

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER 20.06.2022	DATE OF PRONOUNCING ORDER 07.07.2022
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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.OP.NOS.21274 & 21275 OF 2018

AND

CRL.MP.NOS.11558 TO 11561 OF 2018

Crl.OP.No.21274 of 2018

S.Selvakumar, aged about 40 years,
S/o.Sivasubramanian,
No.12, Nagai Rastha,
Vedharanyam,
Nagapattinam District.

... Petitioner/Accused

Vs.

1. State by Inspector of Police,
Thirunallar Police Station,
Karaikal District.
(Crime No.99 of 2015)

... 1st Respondent/Complainant

2. Vijayashanthi,
W/o.Selvakumar,
No.10, Ganesh Nagar,
Subrayapuram, Thirunallar,
Karaikal District.

... 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.300116 of 2018 on the file of the Judicial Magistrate II, Karaikal and quash the same.

Crl.OP.No.21275 of 2018

S.Selvakumar, aged about 40 years,
S/o.Sivasubramanian,
No.12, Nagai Rastha,
Vedharanyam,
Nagapattinam District.

... Petitioner/1st Accused

Vs.

1. State by Inspector of Police,
Thirunallar Police Station,
Karaikal District.
(Crime No.31 of 2015)

... 1st Respondent/Complainant

2. P.Arunachalam,
S/o.Packirisamy,
No.10, Ganesh Nagar,
Subrayapuram, Thirunallar,
Karaikal District.

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in P.R.C.No.3000023 of 2018 on the file of the Judicial Magistrate II, Karaikal and quash the same

For Petitioner : Mr.S.Nagarajan
(in both cases)

For Respondent : Mr.V.Balamurugane (for R1)
Public Prosecutor (Puducherry)
(in both cases)

Mr.R.Natarajan (for R2)
(in both cases)

C O M M O N O R D E R

Crl.OP.No.21274 of 2018 has been filed to call for the records in C.C.No.300116 of 2018 on the file of the learned Judicial Magistrate II, Karaikal and quash the same, while another case in Crl.OP.No.21275 of 2018 has been filed to quash P.R.C.No.3000023 of 2018 on the file of the learned Judicial Magistrate II, Karaikal.

2.Brief facts in Crl.OP.No.21274 of 2018:

The Petitioner herein before this Court is the accused and the 2nd Respondent is the defacto complainant/wife. Marriage between them have been taken place on 03.01.2012, at the time of the filing of the case, they have a male child viz., Ravivarman, aged about 5 years and it is alleged that the wife has left the matrimonial house in the year 2015 and has filed M.O.P.No.44 of 2016 before the Family Court, Karaikkal for divorce on the ground of cruelty and HCP was also filed as the Petitioner was having the child. In the above background, the 2nd Respondent

has lodged a complaint on 02.09.2015 against the Petitioner and the same has been registered as Crime No.99 of 2015 by the 1st Respondent for offences under Sections 294(b), 323 IPC r/w.34 I.P.C. After investigation the 1st respondent filed a separate charge sheet in C.C.No.300116 of 2018 before the learned Judicial Magistrate Court II, Karaikal against the Petitioner for the offences under Sections 294(b), 323, 354 (b) IPC.

3.The case of the prosecution that on 31.08.2015 at about 19.00 hours, the Petitioner being the husband of the defacto complainant forcefully taken her child by abusing her and assaulted her with hand on her head resulting simple injuries due to the family dispute. The 2nd respondent gave the complaint with the view to prevent the Petitioner from having custody of his own child.

4(a).Learned counsel for the Petitioner would contend that there is no prima facie case made out to register the complaint and filing of charge sheet against the Petitioner and the ingredients, which required to constitute an offence are not attracted for each and every offence as the said case is stage managed one and foisted due to the personal vendetta.

4(b).The 2nd Respondent filed M.O.P.No.44 of 2016 for divorce before the Family Court at Karaikal and the Petitioner also filed a Petition for custody of the child in O.PNo.04 of 2018 before the same Court and the Petitioner also interested to settle the matter amicably one way or other and this case should not stand in the way of going for settlement. There is no criminal intention on the part of the Petitioner and he bonafidely wanted to have custody of his child like all fathers out of love and affection.

5.A perusal of charge sheet filed in Crime No.99 of 2015 reveals that on 31.08.2015 at about 19.00 hours at No.10, Ganesh Nagar, Subrayapuram Road, Thirunallar, the accused person Selvakumar had abused the complainant using filthy language and forcibly taken her child Ravivarma from her and assaulted her with hands on her head and face, while she was shouting and also used criminal force against one Kala who is a neighbour, while she attempted to preventing the accused person, forcibly taking the said child and thereby, caused simple injuries to her due to wordy quarrel related to family dispute and accordingly final report filed under Section 294 (b), 323 & 354 (b) of IPC.

6.After going through the statement recorded under Section 161 CrPC of Kala (LW4), I find that the ingredients of the offence under Section 351 IPC is made out. It is a specific averment by the list witness 4/Kala that the accused has

disrobed her saree in the public street. With regard to the nature of the injury, I find that there is medical certificate and the same is subjected to cross examination of medical witnesses in the witness box, during the period of trial and the point raised the learned counsel for the Petitioner that due to the custody given to the Mother viz., 2nd Respondent, she has filed false complaint, cannot be countenanced. In view of the specific averment made by the Defacto Complainant and LW4/Kala, I am of the considered opinion that all the points raised by the Petitioner/Husband is a matter for trial, since it is subjected to the reflection of facts and events, which has to be elicited from the evidences and accordingly, I find that there is no abuse of process of law and hence, this Petition is devoid of merits liable to be dismissed.

7.Cr1.OP.No.21275 of 2018

On perusal of the final report filed in the above case, I find that based upon the complaint given by the 2nd Respondent/P.Arunuachalam, father-in-law for the alleged occurrence on 23.03.2018, an FIR was registered in Crime No.31 of 2018 at Thirunallar Police Station, Karaikal for the alleged offence under Section 452, 307, 324, 323, 506(ii), 363 IPC r/w/34 IPC. After taking statement from 19 witnesses, final report has been filed and was taken on file as PRC.No.3000023 of 2018.

8.The learned counsel for the Petitioner would contend that out of matrimonial dispute between the Petitioner/accused and the Defacto Complainant/Father-in-law due to the vengeance a case has been registered.

9.On the other hand, the State Public Prosecutor would contend that based upon the medical evidence of PW19 with regard to the injuries sustained by LW1 (Defacto Complainant) and LW2/Vijayasanthi, LW3/Subramanian, LW4/Savithri, LW5/Buvaneshwari, who are all occurrence witnesses, deposed about the act of the accused on the body of the defacto complainant the case has been registered and subsequent to the investigation, final report has been filed.

10.It remains to be stated that as per the final report on 23.03.2018 at about 20.30 hrs at No.10, Ganesh Nagar, Subrayapuram Road, Thirunallar, the house of the defacto complainant Arunachalam, the accused No.1/Selvakumar, accused No.2/Uthira Karthick @ Karthick @ Dimmu, accused No.3/Veeramohan @ Pravinkumar and accused No.4/Vijayan @ Viji entered into the house of the defacto complainant armed with deadly weapons like pen-knife, in order to kidnap the child Ravivarman, due to matrimonial dispute between the accused No.1 and his wife

Vijayalakshmi and also in regard to the custody of his child Ravivarman and thereby committed lurking house tresspass, which is punishable under Section 460 IPC, r/w.34 IPC, and criminal intimidation using upon knife. There are witnesses LW2, LW3, LW4 available for the same incident.

11.Though I find that guardian OP Petition has been said to have been pending, at the relevant point of time and now that case in MOP.44 of 2018 was dismissed and minor custody of the boy was given to the mother, assumes significance. Attempting to kidnap the boy victim viz., Ravivarman from the lawful custody of the Mother, it is alleged that they have used a White colour Maruthi Swift car with forged number plate mentioned as "for registration" along with accused 3 & 4. It is stated by the Government Advocate the said act of the accused in replacing the number plate of the car as "for registration" is only to screen their criminal activity.

12.Taking into consideration the facts and circumstances, I find that various contentions raised by the learned counsel for the Petitioner and the learned counsel for the respondent are for the matter of trial, reflecting the factual position which was said to have been happened on that date and hence, I find that there is prima facie material to proceed with the case and there is no abuse of process of law as of now and hence, this Petition is devoid of merits and is liable to be dismissed. The Judicial Magistrate II, Karaikal, is directed to expedite the trial.

13.With these observations and direction, both the Criminal Original Petitions in 21274 & 21275 of 2018 are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

sai

To

1. The Judicial Magistrate II,
Karaikal.
2. -do- through The Chief Judicial Magistrate,
Pondicherry.

3. The Inspector of Police,
Thirunallar Police Station,
Karaikal District.

4. The Public Prosecutor(Puducherry),
High Court, Chennai 600 104.

+2ccs to M/s.S.Nagarajan, Advocate, S.R.Nos.44287, 44286

+2ccs to M/s.R.Natarajan, Advocate, S.R.Nos.44446, 44447

Crl.OP.Nos.21274 & 21275 of 2018
and
Crl.MP.Nos.11558 to 11561 of 2018

PMK(CO)
RLP(22/07/2022)