



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM :

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.O.P.No.35005 of 2019
and
CrI.M.P.No.19304 of 2019

Zaid Omar,
S/o.Ismail Omar.

... Petitioner/Accused

Versus

1. The State Rep by its
The Inspector of Police,
W-4, All Women Police Station,
Kilpauk,
Chennai 600 010.
2. Yousuf Abdul Lathif,
Flat No.3, No.3, Ranganathan Avenue,
Millero Road, Kilpauk,
Chennai 600 010.

... Respondents/
Complainants/Defacto Complainants

Criminal Revision Case filed under Section 482 of Cr.P.C, to call for the records of the case pending trial in C.C.No.3159 of 2019 on the file of the Learned II Metropolitan Magistrate Egmore, Chennai, and quash the same as against the petitioners in the above case.

For Petitioner : Mr.J.Kingsly Solomon.

For Respondents : Mr.N.S.Suganthan,
Government Advocate (CrI.Side) for R1
No appearance for R2

O R D E R

This revision petition is filed by the petitioner to quash the records of the case pending trial in C.C.No.3159 of 2019 on the file of the learned Metropolitan Magistrate No.II, Egmore, Chennai.



2. The petitioner, herein, is the sole accused in C.C.No.3159 of 2019. The genesis of the case is that the petitioner, herein, married Sharmeen on 17.09.2010 and settled at Madurai. Since they had no issues, they adopted a female child. Thereafter, misunderstanding erupted between them and they got separated in the year 2017. Pursuant to the order passed by this Court, the custody of the minor girl was with the adopted mother Sharmeen and thereafter, the petitioner herein sought for modification of the order and accordingly, he was permitted to have the custody for the child 2 days in a week i.e., Saturday and Sunday. While so, on 21.09.2018 at about 11.30 p.m., the petitioner went to the house of the de facto complainant Yousuf Abdul Lathif, who is the father of Sharmeen and picked quarrel with them. He enquired why the child is weeping and when they not properly explained, he fought and took away the custody of the child. This incident led to filing of complaint by the de facto complainant against him. As the result of this complaint, after recording statements of the witnesses, final report has been filed before the learned Metropolitan Magistrate No.2, Egmore, Chennai for offences under Section 451, 294(b) and 506(1) of IPC.

3. The learned counsel appearing for the petitioner submitted that the complaint given by Yousuf Abdul Lathif has no legs to stand and no prima facie case has been made out. While admittedly, the petitioner is the adoptive father and had the right of interim custody during the week ends, he questioned the de facto complainant for not taking proper care of the child, but to prevent the petitioner exercising his right of interim custody during week ends, this complaint was foisted. Further, submitted that after filing the complaint, wife Sharmeen took divorce and left India permanently and settled abroad. The Guardian OP petition filed by her before the High Court in O.P.No.66 of 2018 was withdrawn by her and the same was dismissed on 11.04.2019. Having withdrawn the custody petition unconditionally and left the Country, there is no useful purpose in subjecting the petitioner herein to undergo ordinal of trail. Further, the learned counsel for the petitioner submitted that even if the allegations made in the complaint, proved no offence under Sections 294(b), 506(1) and 451 of IPC would be made out.

4. On considering the contents of the material evidence like statements given by the witnesses and also the subsequent development in the case, particularly, the withdrawal of custody petition filed by daughter of the de facto complainant, this Court is for sure, that the de facto complainant or his daughter are no more interested in the welfare of the child and have given up the right of custody. Presently, the child is with the petitioner, herein.



5. In view of this fact, petition to quash is allowed. The case pending trial in C.C.No.3159 of 2019, on the file of the learned Metropolitan Magistrate No.II, Egmore, Chennai, is quashed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nsa

To

1. The Metropolitan Magistrate No.II,
Egmore, Chennai
2. -do through The Chief Metropolitan Magistrate,
Egmore, Chennai
3. The Inspector of Police,
W-4, All Women Police Station,
Kilpauk,
Chennai 600 010.
4. The Public Prosecutor
High Court, Madras - 104.

+1cc to Mr.J.Kingsly Solomon, Advocate, S.R.No.37096

Crl.O.P.No.35005 of 2019
and
Crl.M.P.No.19304 of 2019

AJB (CO)
CT/06/07/2022