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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 21.04.2022

Pronounced On: 13.06.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.8479 of 2019

and

Crl.M.P.Nos.4520 & 4521 of 2019

S.V.Dhanasekaran

... Petitioner

Vs.

S.Velankanni

... Respondent

PRAYER: Criminal Original Petition had been filed under Section 482 of Cr.P.C, prayed to call for the records and quash the proceedings as against the Petitioner in C.C.No.240 of 2019 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai District.

For Petitioner : Mr.S.Sairaman

For Respondent : Mr.N.Selvaraj for Mr.V.V.Sairam

ORDER

This Petition had been filed to quash the proceedings in C.C.No.240 of 2019 pending on the file of the learned II Metropolitan Magistrate, Egmore, Chennai District.

2. The learned Counsel for the Petitioner invited the attention of this Court to the Complaint preferred by the Respondent available in the typed set of papers. Further he submits that already on the same incident, the Complainant had preferred a complaint through registered post to Inspector of Police, G-1 Vepery Police Station, Chennai on 29.11.2018. After some time, on 03.12.2018, again the Respondent/Complainant had issued another complaint through registered post to Commissioner of Police, Chennai. Without waiting for the Police Officials to act on the basis of the complaint to conduct enquiry and to proceed further, she had immediately lodged a Criminal Complaint before the Court of the learned II Metropolitan Magistrate, Egmore at Allikulam.



2.1. The learned Counsel for the Petitioner invited the attention of this Court to the copy of H.M.O.P in the typed set. The sister of the Petitioner had filed HMOP in which the Respondent herein viz., Velankanni was impleaded as second Respondent. The sister of the Petitioner had filed HMOP No.4268 of 2018 on the file of the learned V Additional Family Judge, Chennai seeking divorce from her husband viz. Sivakumar on the ground of adultery with the second Respondent who is none other than the Complainant herein. The allegations of the adultery had been levelled against the Petitioner's sister's husband by the Petitioner's sister with the Respondent herein. Therefore, as a counter blast, the second Respondent in HMOP.No.4268 of 2018 on the file of the learned Additional Judge - VI, Family Court, Chennai, had filed criminal complaint with an ulterior motive only to cause harassment to the Petitioner. Therefore, the same is to be quashed.

3. The learned Counsel for the Respondent vehemently objected to the submissions of the learned Counsel for the Petitioner seeking to quash the Criminal complaint. The learned Counsel for the Respondent also invited the attention of this Court to the averments in the Complaint enclosed in the typed set of papers, wherein, the occurrence had been clearly stated. Now also, the learned Counsel for the Respondent submitted that when a complaint was preferred by the Respondent/Complainant, the Police authorities did not act on it. Only then, the Respondent/Complainant was forced to approach the Court with a private complaint. Now the private complaint had been taken cognizance by the learned II Metropolitan Magistrate, Egmore at Allikulam and summons had been issued to the accused. It is now pending trial.

3.1. The vehement objection by the learned Counsel for the Respondent/Complainant to quash the complaint in C.C.No.240 of 2019 pending on the file of the learned Metropolitan Magistrate - II, Egmore at Allikulam stating that what are all submitted by the learned Counsel for the Petitioner can at best be treated as valuable defence available to the Accused before the learned trial Judge, which can be appreciated by the learned trial Judge during the evidence of the witnesses before the learned trial Judge and not by this Court exercising the extraordinary power under Section 482 of Cr.P.C.

3.2. Further the learned Counsel for the Respondent/Complainant submitted that as per the guidelines issued by the Hon'ble Supreme Court in the light of the reported ruling of the Hon'ble Supreme Court in 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 in the case of State of Haryana and others Vs. Bhajanlal and others, the extraordinary powers of the



Hon'ble High Courts shall be used sparingly and it cannot be used leniently to quash the FIR, charge sheet, complaints, which will result in miscarriage of justice, is found acceptable.

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4. Considering the fact that the learned Metropolitan Magistrate - II, Egmore, Chennai, after perusing the sworn statement of the Complainant and the materials placed by her at the time of recording of the sworn statement and the statement of the witnesses supporting the Complainant, had taken the complaint on file and had taken cognizance of the offences alleged by the Respondent/Complainant that the Police Officials failed to act on her complaint is justified that the Petitioner herein had not furnished any copy of the FIR in the typed set furnished along with this Petition. As the FIR had not been registered by the Police based on her complaint for the same occurrence, she had filed private complaint which was taken cognizance by the learned Metropolitan Magistrate as C.C.No.240 of 2019. Therefore, the submission of the learned Counsel for the Petitioner can be accepted and the private complaint is to be quashed. In this case, the Police Officials had not acted, therefore, the apprehension of the Respondent/Complainant in lodging a private complaint before the learned Metropolitan Magistrate - II, Egmore at Allikulam resulting in learned Metropolitan Magistrate taking cognizance of the offence alleged by the Complainant/Respondent is found justified. When the learned Metropolitan Magistrate had applied his legal mind to the facts available in the statements of witnesses before him/her along with the sworn statement of the Complainant, had taken cognizance of the offences, the same cannot be quashed, particularly, in the absence of the registration of the case on the basis of the complaint by the Respondent/Complainant to the Police Officials through registered post. Under those circumstances, this criminal complaint cannot be quashed in the light of the reported ruling of the Hon'ble Supreme Court in 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 in the case of State of Haryana and others Vs. Bhajanlal and others.

With the above discussion, this Criminal Original Petition is dismissed as having no merits. The learned Metropolitan Magistrate-II, Egmore, Allikulam is directed to proceed with the trial and dispose of the case within a reasonable period of three months from the date of receipt of a copy of this order or from the date of uploading of this order in the website of this Court. The Petitioner is directed to co-operate with the trial. If the Accused does not co-operate with the trial, the learned Metropolitan Magistrate - II, Egmore at Allikulam can issue Warrant against the Accused. If the Accused is produced on Non-Bailable Warrant, the learned Metropolitan Magistrate need not



recall the Warrant. Instead the learned Metropolitan Magistrate can detain the Accused in Prison and proceed with the trial during the remand of the Accused. Consequently, connected Miscellaneous Petitions are closed.

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-s/d-

Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

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To.

1. The Metropolitan Magistrate - II,
Egmore, Chennai District.
2. The Public Prosecutor,
High Court, Chennai.

+1cc to M/s.V.V.Sairam, Advocate Sr.35035

Cr1.O.P.No.8479 of 2019

pmk[co]
srg 08/07/2022