel for the second respondent justified the act of the second respondent in approaching the City Police Commissioner and stated that a complaint had been given which had been forwarded to All Women Police Station, Egmore, who had registered the First Information Report. The learned counsel stated that there had been no transfer of investigation. It had therefore been pointed out that the registration of the First Information Report is proper.

12. In Magadi Shankar Rao Krishna Murthy referred supra, a First Information Report in Crime No. 447 of 2014 had been registered by the first respondent. The first respondent therefore had a duty to investigate the same. On the other hand, he had transferred it to an entirely different wing, namely, Central Crime Branch. That transfer of investigation had been held to be illegal by the learned Single Judge of the Karnataka High Court.

13. Here the All Women Police Station at Ambattur, had received a complaint. They had issued C.S.R.No. 291 of 2016. They could not conduct enquiry because the first petitioner/husband of the second respondent was in London. Therefore, they filed a temporary closure report. A learned



Single Judge of this Court had granted liberty to press the complaint as and when the first petitioner / husband returns from London. There has been various litigations as between the petitioners and the second respondent. One is DVC No. 149 of 2017 which had been filed by the second respondent before the Additional Mahila Court/ Metropolitan Magistrate at Egmore. By an order dated 20.08.2018 it was directed that the first petitioner herein should pay maintenance of Rs.20,000/- to the second respondent.

14. Questioning that particular order, the first petitioner had filed CrI.A.No. 537 of 2018 and by Judgment dated 14.02.2020, the First Additional Sessions Court, Chennai, while dismissing the said appeal had confirmed the order of the Metropolitan Magistrate / Additional Mahila Court, Egmore, Chennai.

15. The second respondent has been thus running from pillar to post ventilating her grievances regarding her marital discords with the first petitioner herein. There had been no progress in the enquiry with respect to the complaint alleged by her before All Women Police Station, Ambattur, who had temporarily closed the case owing to the fact that her husband was in London. She had then approached the City Police Commissioner with a representation, which was forwarded to the All Women Police Station, Egmore, Chennai, who had registered a First Information Report in Crime No. 9 of 2016 under Section 498(A), 417, 406 IPC.

16. It would however, only be appropriate that the All Woman Police Station, Ambattur, proceeds further with enquiring into the allegations once the first petitioner/husband comes back from London. A learned Single Judge of this Court had granted liberty to the second respondent to press the complaint at that stage. Separate complaints cannot be given to different Police Stations on the same allegations. The second respondent will have to await the return of her husband and on the strength of the order in CrI.O.P.No. 14960 of 2016, then press for investigation of the allegations in the complaint.

17. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. The First Information Report in Crime No. 9 of 2016



registered by the first respondent is quashed. However, as already directed in CrI.O.P.No. 14960 of 2016, the second respondent is granted the liberty to press the complaint dated 05.07.2016 for which the All Women Police Station, Ambattur, had issued C.S.R.No. 291 of 2016, when her husband, the first petitioner returns from London.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

vsg

To

The Inspector of Police
W-3 All Women Police Station
Egmore, Chennai - 600 008.

Copy To

1. The Inspector of Police,
All Women Police Station,
Ambattur, Chennai.
(CSR No.291 of 2016)
2. The Additional Mahila Court Judge/
Metropolitan Magistrate,
Egmore
(DVC No.149 of 2017)

+2ccs to Mr.K.Elangovan, Advocate, S.R.No.47930

CrI.O.P.No. 7649 of 2017
And
M.P.Nos. 5536 & 7844 of 2017

MG(CO)
RLP(12/10/2021)