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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 05.10.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

CrI.OP.No.8704/2017&CrI.MP.Nos.6205&6206/2017

[Video Conferencing]

P.Kamala Kannan
rep.by Mr.Pitchandi

... Petitioner/Sole Accused

Versus

1. State of Tamil Nadu,
Rep. by Inspector of Police,
W-29, All Women Police Station,
Avadi, Chennai District.
Crime No.14/2017

1st Respondent/Complainant

2. Kavitha

... 2nd Respondent/Defacto Complainant

Prayer : - Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.1/2017 on the file of the Learned Judicial Magistrate No.I, Ponnammallee and quash the same.

For Petitioner : Mr.G.Mohanakrishnan

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R2 : Ms.T.K.S.Bharathy Anandraj

ORDER

- (1) Heard Mr.G.Mohanakrishnan, learned counsel for the petitioner ; Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing on behalf of the 1st respondent and Ms.T.K.S.Bharathy Anandraj, learned counsel appearing on behalf of the 2nd respondent/defacto complainant.
- (2) The petitioner is the husband and the 2nd respondent is the wife.



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- (3) The present petition has been filed taking advantage of Section 482 of Cr.P.c., seeking to interfere with the further progress in CC.No.1/2017 which is now pending on the file of the Court of the Judicial Magistrate No.1, Poonamallee.
- (4) The said Calendar Case had been taken cognizance pursuant to a Final Report being filed with respect to the allegations in FIR in Crime No.14/2016 registered on 19.09.2016 u/s.498-A, 324 and 506[iii] IPC on a complaint given by the 2nd respondent/defacto complainant herein.
- (5) After investigating into the allegations made, the Investigating Officer also thought that it would only be appropriate to report that the said offences have been made out and the learned Magistrate had also taken cognizance for commission of offences u/s.498-A, 324 and 506[iii] IPC.
- (6) I am also informed that three witnesses have been examined ; but they have not been cross examined and at that stage, the present petition has been filed and stay has been granted.
- (7) It is the contention of the learned counsel for the petitioner that the allegations placed by the 2nd respondent/defacto complainant that the petitioner herein had beaten her with an iron rod and had also beaten the young son with iron rod, are all false and fabricated. Learned counsel for the petitioner stated that a perusal of the Accident Register would reveal that no such incident had ever taken place and even if that incident had taken place, it had been very much exaggerated by the 2nd respondent/defacto complainant herein in terms of the injuries suffered.
- (8) The learned counsel for the petitioner stated that the Bank Statement of the petitioner had been enclosed as document along with the present petition, which would reveal that the petitioner had been more than liberal in advancing amounts to the 2nd respondent herein. The learned counsel also pointed out the other document which had been filed along with the petition, viz., the statement of expenditure, which had been made in favour of the 2nd respondent/defacto complainant herein and a perusal of the same shows that the petitioner herein claims that he had spent a sum of Rs.2,43,61,789/- for the 2nd respondent/defacto complainant.
- (9) These facts are very strongly denied and disputed by the learned counsel appearing for the 2nd respondent/defacto



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complainant who claims that such amounts have not been actually given. The learned counsel had also filed a typed set of documents in which a Report of the Mediation and Conciliation Center had been enclosed which took place in the year 2016, at the time when the petitioner herein had sought bail. Before the Mediation and Conciliation Centre, parties had agreed to live together. But, thereafter incidents happened, which according to the learned counsel for the 2nd respondent, had made it impossible for the 2nd respondent/defacto complainant to even think of living with the petitioner herein. It has been alleged that on 18.09.2016, the 2nd respondent/defacto complainant and her young son had been beaten up with iron rods and investigation in that regard, had also progressed and the learned Additional Public Prosecutor states that during the course of investigation, the petitioner herein had also confessed to the said offence.

- (10) I am conscious that such confession is to be tested during the course of trial and only the admissible portion of the same can be examined by any Court. But still, as a fact, it lends credence to the statement of the 2nd respondent/defacto complainant that she had been actually beaten up by the petitioner herein.
- (11) It is also very disturbing that the 2nd respondent/defacto complainant has named a specific lady with whom the petitioner herein appears to have continuous relationship in Bombay and the learned counsel for the 2nd respondent states that it is such relationship which is the root cause of the entire marital discord between the two parties.
- (12) It is claimed that the offence u/s.498-A IPC. Particularly are made out in the circumstances of the case.
- (13) Learned Additional Public Prosecutor stated that the prosecution had, after investigation, filed a Final Report before the competent Court which Final Report had also been taken cognizance and trial has in fact, commenced. This would naturally indicate that parties had willingly accepted to abide by the trial proceedings and therefore, the learned Additional Public Prosecutor pointed out that it would only be just and proper that the further progress in trial is encouraged and not curtailed by this Court.
- (14) I have given careful consideration to the arguments advanced by all the three counsels.
- (15) The petitioner herein and the 2nd respondent/defacto complainant are spouses. It is the specific case of the 2nd



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respondent/defacto complainant that on 18.09.2016, early in the morning, there was a quarrel between the petitioner and the 2nd respondent herein and at that time of the night, it is alleged by the 2nd respondent herein that the petitioner, hit her in the arms and legs with an iron rod. It is also the contention of the 2nd respondent/defacto complainant that not stopping with that, the petitioner appears to have also hit the young son who also has some other medical ailments and requires treatment, for which blood is required and that the petitioner herein had not even thought of coming down to donate blood or to give sample blood which would enable the surgeons in their discharge of their work. It is also seen that the petitioner herein is earning substantially at Nigeria and it is claimed that though Maintenance Case has been filed by the 2nd respondent herein, the petitioner herein had not come forward to pay even a single rupee towards maintenance. The claim by the petitioner that he had spent a sum of Rs.2,43,61,789/-, would not come to the aid and assistance of the petitioner herein since as a husband, there is a duty to maintain the wife and it is hardly expected that a husband should also maintain accounts for such expenditure. If this is to be encouraged, then the petitioner will also begin to calculate expenses incurred on the rice which was cooked in the morning, coffee and tea which was taken by the spouses during the day and the petitioner can claim the amounts stating that he has spent them towards the health and welfare of the 2nd respondent.

- (16) There are duties and responsibilities which are cast on the petitioner in discharge of his role as a husband and he cannot claim privilege owing to discharge of such duty, The facts stares in the face of the petitioner owing to assault and battery of the 2nd respondent. That is a fact which has to be established during the course of trial and this Court cannot come to any conclusion whether such incident ever occurred or not. The trial procedure is the answer to establish that particular incident or to disprove that such an incident had never occurred in the manner stated by the 2nd respondent.
- (17) I am confident that the learned Magistrate would give ample opportunity to the parties to advance evidence and participate during the trial proceedings. I am not impressed with the submissions made on behalf of the petitioner herein.
- (18) I am also confident that the learned Judicial Magistrate No.1, Poonamallee, would be analysing the evidence and come to a conclusion with respect to the charges framed on the



basis of the evidence adduced before the said Court.

(19) A direction is given to the petitioner to appear before the Trial Court and the learned Judicial Magistrate No.1, Poonamallee, may give two opportunities for such appearance and if still, the petitioner herein does not appear, the Trial Court may proceed further by issuing Non Bailable Warrant and secure the presence of the petitioner and go ahead with the trial and endeavour to complete the same on or before 28.02.2022. The learned Magistrate may take any steps as required in law, even if the petitioner is in abroad to ensure that the petitioner comes back and faces trial.

(20) With the above observations and directions, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

AP

To

1. The Judicial Magistrate No.I, Poonamallee.
2. Do-Through, The Chief Judicial Magistrate, Tiruvallur.
3. The Inspector of Police,
W-29, All Women Police Station,
Avadi, Chennai District.
4. The Public Prosecutor
High Court, Madras.

+1cc to M/s.T.K.S.Bharathy Anandraj, Advocate, S.R.No.52484

Cr1.OP.No.8704/2017

RSI (CO)
SU(26/10/2021)