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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :25.03.2022

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.No.27452 of 2019

Karthikeyan

.. Petitioner/Accused

/versus/

1. State rep.by
Inspector of Police,
K-5, Peravallur Police Station,
Chennai.

2. K.Abirami

.. Respondents/Complainant &
Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.1515 of 2009 on the file of Chief Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioner : Mr.N.Narayanaswamy

For Respondents : Mr.S.Santhosh
Government Advocate (Crl.Side)
for R1
No Appearance for R2

O R D E R

This Criminal Original Petition is to quash the complaint proceedings pending against the petitioner in C.C.No.1515 of 2009 on the file of the Chief Metropolitan Magistrate Court, Egmore, Chennai.

2. A short point involved in this case is that, this petitioner along with his mother, father and sister were charge sheeted for the offence under Sections 498(A), 406, 417, 384, 342, 323, 324 and 506(II) of IPC and Section 4 and 6(3) of Tamil Nadu Prevention of Women Harassment Act, 1998. The final report was taken on file in C.C.No.1306 of 2008 showing this petitioner and his sister Radhika as absconding accused for a long time. This petitioner and his sister were not able to secure and



therefore, the case against this petitioner was split up and separate calender case No.1515 of 2009 was assigned.

3.As far as the parents of the petitioner in C.C.No.1306 of 2008 are concerned, except the chief examination of PW-1 and PW-2, there was no much progress in this case, but there were several interlocutory applications before the High Court and the trial Court, which ultimately prevented the progress. At last, when the accused in C.C.No.1306 of 2008 came to this Court seeking to quash the case against them. In view of an inordinate delay, this Court directed the prosecution to Marshall the witnesses and complete the trial at the earliest. Dates were fixed for examining of PW-1 and PW-2. Thereafter, cross examination was deferred earlier in respect of this order in Crl.O.P.No.29747 of 2013 and there was no progress. Thereafter, after few months, the accused in C.C.No.1306 of 2008 came before this Court again to quash the case. At this juncture, the father of the defacto complainant had filed an affidavit stating that the defacto complainant, after obtaining divorce from this petitioner, who was an absconding accused in C.C.No.1515 of 2009, had settled Abroad and she is not interested in pursuing the matter any further.

4.Recording the said submission, this Court, vide order dated 17.03.2016 in Crl.O.P.No.29747 of 2013, has quashed the case in C.C.No.1306 of 2008 against the accused, who are the parents and sister of this petitioner. This petitioner, even after the case against him was split up, has not returned back to India. However, he moved this Court by way of filing a petition to quash the case against him and the said petition is now under consideration for this Court.

5.Efforts have been taken to serve notice to the defacto complainant, who is the second respondent, did not fructify, had received the private notice and it is obvious that the second respondent is no more in India and she has settled in Abroad even according to the affidavit filed by her father in the connected proceedings.

6.The learned counsel appearing for the petitioner would submit that the defacto complainant initiated a criminal prosecution against the petitioner in German Court and after full trial, the German Court has acquitted the petitioner herein vide order dated 11.02.2010. He would submit that in the light of the fact that the defacto complainant is not interested in pursuing the matter and did not even turn up to depose subjected herself, when the cross examination an opportunity was given to her, nothing survives in the complaint and prosecution. Hence, the case against the petitioner is to be quashed.



7.The learned Government Advocate (Crl.Side) would submit that a person, who has not subjected himself for the prosecution been absconding cannot have the privilege of quashing the complaint without being tested.

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8.This Court is in full agreement with the submission made by the learned Government Advocate (Crl.Side) and the absconding accused cannot seek for remedy without subjecting himself to the jurisdiction of this Court. But one particular factor, which has gone to this Court to allow the prosecution is that the defacto complainant who has come before this Court to redress for the matrimonial grievance had been driven from pillar to post and she out of frustration has gone to Abroad and abandoning in pursuing the litigation.

9.In the circumstances, after 13 years to the occurrence, when the notice was attempted to be served in the quash proceedings, she has not responded. Taking note of the fact that the allegation found in the complaint and the statements could not be tested before the Court by examining the witnesses and the possibility of the witness also became remote, keeping C.C.No.1515 of 2009 pending on file will be of no use and it will be false attempt. Therefore, C.C.No.1515 of 2009 pending against this petitioner is quashed. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Chief Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Inspector of Police,
K-5, Peravallur Police Station, Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Narayanaswamy, Advocate, S.R.No.20457

Crl.O.P.No.27452 of 2019

RSI (CO)

SU(05/04/2022)