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Crl.OP.No.16868 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.16868 of 2013

and

M.P.No.1 of 2013

O.Homerlal, (aged 47 years)
S/o.Oliver,
Residing at No.2-154,
Nedumbara Garden Road,
Vellicode, Milagumodu P.O.,
Kanyakumari District.

... Petitioner

Vs.

1.The State
Rep. by the Inspector of Police,
Namakkal Police Station,
Cr.No.963/08 of the
Namakkal Police station.

2.Renuka,
W/o.Vaiginath,
No.54, A1.A.S.Pettai,
I Street, Namakkal.

... Respondents

PRAYER: This Petition is filed under Section 482 of Cr.P.C., to call for
the records in connection with the case in C.C.No.261/2009 on the file of

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the learned Judicial Magistrate No.1, Namakkal and quash the same so far
the Petitioner is concerned.

For Petitioner : Mr.G.K.Gaarkeychandran
for Mr.R.Srinivas

For Respondents : Mr.L.Baskaran (for R1)
Government Advocate (Crl. Side)

Ms.V.Revathy (for R2)
Legal aid counsel

ORDER

The Petitioner, who is A2 in C.C.No.261 of 2009 facing trial along
with another Accused/A1 for offences under Sections 341, 385 & 506(ii)
r/w 109 IPC filed this quash Petition.

2.The case against the Petitioner is that he is the brother of Defacto
Complainant/Second Respondent. The other Accused A1 is the husband of
Defacto Complainant. Marriage between A1 and Defacto Complainant had
taken place on 11.02.2007 and out of the marriage, they have two sons and
they lived in Erode Town. Since A1 gave physical and mental torture to the
Defacto Complainant, she got employment in Kurinchi Matriculation



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School, Namakkal and started to live at Namakkal in a rented house with her children. On 07.08.2008 at about 4.45 pm, in a road junction near Kurinchi Matriculation School, at the instigation of the Petitioner and other Accused, two unidentified persons wrongfully restrained the Defacto Complainant, while she was returning to her house and further those unidentified persons forced and demanded the Defacto Complainant to sign in blank stamp papers and white papers and further threatened her with dire consequences.

3.The first Respondent on the complaint of the Defacto Complainant registered a case, examined listed witnesses viz., LW1 to LW13 and on completion of investigation filed charge sheet, against which the present Petition.

4.The contention of the Petitioner is that he is brother of Defacto Complainant, there is a family dispute between the husband and wife viz., A1 and Defacto Complainant. The Petitioner has got nothing to do with it. The Petitioner only taken steps to mediate the dispute between the husband



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and wife. Finding no reasons in Defacto Complainant's claim and allegations, the Petitioner forced the Defacto Complainant to join with A1, which was not to the liking of the Defacto Complainant. Hence, false case has been projected against him. Further it is submitted that already divorce petition is pending between A1 and Defacto Complainant in IDOP.No.35 of 2008 before the Sub Court, Namakkal, which is admitted fact and is also in the statement of LW1. It is further submitted that in the FIR it is recorded that two identifiable persons have come and forced the defacto complainant. For the reasons best known, prosecution has not taken any steps to identify those two persons. The Defacto Complainant taking advantage of Mr.John Nickelson, the then Superintendent of Police, Namakkal, who is the relative had foisted the above case. The family relationship between the Superintendent of Police is an admitted fact.

5.He further submitted that in this case, LW2 and LW3 are the observation mahazar witnesses and LW4, LW5, LW6, LW9, LW10, LW11, & LW12 are all drivers of Kurinchi Matriculation School, who gave positive evidence in favour of the Petitioner, stating that they have not seen



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any occurrence as alleged by the Defacto Complainant on 07.08.2008. The other witness viz., LW8 is the teacher, who working along with Defacto Complainant, not an eyewitness to the occurrence. Except LW1, no body witness to the occurrence, which is said to have taken place in a broad day light, in a public place. LW13 is the Inspector of Police, who registered the case and filed charge sheet. It is also submitted that the alleged occurrence taken place on 07.08.2008 and the complaint registered only on 13.08.2008, no reason given for the delay, in fact, the complaint had been preferred to the Superintendent of Police on 09.08.2008, which was forwarded to the Respondent Police and thereafter, they registered the FIR and for what reason the Defacto Complainant had directly gone to the Superintendent of Police, obviously, it is for the reason that the Superintendent of Police is known to the Defacto Complainant, which is an admitted fact.

6.The learned Government Advocate (Crl. Side) appearing on behalf of the first Respondent submitted that the complaint given to the Superintendent of Police by the Defacto Complainant, forwarded to the Respondent police and the case registered. The Defacto Complainant



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specifically stated that at the instigation of the Petitioner and A1, the offence had been taken place. Though she had stated two identifiable persons forced her to sign in stamp papers and white papers, thereafter she was unable to give further details. Hence, the persons, who have been sent by the Petitioner could not be traced, for that reason, finding fault with the final report, is not proper. Relationship between A1, A2 & Defacto Complainant are not in dispute, they are closely related and known to each other. The Petitioner is an abettor. The points raised by the Petitioner are factual in nature, which are to be decided during the trial and prayed for dismissal of this Petition. He further submitted that the case is kept pending before the trial Court, without any progress, from the year 2009 and the next hearing date before the trial Court is 17.11.2022.

7.Learned counsel for the Defacto Complainant/R2 submitted that the Petitioner is the brother of Defacto Complainant. The Petitioner with ulterior motive, joined with her estranged husband and committed the above offences. At the instigation of the Petitioner and her estranged husband two persons, who were sent by the Petitioner wrongfully restrained Defacto



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Complainant in the middle of the road, forced her to sign in the blank stamp papers and white papers, to take away the family properties from the Defacto Complainant. This Petitioner is the direct beneficiary. The Defacto Complainant admitted that since complaint was not entertained by the Respondent Police, she had no other option except to approach the Superintendent Police, who forwarded the complaint to the Respondent Police. The Respondent police registered a case and after investigation filed final report. The Petitioner immediately on receipt of the summons, he approached this Court and obtained a stay and the case is pending from the year 2009, without any progress. The points raised by the Petitioner are to be decided during the trial and prayed for dismissal of this Petition.

8.Considering the submissions made by the learned counsel on either side and on perusal of materials, it is seen that the Defacto Complainant and A1 are husband and wife. They have two children, due to the strained relationship, the Defacto Complainant left A1 and started living separately and got employment as teacher. IDOP No.35 of 2008, is pending before the Sub Court, Namakkal. On 07.08.2008, when the Defacto



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Complainant was returning in her two wheeler near Paramathi Road junction in Namakkal two identifiable persons said to be sent by the Petitioner and other Accused, restrained her and attempted to get signature of the Defacto Complainant in blank stamp papers forcibly, further they threatened the Defacto Complainant. With regard to the identifiable persons no investigation conducted. The Petitioner is charged for abetment of offences under Sections 341, 385 & 506(ii) IPC all r/w. 109 IPC. When the abetted is not been identified, the question of abetment would not arise. Further, the occurrence taken place in a public road and on a bright day light. No public witness, other than Defacto Complainant examined. The other witnesses viz., drivers given positive evidences stating that they have not seen any occurrence on 07.08.2008. There is some dispute between the Petitioner and his sister. Further the relationship between the Defacto Complainant and the Superintendent of Police, Namakkal was objected. Though they were relatives as brother and sister. Further the threat and restraintment are not followed by action. Therefore, this Court finds that no case is made out against the Petitioner/A2. In view of the same, this Court is inclined to quash the proceedings against the Petitioner/A2, since



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continuation of prosecution would amount to abuse of process of law.

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9. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.261/2009 on the file of the learned Judicial Magistrate No.1, Namakkal, against the Petitioner/A2 is hereby quashed. It seems that the other accused/A1, who is the estranged husband of Defacto Complainant, though not filed any Petition, he stands on the same footing. Hence, the case against A1 is also quashed.

10.In fine, the case in C.C.No.261/2009 on the file of the learned Judicial Magistrate No.1, Namakkal is hereby totally quashed against all accused. Consequently, connected miscellaneous petition is also closed.

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Internet : Yes/No

Index : Yes/No

Speaking Order/Non Speaking Order

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M.NIRMAL KUMAR, J.

sai

To

1. The learned Judicial Magistrate No.1,
Namakkal

2. The Public Prosecutor,
High Court, Madras.

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and

M.P.No.1 of 2013

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