

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER 15.06.2022	DATE OF PRONOUNCING ORDER 28.06.2022
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CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.OP.NO.17073 OF 2015

AND

CRL.MP.NO.1 OF 2015

1.Prakash,
S/o.Sadagopan

2.Vasanth,
W/o.Sadagopan,
Both are residing at
No.3/278, Mohan Nagar,
Moongil Thuraipattu,
Sankarapuram Taluk,
Villupuram District.

...Petitioners

Vs.

1.State, Rep. by:
Inspector of Police,
All Women Police Station,
Thirukoilur, Villupuram District.
(Crime No.11/2014)

2.Leelakumari,
D/o.Vadivel,
Residing in Kamaraj Nagar,
Moongil Thuraipatti Village,
Sankarapuram Taluk.

...Respondents

(R2 is suo motu impleaded as per Order in
Crl.O.P.No.17073 of 2015, dated 08.12.2020)

Prayer : Criminal Original Petition filed under Section 482 of
Cr.P.C., to call for the records and quash the proceedings as
against the Petitioner in C.C.No.182 of 2014 on the file of
Judicial Magistrate, Sankarapuram, Villupuram District.

For Petitioner : Mr.S.Sairaman

For Respondent : Mr.C.E.Pratap (for R1)
Government Advocate (Crl. Side)

Mr.V.Prabhakaran (for R2)
Legal Aid Counsel

O R D E R

The Criminal Original Petition has been filed to call for the records and quash the proceedings, against the Petitioner in C.C.No.182 of 2014 on the file of the learned Judicial Magistrate, Sankarapuram, Villupuram District.

2.The 2nd Respondent is the wife of the 1st Petitioner. She has lodged a complaint for the offences under Section 498 (A), 406 of IPC r/w Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act. After investigation, closure report has been filed by the Inspector of Police, All Women Police Station, Thirukoviloor. However, after perusing the RCS report, the learned Judicial Magistrate, Sankarapuram found that Section 4 of the Protection of Women from Domestic Violence Act is also made out. Accordingly, he has taken cognizance of the case and the case was numbered as C.C.No.182 of 2014.

3.Challenging the cognizance taken by the learned Judicial Magistrate, the husband has preferred this Criminal Original Petition. Initially, the matter was referred to the Mediation Centre attached to this Court, since the issue arises out of the matrimonial dispute. However, the Mediation initiated between the parties was failed.

4.Though the initial closure report filed by the 1st Respondent Police based upon the 161 statements recorded from the LW1/Leelakumari/wife, her Father Vadivel, her Mother Saraswathi, Valli and Dr.M.Gomathi, who had given treatment to the Defacto Complainant/wife on 12.02.2014, the learned Magistrate has applied his mind and has found that the closure report filed by the 1st Respondent does not reflect the true issues involved in this case. Sixteen sovereigns said to have been given during the marriage appears to be missing, while the Defacto complainant was at the matrimonial home and there is matrimonial discord between the accused and the Defacto Complainant. The HMOP filed by the wife for divorce in HMOP.No.9 of 2016 appears to have been decreed exparte in faovur of the wife.

5.After perusing the 161 statements recorded from the private witnesses and also the evidence of the Doctor, I find that the order of taking cognizance by the learned Magistrate cannot be found fault with.

6.The learned Magistrate in his order has made an observation for going into the conclusion and also assigned the following reasons to arrive at a conclusion for taking cognizance under the said Section:

(i) The reason stated by the Investigating Officer for closure of the case is absurd, devoid of merits and not in consonance with the available evidence.

(ii) There are also triable issues involved in this case, which can be decided only by way of full fledged trial.

(iii) There is enough material available on record and prima facie case is made out.

7. In the decision rendered by the Hon'ble Supreme Court in the case of M/s. India Carat Pvt. Ltd., vs. State of Karnataka and Another reported in (1989) 2 Supreme Court Cases 132, it is observed that the Magistrate is entitled to direct the registration of case against the Respondent and issue summons to him and further the Magistrate is not bound by the conclusion arrived at by the police, even as he is not bound by the conclusions arrived at by the complainant in a complaint. It is well settled law that upon receipt of a police report under Section 173(2), a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code, even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a), though it is open to him to act under Section 200 or Section 202 also.

8. Hence, I am satisfied with the statement of witnesses recorded during the investigation and the cognizance taken by the learned Magistrate and the power of the learned Magistrate under Section 190(1)(b) of Cr.P.C. to take cognizance even against the negative closure report of the Police. In this view of the matter, I do not find any merit in this case.

9. Accordingly, the Criminal Original Petition is dismissed. The learned Judicial Magistrate, Sankarapuram is expected to expedite the matter, due to long pendency and dispose of the

same within a period of five months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

sai

To

1.The Judicial Magistrate,
Sankarapuram,
Villupuram District.

2.The Public Prosecutor,
High Court, Chennai.

+1cc to Mr.V.Prabhakaran, Advocate Sr.No.41284

+1cc to Mr.S.Sairaman, Advocate Sr.No.39982

Cr1.OP.No.17073 of 2015
and
Cr1.MP.No.1 of 2015

NK(CO)
RVM(18/07/2022)