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CRL.O.P.No.28921 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.28921 of 2018

and

CrI.M.P.No.16894 of 2018

Lethisya Mary

... Petitioner/Accused

Versus

1.The State represented by its
Inspector of Police,
Neelangarai, Chennai – 115.
(Crime No.1665 of 2015)
on the file of J8, Neelangarai P.S.)

2.Sujatha

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.1090 of 2016 on the file of the Judicial Magistrate Court at Alandur and quash the same.

For Petitioner : Mr.J.Antony Jesuraja

For Respondent-1 : Mr.L.Baskaran
Government Advocate (CrI. Side)

For Respondent-2 : Ms.Priyadharshini
Legal Aid Counsel



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ORDER

This petition has been filed to quash the complaint against the petitioner/Accused in C.C.No.1090 of 2016 pending on the file of the Judicial Magistrate Court, Alandur.

2. The petitioner/Accused in C.C.No.1090 of 2016, who is facing trial for offence under Sections 294(b) and 323 I.P.C., has filed this quash petition.

3. The gist of the case is that on 22.05.2015 at about 2.00 p.m., the de-facto complainant/second respondent, namely, Sujatha, W/o.Maria Arokiayaraj, residing at No.29, VGP Layout, 3rd Phase, 3rd Cross Street, Palavakkam, Chennai had lodged a complaint stating that she is residing in the above said place along with her children. On 22.05.2015 at about 12.30 p.m. while she was talking with her children, the petitioner, who is the sister of de-facto complainant's husband, came there, started abusing her to vacate the house and simultaneously using her mobile phone given a punch on her cheek. Due to which, the de-facto complainant sustained injuries on the head



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and wrist. Hence, she lodged a complaint before the respondent Police. After investigation, statement of witnesses L.W.1 to L.W.5 recorded, collected documents and charge sheet filed.

4. In this case, L.W.1 is the victim/de-facto complainant. L.W.2 is the neighbour, who heard the noise from the de-facto complainant's house, visited the scene of occurrence and saw the fight. L.W.3 corroborate the statement of L.W.2. L.W.4 and L.W.5 are the witnesses of observation mahazar and rough sketch. L.W.6 is the investigating officer, who filed final report in this case, against which, the present quash petition has been filed.

5. The contention of the petitioner is that petitioner's brother, Maria Arokiaraj already filed a divorce petition before the I Additional Family Court, Chennai in H.M.O.P.No.30 of 2015. After the difference of opinion both the petitioner's brother and the de-facto complainant are residing in the same address but in the different floors. The marriage between the petitioner's brother and the de-facto complainant took place in the year 1997, thereafter, they lived happily for some time. The petitioner's brother was working in a Multi National Company. In the year 2009, the petitioner's father settled a



flat in favour of petitioner's brother. After the demise of her father on 02.04.2011, the petitioner's brother had a moral obligation to support his sisters and brother, which was objected to by the second respondent/de-facto complainant. Due to which, there was some dispute between them and their relationship got strained. The petitioner's brother was also some time posted in Bangalore and the rift between the petitioner's brother and de-facto complainant widened and the de-facto complainant also objected for sale of flat. Some how to wreak vengeance, false complaint has been lodged by the second respondent. The first respondent Police without conducting proper investigation, mechanically filed a charge sheet in this case.

6. Learned counsel for the petitioner submitted that the statement of witness, namely, de-facto complainant would reveal that there was an abuse inside the house and not in public place. Hence, offence under Section 294(b) I.P.C. would not get attracted. Further, for the injuries, the de-facto complainant not taken treatment in any hospital, no medical records provided except for her statement. The statement of L.W.2-Anthony is that while he was working in Palavakkam and was near the de-facto complainant's house, he heard some noise from the de-facto complainant's house. He went there



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and found that both the petitioner and second respondent were shouting at each other and it was intervened and pacified by the second respondent's son, namely, Shan. Admittedly, in this case, the said Shan has not examined as witness. L.W.3 – Suresh, who is running a provision shop there, wherein, the second respondent as well as her son Shan came and informed about the abuse and assault committed by the petitioner and also lodging of the complaint. L.W.4 and L.W.5 are witnesses for observation mahazar and rough sketch. L.W.6 is the Sub Inspector Police, who registered F.I.R., conducted investigation, filed final report. From the uncontroverted statement of these witnesses it would clearly show that there is no offence under Section 294(b) and 323 I.P.C. is made out. Further submitted that the dispute between the de-facto complainant and her husband is a matrimonial dispute, for which, a false case has been registered. De-facto complainant lodged three other cases against her husband and his family members. She also filed a case in S.C.No.129 of 2016 for offence under Sections 3(1)(x) of SC/ST Act, which is pending before the Sessions Court, Chengalpet. This case has been stayed by this Court in Crl.O.P.No.24266 of 2016 and Crl.O.P.No.29160 of 2017. The de-facto complainant also filed a case under Section 12(1) of the Domestic Violence Act in C.M.P.No.5658 of 2015, which is pending before



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the Judicial Magistrate, Alandur. She also filed a maintenance case in M.C.No.16 of 2015, which is also pending before the Judicial Magistrate, Alandur. The petitioner's brother is defending the case against him in all the forums. It is only his family members, who have been falsely arrayed as accused and harassed. Hence, prayed to quash the complaint.

7. Learned Government Advocate (Crl. Side) appearing for the first respondent police submitted that on the complaint of L.W.1/de-facto complainant, a case registered, immediately investigation taken up. The Investigating Officer visited the scene of occurrence, enquired witnesses present therein, namely, L.W.2, L.W.3 and thereafter, prepared observation mahazar, rough sketch, collected documents in the presence of L.W.4 and L.W.5. After recording statement and collecting documents, charge sheet filed before the trial Court. The petitioner appeared before the trial Court, charges framed and thereafter, approached this Court and obtained stay in the year 2016. The trial of the case is stalled due to the pendency of the above O.P. and the stay granted herein. He further submitted that the points raised by the petitioner are factual in nature, which have to be decided during trial. Further, the petitioner's main contention is that, motivated complaint has been given



and there have been disputed questions of fact, which have to be decided during trial. Hence, he opposed for quashing of the complaint.

8. Learned counsel appearing for the second respondent submitted that the marriage between the second respondent and petitioner's brother took place on 03.09.1997 at St. Mathias Church, Ashok Nagar, Chennai. The second respondent and the petitioner's brother had started their matrimonial life initially at No.14, Veperi High Road, Chennai. After a year, due to birth of their son, they shifted back to their parents place at Kandasamy Nagar and they were residing together till 2007. Since the house was demolished and it was sold to a builder, they stayed in a flat in Swaminathan Nagar. After construction of the flat in Kandasamy Nagar, the respondent's father-in-law settled the Flat No.2/356-C, Kandasamy Nagar, Palavakkam, Chennai to the second respondent's husband. Thereafter, his father-in-law passed away on 02.04.2011. Taking advantage of his demise, the petitioner, her sisters and another brother have started demanding the property from her husband and also forced the second respondent to vacate the premises. They have also threatened her. Further, the second respondent was also projected as psychiatric patient and was advised to take some treatment, which caused



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great harassment to her. Taking advantage of the strained relationship between the second respondent and her husband, the petitioner used to visit the house, pick up quarrel and create trouble to the second respondent. On the fateful day, when the second respondent was sitting along with her son, the petitioner entered into the house, abused her in filthy language and hit her on the cheek, head and caused injuries. The petitioner used abusive language, for which, the second respondent already lodged separate complaint. The second respondent in taking legal recourse available for maintenance and DVC cannot be termed as a motivated complaint or harassment to the petitioner. The points raised by the petitioner are factual, which are to be decided during trial. Hence, the quash petition is liable to be dismissed.

9. Considering the submissions and on a perusal of material it is seen that the petitioner and second respondent/de-facto complainant are close relatives. The relationship now got strained. The petitioner's brother is the estranged husband of the second respondent. They got married in the year 1997, lived together till 2007. Out of their marriage, they had two children. They were initially lived separately, thereafter lived in a joint family. After the death of the second respondent's father-in-law, trouble arose with regard to



the share of the properties. The second respondent's husband was taken over by the petitioner, other sisters and family members and the relationship is not cordial between the husband and wife. It was taken advantage by the petitioner and other family members, which led to filing of divorce petition and various other cases.

10. Admittedly, in this case, L.W.2, who was working as printing machine operator and neighbour of the second respondent, on hearing the shout, gone there. His categorical statement is that when he reached her house, he saw the second respondent's son pacifying both his mother and aunt and thereafter he has not seen any assault or use of abusive words. Admittedly in this case, the abusive words uttered is inside the house and not in public place and what is the abusive word uttered, there is no reference. Admittedly in this case the second respondent's son not examined and cited as witness. The other witnesses are observation mahazar and rough sketch witnesses and L.W.3 is an innocuous witness. On taking the statement of the witnesses, on the whole, they are uncontroverted.



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11. This Court finds that there is no case made against the petitioner.

Added to it, the second respondent already filed complaint under the Domestic Violence Act, Maintenance case and also complaint under SC/ST Act and the same are pending. This is yet another case, which is nothing but a motivated one. It is not in dispute that divorce petition filed by the second respondent's husband in H.M.O.P.No.30 of 2015 is pending between the second respondent and her husband, who is none other than the petitioner's brother. From the above, it is seen that continuation of proceedings would amount to abuse of process of law.

12. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.1090 of 2016 on the file of the learned Judicial Magistrate, Alandur against the petitioner/Accused is hereby quashed. Consequently, connected miscellaneous petition is closed.

13. This Court places its appreciation for the Legal Aid Counsel, who made effective submissions on the records available to defend the second respondent/de-facto complainant.



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Index: Yes/No
Internet: Yes/No
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To

- 1.The Judicial Magistrate,
Alandur.
- 2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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