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Crl.O.P.No.30013 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2022

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.30013 of 2022
and
Crl.M.P.No.18389 & 18390 of 2022

Dr.Tapas Kumar Sengupta ... Petitioner

Vs.

Anita Rachel Fonseca ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records in C.C.No.269 of 2021 pending on the file of the Additional Mahila Court, Chengelpattu and quash the same only relating to the 3rd Accused.

For Petitioner : Mr. Ajay Francis Inigo Loyola

ORDER

This Criminal Original Petition is filed to call for the entire records in C.C.No.269 of 2021, pending on the file of the Additional Mahila Court, Chengelpattu and quash the same only relating to the 3rd Accused.



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2.The learned counsel for the petitioner submitted that the petitioner is the father of the 2nd accused and he is also shown as 3rd accused in this case.

The allegation against the petitioner and other accused is that when the marriage between the complainant Anita Rachel Fonseca and the 1st accused is subsisting, on 09.02.2020, 1st accused married 2nd accused, Shrinanda Senguptha, who is the daughter of the petitioner. This petitioner has nothing to do with the alleged marriage between the 1st and 2nd accused. He has been falsely implicated as an accused in this case. Therefore, he prays that the proceedings should be quashed and in support of his submissions, he relied on the judgment reported in **(1998 CriLJ 1476) Manjula Vs.Mani and others.**

3.First of all, this Court would make it clear that the judgment relied by the learned counsel for the petitioner is rendered in an appeal proceedings. This is a case where the petitioner has approached this Court for quashing the complaint. Therefore, in the considered opinion of this Court, the judgment relied by the learned counsel for the petitioner cannot be applied to the facts of this case for the present. On going through the complaint allegations, this Court found that when the complainant and 1st accused are still husband and wife and I.D.O.P.No.847 of 2017, on the file of the VII Additional Family



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Court, Chennai is pending, the 1st accused had married the 2nd accused. It is also mentioned in the complaint that the accused have uploaded the pictures of the 1st and 2nd accused together at their home. The 3rd accused, being the father of the 2nd accused, willfully and wantonly aided the 1st accused in committing the offence by consenting, aiding his daughter getting married with the 1st accused and thus, committed offences punishable with the aid of Section 109 IPC. There is a specific allegation of active involvement of the petitioner in the alleged marriage between 1st and 2nd accused. The truth or otherwise of these allegation will come out only during the course of trial. Therefore, this Court finds that the prayer for quashing the proceedings against the petitioner cannot be entertained.

4.This is a case instituted otherwise than on a police report. On the accused entering appearance, prosecution ie., the complainant has to produce evidence in support of the complaint. Upon taking evidence, if the learned Magistrate, for the reasons recorded, finds that no case against the accused is made out, the learned Magistrate shall discharge the accused. Nothing will prevent the learned Magistrate from discharging the accused at any previous stage for the reasons to be recorded by the learned Magistrate. Therefore, it is



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open to the petitioner to appear before the learned Magistrate and seek for discharge at the appropriate stage.

5.It is submitted by the learned counsel for the petitioner that the petitioner is aged 75 and suffering from ailments and therefore, he is not able to appear before the Court. This is not a serious offence where the petitioner's presence is required. The only fact is that he is the father of the 2nd accused. Considering the age of the petitioner and his ailments, the learned Magistrate is directed not to insist on the personal appearance of the petitioner on every date of hearing. Only whenever the presence of the petitioner is required, his presence may be insisted, otherwise, the petitioner may be represented by his counsel either through a petition under Section 317 Cr.P.C. or under Section 205 Cr.P.C.

6.With these observations, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

06.12.2022

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order



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To:

- 1.The Additional Mahila Court,
Chengelpattu.
- 2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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