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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.22194 of 2021 and
CRL.M.P.Nos.12031 and 12032 of 2021

Zakir Hussain

... Petitioner/Accused 2

Versus

1. The State Rep. by
The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai - 600 014
(Ref.Cr.No.11/2016) ...1st Respondent/Complainant
2. Sabhibha Banu ...2nd Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Cr.P.C may be pleased to quash the proceedings in C.C.No.3114 of 2019 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai for offences under section 498(A) & 406 IPC.

For Petitioner : Mr.Sheik Ismail for Mr.P.N.Vignesh

For Respondents: Mr.E.Raj Thilak
Additional Public Prosecutor for R1

ORDER

The Petitioner/A2 facing trial in C.C.No.3114 of 2019 for offence under section 498(A), 406 and 506 (i) of IPC has filed this quash application.

2. Initially Charge Sheet was filed against this petitioner in C.C.No.2594 of 2017 in Crime No.11 of 2016 in which the petitioner was arrayed as A4.

3. The 2nd respondent herein is the de-facto complainant. She married one Shahir Hussain the brother of the petitioner herein on 04.10.2009. During the marriage, as per customary practice more than 60 sovereigns of gold along with cash were gifted to her and apart from that marriage expenses were also incurred by the family of the de-facto complainant. After marriage, she resided along with her husband at No:15, VM Street Mir Shahibpet, Royapet, Chennai - 600 014. Thereafter, the demand of dowry started by her husband's family and entire



family members of her husband were constantly demanding dowry from the family of the second respondent, by subjecting the de-facto complainant to cruelty.

4. While so, on 06.03.2010 she had left to Abu Dhabi along with her husband and lived together for 6 months. But still the harassment and cruelty continued at the hands of her husband and she was abandoned. Thereafter, on 22.09.2010 she left Abu Dhabi and came back to Chennai again she was compelled to stay in her in-laws place and the demand for dowry continued, due to which her father unable to withstand the tortures given by her husband's family to her daughter passed away on 24.04.2015. Even after that, her in-laws tortured her and abused her for not forbearing a child. The fight between the 2nd respondent and her husband continued over mobile phone.

5. On 29.09.2011 she again left to Abu Dhabi and due to her husband's compulsion she joined as a school teacher and worked there and later worked in a private company and handed over all her earnings to her husband. While so, her husband started suspecting her fidelity had tortured her and even locked her in the bathroom. On 19.03.2014, since her Brother-in-law Nazir Hussain marriage was fixed the second respondent along with her husband has come to Chennai. Thereafter her husband left her in Chennai and left to Abu Dhabi. But, again she was suspected to cruelty at the hands of her in-laws and thereafter she left to Abubadi and again came to Chennai for medical treatment and thereafter her husband left her and went to Abu Dhabi.

6. When the brother of the second respondent, questioned the accused in the manner in which her sister has been treated during February 2015 he was cruelly assaulted. Thereafter, she had left the matrimonial house and joined her mother and later the complaint was lodged against the accused.

7. The Additional Public Prosecutor submitted that in this case on completion of investigation charge sheet was filed against 6 accused. During May 2017 A1 and A2 absconded themselves and not appeared before the Trial Court and hence the case in C.C.No.2594 of 2017 was not progressive and thereafter the case against A1-the husband of 2nd respondent and A4- the brother-in-law was split up and C.C.No.3114 of 2019 was assigned and due to the non appearance of the petitioner before trial Court, NBW was issued against the petitioner. He further submitted that the petitioner after coming to know about the NBW issued against him, had appeared before XVIII Metropolitan Magistrate Saidapet Chennai on 17.04.2021 and thereafter NBW was recalled. Earlier a request for LOC was issued by the Deputy Commissioner of Police, Mylapore in C.No.01/DC Myp/Camp/2019 dated 02.01.2019 against Zakir Hussain S/o Aktar Hussain holding passport No.N2780392.



He further submitted that based on the said request, the Bureau of Immigration (Ministry of Home Affairs) Government of India had opened an LOC on 02.01.2019.

8. The learned counsel appearing for the petitioner submitted that though in the LOC request it is stated that LOC will be in force for one year, would automatically lapse after a year of opening, unless reviewed and recommended for retention by the originator. same is seldom followed once the name is found in LOC it always remains. He further submitted that the petitioner after recalling of Non Bailable Warrant had submitted the intimation from the Court to the Inspector of Police Royapettah Police Station informing that recall of NBW, but despite the same the petitioner's name is still found in LOC list and in view of the same the petitioner is unable to proceed to United Arab Emirates where he is employed. He further submitted that the petitioner has to go for employment to United Arab Emirates and make his earnings to sustain himself. He further submitted that there is no purpose keeping LOC pending. He further submitted that the petitioner is willing to co-operate with the Trial and proceed with the Trial before the trial Court.

9. Though the prayer sought for in this Criminal Original Petition is for quashing for C.C.No.3114 of 2019, the learned counsel for the petitioner submits that it would suffice for the present if the LOC pending on the file of Bureau of Immigration (Ministry of Home Affairs), Government of India is quashed with liberty to agitate other grounds in CC.No.3114 of 2019 later.

10. When the NBW warrant issued against the petitioner is recalled there is no purpose of keeping LOC pending. The Hon'ble Apex Court in catena of judgments following the case of "Menaka Gandhi Versus Union of India reported in AIR 1978 SC 597" consistently held that it is a constitutional right of a person to travel abroad and no one should be deprived of his life and liberty except the procedure established in law. This Court following same in the case of "E.V.Perumalsamy Reddy and others Versus State represented by the Deputy Commissioner of Police reported in 2014 (1) MLJ 125" and in the case of "S.Martin Versus the Deputy Commissioner of Police, Central Crime Branch reported in 2014 (1) MLJ 647" held that once a person is granted bail, no question of sustaining Look Out Circular would arise, unless the person is involved in any heinous crimes and in terrorist activities. In this case, the issues is a matrimonial dispute between the husband and wife.

11.As regards the LOC is concerned, the Look Out Circular issued by the Bureau of Immigration (Ministry of Home Affairs), Government of India, New Delhi against the petitioner (Passport No.N2780392) in LOC Suspect No.from 1940036 to 1940036 is a collateral act, which is on the



request of the Deputy Commissioner of Police, Mylapore District, Chennai. Since the petitioner by his affidavit undertakes to participate in trial and the case is arising out of the matrimonial dispute, this Court quashes the Look Out Circular issued by the Bureau of Immigration (Ministry of Home Affairs), Government of India, New Delhi against the petitioner (Passport No.N2780392) in LOC Suspect No.from 1940036 to 1940036.

This Criminal Original Petition is disposed of accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

rap/mp

To

1. The Bureau of Immigration
(Ministry of Home Affairs),
Government of India,
New Delhi.
2. The XVIII Metropolitan Magistrate
Saidapet Chennai.
3. -do- Through Chief Metropolitan Magistrate,
Egmore, Chennai District.
4. The Inspector of Police,
W-23, All Women Police Station,
Royapettah, Chennai - 600 014
(Ref.Cr.No.11/2016)
5. The Deputy Commissioner of Police,
Mylapore, Chennai District.
6. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.N.Vignesh, Advocate SR.No.5929

CRL.O.P.No.22194 of 2021 and
CRL.M.P.Nos.12031 and 12032 of 2021

SPD (CO)

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GMI (02/02/2022)