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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

C O R A M

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

Crl.O.P.No.29881 of 2019

and

Crl. M.P. Nos.16101 and 16102 of 2019

Zameerudeen @ Zameer

...Petitioner

Vs.

1.The State Rep. by,
The Inspector of Police,
W/16, All Women Police Station,
Pulianthope, Chennai -

2.Shabana Begam

... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying to call for the records in S.C. No.369 of 2018 on the file of the Mahila Court, Chennai and quash the same and pass appropriate orders accordingly.

For petitioner :: Mr.C. Ruban D Silva
For R1 :: Mr.A. Gokulakrishnan
(Additional Public Prosecutor)
For R2 :: Mr. R. Balachandran

O R D E R

The petitioner has filed this petition to call for the records in S.C. No.369 of 2018 on the file of the Mahila Court, Chennai and quash the same and pass appropriate orders accordingly.

2.When this petition came up for hearing, both parties along with their counsel are present.

3.The case of the prosecution is that the petitioner and the defacto complainant got married on 09.09.2012 at Noor



Madharsha Thirumana Mandapam, Pattalam and out of their wedlock, a son was born to them. In a few months after the marriage, the petitioner had harassed and assaulted the defacto-complainant daily in a drunken mood and the petitioner tortured her demanding dowry by selling out the property belonged to the parents of the defacto-complainant. Further, while the subsistence of their marriage, the petitioner had married a minor girl aged about 17 years and a child was born out of their wedlock. Therefore, the defacto-complainant declaring herself as the 1st wife of the petitioner/accused, lodged a complaint to the 1st respondent police in that regard. On receipt of the same, the 1st respondent police registered the case in Crime No.2 of 2018 under Sections 498(A), 494, 506(i) of I.P.C. r/w.109 of I.P.C and thereafter the same was registered as under Sections 498(A), 494, 506(i) of I.P.C. r/w.109 of I.P.C and 6 of the POCSO Act, 2012 and Charge sheet has also been filed before the Mahila Court, Chennai accordingly in S.C. No.369 of 2018 against the petitioner herein and it is pending for Trial.

4. The learned counsel for the petitioner would submit that the 2nd respondent/complainant has complained against the petitioner herein before the 1st respondent police claiming herself as his Wife, while she was living with another 2nd husband namely, R. Ansar since 2017 having got married him and gave birth to a male child namely Azam, on 01.02.2019 out of their wedlock. Hence, at the time of filing the complaint, she was not his wife. Further, he submitted that the petitioner married the defacto-complainant in the year 09.09.2012 and in a few months after the defacto complainant was separated from the petitioner, she filed a maintenance case against the petitioner before the Family Court in M.C. No.5 of 2013 and the same was not proceeded further.

5. The learned counsel for the petitioner would further submit that while defacto-complainant after deserting the petitioner, was living with one Mr. R. Ansar from the year 2016 and gave birth to a male child on 01.02.2019, thereafter, against her 2nd husband, she also filed a maintenance case in M.C. No.12 of 2019 before the Family Court, Thiruvallur, under Section 125 of Cr.P.C. seeking a sum of Rs.15,000/- as maintenance and the copy of M.C. No.12 of 2019 also produced by the petitioner as document also perused. In that, the De-facto complainant/2nd respondent herein also admitted the aforesaid facts that she lived with her 2nd husband namely, R. Ansar, from May 2017 onwards at No.38, 1st Street, Saravana Nagar, Thiruvattiyur, Chennai - 600 019 and she gave birth to a male child through her 2nd husband. Under such circumstances, in the year 2018, the



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Defacto-complainant/the 2nd respondent herein has filed this false complaint against the petitioner herein at the time when she was living with her 2nd husband, just to unleash her personal vendetta against the petitioner and also to extract money from him by false complaint.

6. It has been further submitted by the learned counsel for the petitioner that de-facto complainant is accused under Section 3(2)(b), 4(1), 5(1)a of Immoral Traffic (Prevention) Act in Crime No.61 of 2009 which was registered by Oterri Police Station and was remanded on 19.02.2009 and also charges were framed in C.C. No.2835 of 2009 on the file of XVII Metropolitan Magistrate Court, Saidapet.

7. The learned counsel for the petitioner would further submit that there is no credible evidence to prove that the alleged victim girl was forcefully taken away by the petitioner/accused and was married. In the 164 statement recorded by the VI Metropolitan Magistrate Judge, Egmore from the alleged victim girl, it was stated that she approached the petitioner/accused and proposed to marry him. Initially, the petitioner/accused did not accept her proposal for the reason that he was already married and she is also not matured enough to get married. However, due to persistence of the alleged victim girl as her parents were arranging for her marriage with someone else, the petitioner had married her. Thus, the alleged victim girl married the petitioner with her free consent. While being so, the 2nd respondent/complainant made allegation against the petitioner in this regard is baseless and will not fall within the purview of the POCSO Act since the complaint was not made by the alleged victim girl or her parents or relatives but by the defacto-complainant /2nd respondent herein falsely claiming as 1st wife of the petitioner herein and suppressing her 2nd marriage with one Mr. R. Ansar. As such, it is clear that it was an attempt of the defacto-complainant to implicate the petitioner/accused in a false offence under the provisions of POCSO Act, in order to wreak her vengeance against the petitioner/accused. While, the marriage between the petitioner and the alleged minor girl was made out of free consent and now the alleged girl has become major and they both are living together happily and they also have two children born out of the said wedlock. Hence, criminal proceedings against the petitioner/accused would go against the welfare of the alleged victim. Hence, it would be just and proper to end the prosecution against the petitioner.



8. The learned counsel for the 1st respondent would submit on instruction that the defacto-complainant had married another man and the petitioner also got married another women. However, the defacto complainant has made complaint against the petitioner as she is the 1st wife of the petitioner alleging that the petitioner has married another minor girl during subsistence of their marriage. But, there is no complaint from the alleged girl side with regard to the marriage with the petitioner herein.

9. The learned counsel for the 2nd respondent would submit that the defacto complainant has married another man and gave birth to a male child out of her 2nd marriage. However, the petitioner has harassed the defacto-complainant demanding dowry and got married with the minor girl.

10. Heard the learned counsel for the petitioner, the learned Government Advocate for the 1st respondent and the learned counsel for the 2nd respondent as well as perused the materials available on record.

11. On enquiry of the parties concerned and having taken into consideration of the submissions made by the learned counsel on either side as well as considered the facts and circumstances of the case, it is seen that as per the complaint, the petitioner/accused married a minor girl while the marriage of the defacto-complainant was in subsistence with the petitioner. However, the fact reveals that the defacto complainant/2nd respondent herein had married another man namely Mr.R. Ansar and gave birth to a male child out of their wedlock, at the time, the complaint was lodged against the petitioner herein. But, there is no complaint received from the side of the alleged minor girl with regard to her marriage with the petitioner. It is stated that she had married the petitioner with her free consent and she was not forced to marry him. Even though at the time of her marriage, she was a minor, now she attained majority and is living with the petitioner having two children. Further, it is also stated that the de-facto complainant having dispute with her 2nd husband, has filed maintenance petition in M.C. No.12 of 2019 seeking a sum of Rs.15,000/- before the Family Court, Thiruvallur. Under such circumstances, after the defacto-complainant had remarried another man by deserting the 1st husband/petitioner herein, she had given the complaint against the petitioner as if she is his wife and the petitioner was charged for the offence under Section 498(A), 494, 366(A) 506(i)



should be quashed when the parties have resolved their entire disputes among themselves." Further, the petitioner/accused and the alleged victim girl were married and physical relationship between them was consensual. However, the alleged victim was minor at the relevant point of time, now she attained majority and living with the petitioner having two children out of the wedlock. However, there is no complaint on her part or by her parents against the petitioner/accused. Thus taking into consideration the said circumstances and in the light of principles laid down by the Apex Court in the case of "Narinder Singh & Ors. Vs. State of Punjab", there is no impediment in quashing the FIR and the criminal proceedings filed against the petitioner/accused. Accordingly, the Criminal proceedings against the petitioner/accused for the offence under Section 366-A of IPC is required to be quashed. Further, the statement of the alleged victim would reveal the fact that no offence under Section 6 of POCSO Act has been made out against the petitioner/accused. Neither the alleged victim who is none other than the 2nd wife of the petitioner/accused nor her parents have come forward with a complaint against the petitioner/accused. Further, alleged victim has been living with the petitioner/accused, since 2016 and two children were also born out of the wedlock. Under such circumstances, it is quite natural that the alleged victim girl who is the present wife of the petitioner/accused will not have any grievance against the petitioner/accused. Therefore, the Criminal proceedings against the petitioner/accused for the offence under Section 6 of POCSO Act before the Mahila Court is also liable to be quashed.

15. In fact, it was the de-facto complainant who used to threaten him to falsely implicate in Criminal case and there was no such offence under Section 506 of IPC was committed by the petitioner/accused as alleged. Therefore, under those circumstances, it is not a fit case where conviction can be recorded for the aforesaid offences. Hence the Criminal proceedings against the petitioner/accused for the offence under Section 506 of IPC is liable to be quashed.

16. In the Judgment pronounced by a 3 Judge bench of the Apex Court in the case of "Gian Singh Vs. State of Punjab" it has been observed that "in the very nature of its constitution, it is the judicial obligation of the High Court to undo a wrong in course of administration of justice or to prevent continuation of unnecessary judicial process."



17. In view of the above, this court is inclined to quash the Criminal proceedings relating to the case in S.C. No.369 of 2018 on the file of the Mahila Court, Chennai. Accordingly, this petition is allowed and the Criminal proceedings in S.C.No.369 of 2018 is quashed.

Sd/-

Assistant Registrar(CS-VI)

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Sub Assistant Registrar

Lbm

To:

1. The Mahil Court,
Chennai.
2. The Inspector of Police,
W/16, All Women Police Station,
Pulianthope, Chennai -
3. The Public Prosecutor,
High Court, Chennai.

Cr1.O.P.No.29881 of 2019

and

Cr1. M.P. Nos.16101 and 16102 of 2019

MT(CO)

CB(17/03/2022)