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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.RC.NO.1070 OF 2021

Mrs.R.Kavitha

... Petitioner/Defacto
Complainant

.Vs.

1. The Inspector of Police,
All Women Police Station,
Tambaram.

2. Mr.Kamal

... Respondents/Complainant/
Accused

PRAYER:-

Criminal Revision is filed under Sections 397 r/w.401 of Criminal Procedure Code to set aside the judgment and order of the Judicial Magistrate No.I, Tambaram in C.M.P.No.1746 of 2021 dated 09.09.2021 dismissing the petition under Section 156(3) Cr.PC.

For Petitioner : Mrs.K.Sumathi

For Respondent : Mr.S.Sugendran
Government Advocate (Crl. side)
For R1

Mr.Aswin for R2

ORDER

(The case has been heard through video conference)

This revision has been filed against the dismissal of the petition filed under Section 156(3) Cr.PC seeking to direct the first respondent to register the FIR against the second respondent.



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

The case of the petitioner is that marriage between the petitioner and the second respondent was solemnised on 22.01.2010 at Sholinghur, out of the wedlock, the petitioner had three children viz., Sharvikhasri-7yrs, Ranver and Ranveka-5years (twins) were born to them. The second respondent got addicted to liquor and his attitude after 2017 had become intolerable and he used to cause severe mental agony to the petitioner.

3. Pursuant to the continuous torture, the second respondent during August 2020 went to the extent of killing the petitioner and her children and fearing danger to life of her and children and herself, the petitioner was forced to leave matrimonial home and is living with her aged parents at Tambaram. While so, on 11.02.2021, when she had gone out, the second respondent along with two of his friends had come in red colour car and had assaulted her aged parents and had taken away the children by force.

4. The petitioner had immediately taken her parents for treatment to Hindu Mission Hospital at Tambaram, thereafter on the same day had given complaint to the first respondent on 11.02.2021. The first respondent had taken the complaint for enquiry in CSR.No.57 of 2021 and thereafter since, no action was taken, the petitioner had sent the complaint to the higher officials on 13.02.2021. Since no action was taken by the officials, the petitioner had filed petition under Section 156 (3) before the Magistrate. The Magistrate by an order dated 09.09.2021 had dismissed the application, against which the present revision has been filed.

5. Mrs.K.Sumathi, the learned counsel for the petitioner would submit that the second respondent had caused unbearable matrimonial cruelty and harassment and had driven the petitioner and her children out of the matrimonial home. The petitioner sought refuge in the house of her parents at Tambaram. The children and the petitioner were brought up by the aged old parents and taking advantage of the absence of the petitioner on a particular day on 11.02.2021, the second respondent along with his friends in an inebriated condition barged into the house of the petitioner's parents and assaulted them and abused them with filthy language and had taken the children by force. The petitioner's parents have also taken treatment in Hindu Mission Hospital for the injuries sustained by them. The averments in the complaint made out a specific case of cognizable nature, involving house trespass, assault on her aged parents and illegal removal of minor children. However, the first respondent had not taken any action and also not conducted any preliminary



investigation with regard to the incident, thereby the petitioner had approached higher officials and since no further action was taken, the petitioner was constrained to approach the jurisdictional Magistrate. The Magistrate without taking into consideration the serious allegation had dismissed the petition contending that the matrimonial dispute is pending between the parties.

6. The learned counsel would further submit that matrimonial proceedings and the criminal activities of the accused are independent of each other. The first respondent has not even called the second respondent for enquiry and he had not enquired the children and taken steps to recover the accident registers from the hospital where the parents had taken treatment. Whereas, the learned Magistrate erred in dismissing the petition.

7. Mr.S.Sugendran, learned Government Advocate (Crl.side) would submit that the petitioner along with her parents have appeared for enquiry and since they did not produce any medical records to show that her aged parents have been assaulted and taken treatment at Hindu Mission Hospital, the respondent did not proceed further, he would submit that enquiry is still pending.

8. The learned counsel representing the second respondent would submit that matrimonial disputes are pending between the parties.

9. Heard the counsel and perused the materials available on record.

10. It is the specific case of the petitioner that the second respondent has committed house trespass and assaulted the aged parents of the petitioner due to which they have sustained injuries and children have been removed by force.

11. Perusal of the records would show that earlier the second respondent has approached this Court seeking for anticipatory bail in Crl.OP.No.3397 of 2021 and this Court by an order dated 22.02.2021 finding that the enquiry is pending against the second respondent in CSR.No.57 of 2021 had directed the respondent/police to complete the enquiry within four weeks and had also directed that if prima facie case is made out against the petitioner, the respondent/police shall register the FIR.

12. This Court is of the opinion that prima facie case is made out for registration of the case. In view of the above, the criminal revision stands allowed. The order dated 09.09.2021



made in CMP.No.1746 of 2021 passed by the Judicial Magistrate No.I, Tambaram is set aside. The respondent shall conduct preliminary enquiry and collect the medical records from the Hindu Mission Hospital and thereafter register a case and proceed further in accordance with law.

13. With the above direction, the criminal revision is disposed of.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Tambaram.
2. -Do Thro The Chief Judicial Magistrate,
Kancheepuram.
3. The Inspector of Police,
All Women Police Station,
Tambaram.
4. The Public Prosecutor,
High Court, Madras.

Copy To:-

The Section Officer,
Criminal Section,
High Court, Madras.

+2ccs to Mrs.K.Sumathi, Advocate, S.R.No.5069

CRL.RC.NO.1070 OF 2021

AD(CO)
PBS/18/02/2022