



CRL.O.P.No.15201 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

Crl.O.P.No.15201 of 2018
and Crl.MP.Nos.7689 of 2018 &13060 of 2019

Dr.Bhoopathy
Petitioner

...

Vs.

1. The State rep by
Inspector of Police,
All Women Police Station,
Velur,
Namakkal District.

2. Sumathi
Respondents

...

PRAYER: This Criminal Original Petition filed under [Section 482](#) of Cr.P.C., to call for the entire records pertaining to the C.C.No.8 of 2018 on the file of the Mahila Court, Magisterial level, Namakkal and quash the same.

For Petitioner : Mr.B.Kumarasamy

For Respondents : Mr. Leonard Arul Joseph Selvam
Govt. Advocate (Crl.side) for R1



CRL.O.P.No.15201 of 2018

Mr. K.Selvakumar for R2

WEB COPY

ORDER

This Criminal Original Petition has been filed to call for the entire records pertaining to C.C.No.8 of 2018 on the file of the Mahila Court, Magisterial level, Namakkal and quash the same.

2. The brief facts of the case are as follows:-

Based on the complaint given by the 2nd respondent/Sumathi/defacto complainant on 17.09.2017, the 1st respondent police had registered a case. The husband of the witness Sumathi by name Selvam is the younger brother of the accused Boopathy. The above said Selvam is running a medical shop next to the clinic of the accused Boopathy. Since the above said Selvam is working as a teacher in Government School, the witness Sumathi used to look after the medical shop during the day time and her husband used to look after the medical shop from 7:00 p.m. onwards after attending school. When such being the state of affairs, on 17.04.2014 at about 6:30 p.m., at the clinic of the accused Boopathy situated on the Trichengode main road at Velagoundampatty within the



jurisdiction of Velagoundampatty Police Station limits when the witness Sumathi sought some clarification to the accused Boopathy with regard to the prescription given by him, the accused Boopathy with intent to outrage the modesty of the witness Sumathi touched her breast and her hip and thus caused fear, shame and embarrassment over the mind of the witness Sumathi and thereby the accused Boopathy committed an offence punishable under Section 354 IPC and Section 4 r/w 2 (a) of Tamil Nadu (Prohibition of Harassment) on Women Act, 1998. In the course of the same transaction on 18.04.2014 at about 7:00 a.m. at the house of the accused Boopathy situated on the Trichengode main road at Velagoundampatty within the jurisdiction of Velagoundampatty Police Station limit, when the witness Sumathi along with the witness Kannan her father questioned about the activities of the accused to him, the accused Boopathy abused the witness Sumathi in filthy language and also criminally intimidated and thereby the accused Boopathy committed an offence punishable under Sections 294(b) & 506(i) of IPC.

3. The learned counsel for the petitioner submitted that no such abuse has taken place and he has neither indulged in such harassment with



the second respondent. Since the petitioner being the brother of the second respondent's husband, he has been falsely implicated in this case. Infact he is a Doctor by profession and is having his clinic on the Tiruchengode main road at Velagoundampatty and has been falsely implicated in this case. He further submitted that based upon the complaint given by the second respondent against her husband as if he misbehaved with his own minor daughter, he was charged under Sections 354, 506(i), 376(2), (f) of IPC and Sections 6 r/w 5(n) and Sections 10 r/w 9(n) of POSCO Act, 4 r/w 2(a) of TN (Prohibition of Harassment) of Women Act, 1988 in C.C.No.270 of 2015. Though he was convicted by the trial Court, it was ended in acquittal before this Court. As per the FIR allegation, this petitioner who is the brother of Selvam, attempted to misbehave with the second respondent/defacto complainant in the year 2010, finally on 07.04.2014, when the defacto complainant went to the medical shop, she was harassed by the petitioner. On 17.04.2014, the second respondent's husband misbehaved with his own daughter and the minor girl was sexually abused. Hence, FIR was lodged and an additional charge was implicated under Section 4 r/w 2(a) of the Tamil Nadu Prohibition of Harassment of Women Act, 1988. This petitioner was prosecuted separately and the defacto complainant's husband has been



prosecuted under POCSO Act. He further submitted that the trial has already been commenced and by relying the ratio in (2018) 4 MLJ (Crl) 207 (SC) LNIND 2018 SC 352 in the case of ***Dr.SR.Tessy Jose and others Vs State of Kerala***, he prays to allow this petition.

4. The learned counsel for the second respondent raised objection stating that considering the close relationship, the second respondent/defacto complainant has not disclosed this fact but on two occasions, this petitioner misbehaved with the second respondent/defacto complainant and when the second respondent informed the same to her husband, he simply ignored. But when her husband misbehaved with his own minor daughter, she gave a complaint by implicating all the events hence the petitioner has to be prosecuted and he has to undergo trial. Hence he prayed to dismiss the petition.

5. The learned Government Advocate (Crl.side) submitted that prima facie allegations are made out against the petitioner and hence he vehemently opposed for allowing this petition.



6. Heard both sides and perused the materials available on
record.

7. The defacto complainant/Sumathi is the wife of one Selvam and this petitioner is the brother of Selvam who is a Doctor by profession and against him the case is that he attempted to misbehave with the second respondent/defacto complainant. A perusal of records reveals that there was a misunderstanding between the defacto complainant Sumathi and her husband Selvam. As per the FIR, the defacto complainant gave a complaint against her husband stating that he sexually harassed her own minor daughter and when she came to know the same from her daughter, she complained to her brother-in-law viz., the petitioner herein but he threatened her with dire consequences. The second respondent has given a complaint in the year 2014 stating that in the year 2010 when she attended the medical shop, the petitioner misbehaved with her on many occasions with intent to outrage the modesty. Hence he was charged under Section 294(b), 354, 506(i) of IPC and Section 4 r/w 2(a) of the Tamil Nadu Prohibition of Harassment of Women Act, 1988. Subsequently, she gave another complaint against her husband stating that he misbehaved and sexually harassed his



own minor daughter on 17.04.2014. This petitioner also misbehaved with the defacto complainant and culminating all the incidents, she gave a complaint. But admittedly on 24.06.2014, the second respondent's husband initiated divorce proceedings against the defacto complainant and she received summon on 08.07.2014 and after receipt of the same only, the defacto complainant gave complaint against her husband as if he misbehaved with his own minor daughter and he was charged under POCSO Act. Though the trial Court has convicted the second respondent's husband, he preferred an appeal before this Court and this Court categorically observed that PW1 after the receipt of HMOP summon and in order to take vengeance against her husband falsely gave a complaint as if he abused her minor daughter. This Court also observed that the second respondent is having illegal relationship with one Karthikeyan and as per the divorce petition filed by the husband he has mentioned that the defacto complainant is having illegal relationship with one Karthikeyan. So all the facts reveal that there was misunderstanding between the defacto complainant, her husband and their daughter. This petitioner was dragged to the Court since because he is the brother of defacto complainant's husband. If the petitioner misbehaved with the defacto complainant in the year 2010, she ought to



CRL.O.P.No.15201 of 2018

have given the complaint immediately but she has not done so and only in the year 2014, she had given the complaint with the aforesaid allegations and the reason for the delay in filing the complaint has not been properly explained. Though the second respondent was informed by her daughter that Selvam/husband of the second respondent misbehaved with her daughter and physically abused her for the past few years, the second respondent has come forward with the complaint only in the year 2014, that too after receipt of summons in the divorce proceedings initiated by her husband, which is a clear abuse of process of law. This fact also clearly reveals that in order to take vengeance against her husband, the second respondent has preferred the complaint.

8. In view of the above, the proceedings in C.C.No.8 of 2018 on the file of the Mahila Court, Magisterial level, Namakkal is liable to be quashed. Accordingly, the criminal original petition is allowed. Consequently connected miscellaneous petition are also closed.

16.12.2022

Index: Yes/No
Speaking/Non speaking order
dpq



WEB COPY



CRL.O.P.No.15201 of 2018

T.V.THAMILSELVI, J.

dpq

To

1. The Mahila Court,
Magisterial level, Namakkal.
2. The Public Prosecutor
High Court of Madras.

CrI.O.P.No.15201 of 2018
and CrI.MP.Nos.7689 of 2018
&13060 of 2019

16.12.2022