

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	26.07.2022
Delivered on	05.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.(MD) Nos.7999 & 8219 of 2022
and
Crl.M.P(MDNos.5423 & 5548 of 2022

Moses Raja @ Moses Raja Singh

... Petitioner in
Crl.O.P(MD)No.7999 of 2022/A2

Dhivya

... Petitioner in
Crl.O.P(MD)No.8219 of 2022/A1

Vs.

1.The State rep. by the Inspector of Police,
City Crime Branch,
Tirunelveli City,
(Crime No.5 of 2022)

2.Prabaharan Jebastin

... Respondents in both petitions

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. praying to call for the records pertaining to the case in Crime No.5 of 2022 pending on the file of the Inspector of Police, City Crime Branch, Tirunelveli City and quash the same as against the petitioners/A1 and A2.

For Petitioner
in Crl.O.P(MD)No.7999 of 2022 : Mr.R.Anand

For Petitioner
in Crl.O.P(MD)No.8219 of 2022 : Mr.R.Anand for
Mr.P.Gunasekaran

For Respondents in both Petitions : Mr.M.Sakthikumar
Govt. Advocate (for R1)

Mr.M.S.Sureshkumar (for R2)

COMMON ORDER

These petitions are filed to quash FIR No.5 of 2022 registered against the petitioners by the first respondent/Inspector of Police, City Crime Branch, Tirunelveli City. The petitioner in Crl.O.P(MD)No.8219 of 2022 is the first accused and she is the wife of the defacto complainant and the petitioner in Crl.O.P(MD)No.7999 of 2022 is the second accused.

2.Fact:- (i) The defacto complainant married the petitioner/A1 on 22.05.2009. After marriage, they lived at Tirunelveli. On 01.01.2011, the defacto complainant went Saudi Arabia, since he got job there. For the purpose of constructing a new house at the place purchased by the

defacto complainant, he fixed a rental house at Tirunelveli for his wife and his parents. In the month of February 2012, one Sheela, who is neighbour, introduced the second accused as her husband to the defacto complainant. It was also informed that the second accused has knowledge for getting plan approval for construction of house and also having experience in constructing houses and he was also a Christian boaster and hence, he was engaged and allowed him for construction of house. The defacto complainant/husband and the first accused/wife are having joint account at Vijaya Bank and ICICI Bank. The defacto complainant has entrusted his bank password, ATM Card, pin number, signed cheque book and 80 sovereign gold jewels to his wife, viz., the first accused. Apart from that, the first accused/wife possessed all the family documents.

(ii) In this situation, on 15.05.2020, the first accused/wife sent a birth day message to the second accused, his birthday falls on 16.05.2020. Since the first accused used cell phone having google account, the defacto complainant found the birth day message sent by the

first accused to the second accused and also found the illegal relationship between them. It was also found that during the lock down period, the second accused frequently visited her house and on enquiry, the second accused is having illegal connection with so many women. Further, the first accused/wife transferred the amount of Rs.36,13,118/- which is lying with the joint account, to the second accused and she also took the properties worth about Rs.61,13,180/-. Under these circumstances, the second respondent/defacto complainant gave the complaint against the petitioners and the same was registered in FIR No.5 of 2022 for the offences under Sections 418, 420, 294(b) and 506(i) IPC. To quash the same, the petitioners filed these petitions.

3. The learned counsel appearing for the petitioners/A1 and A2 submitted that first accused and the defacto complainant are the husband and wife and they are having two minor children. The husband harassed the wife cruelly and he suspected her character and driven out from the matrimonial home. Hence, she filed G.W.O.P.No.1014 of 2021 and I.D.O.P.No.868 of 2021. The learned counsel further submitted that as a

husband, the defacto complainant is bound to maintain his children. Since he did not paid any amount, the wife utilized the amount lying in the bank account, hence, Sections 418 and 420 IPC would not apply. He further submitted that the allegation stated in the First Information Report that the petitioners abused the defacto complainant with filthy language through message and phone, would not attract Section 294(b) IPC. As they did not cause annoyance to any one, the offence under Section 294(b) IPC also not made out. With regard to Section 506(i) IPC is concerned, the learned counsel submitted that the offence is also not made out as the alleged conversation took place through phone calls and there was no criminal intimidation as required under Section 506(i) IPC. Hence, all the offences under Section 418, 420, 294(b) and 506(i) IPC are not made out on the allegations stated in the First Information Report. He further submitted that the alleged criminal case against the petitioners is a counter-blast to the divorce petition filed by the petitioner/A1 against the defacto complainant. Therefore, continuation of criminal proceeding would be abuse of process of law and it is liable to be quashed. Hence, the learned counsel prays for quash the impugned proceedings.

4. In support of his arguments, the learned counsel for the petitioners produced the following Judgments of the Hon'ble Supreme Court and this Court.

(i) Pawan Kumar vs. State of Haryana and another [(1996)4 SCC 17]

(ii) Anupriya Pal and others vs. State of Uttar Pradesh [(2019)14 SCC 643]

(iii) S.Baskaran vs. State rep. by the Inspector of Police and another (Crl.O.P.Nos.19179 & 19215 of 2017)

(iv) E.Mohan and others vs. State rep. by the Inspector of Police and another (Crl.O.P.No.24598 of 2017).

(v) S.Ramesh vs. State through the Inspector of Police and another [2018 SCC Online Mad 2563]

(vi) G.Paramasivam vs. the Deputy Commissioner of Police (Crl.O.P(MD)No.1748 of 2013)

(vii) Krishna Lal Chawla and others vs. State of Uttar Pradesh and another [(2021)5 SCC 435 and

(viii) Vijay Kumar Ghal and others vs. State of West Bengal and others [2022 SCC Online SC 344]

5. The learned counsel appearing for the second respondent/defacto complainant submitted that all the allegations stated in the First Information Report are made out prima facie offences against the petitioners, hence, the case has to be investigated. The prayer sought for by the petitioners to quash the First Information Report is not maintainable. The continuation of the criminal proceedings against the petitioners would not be abuse of process of the Court. Hence, the learned counsel pleaded to dismiss these petitions.

6. The learned Government Advocate (criminal side) appearing for the first respondent police submitted that the impugned First Information Report is registered as per the direction of this Court in Crl.O.P(MD)No.3852 of 2022 dated 25.02.2022 and the case is under investigation. He further submitted that since the averments made in the First Information Report has to be investigated, the F.I.R cannot be quashed. Hence, he prays for dismissal of these petitions.

7. I have considered the rival submissions of the learned counsels appearing on either side and perused the materials available on records.

8. A perusal of the records reveals that the second respondent/defacto complainant and the petitioner/A1 are the husband and wife. Since the defacto complainant is working at Saudi Arabia, he engaged a rental house for his wife, parents and children. The second accused is the neighbour of the rental house and the petitioner/A1 is having acquainted with the petitioner/A2. The above said fact is not disputed. In the complaint, it is alleged that on exposing the illegal relationship of the petitioner/A1, she had taken the jewels and transferred the money Rs.36,13,118/- from their joint account to her personal account and converted it as a fixed deposit in the children's name. Further, the petitioner/A1 filed the divorce petition and the GWOP against the second respondent/defacto complainant. According to the defacto complainant, the petitioner/A1 has taken his properties worth about Rs.61,13,180/-.

9. On a reading of the First Information Report, it reveals that there are sufficient allegations for a full fledged investigation. The High Court is guided by the allegations made in the complaint or charge sheet and it has to be seen if these allegations constitute any offence or not and whether resort to criminal proceeding in such circumstances amounts to an abuse of the process of the Court or not.

10. It is to be noted that initially, the complaint given by the defacto complainant was closed by the respondent police. After closing the complaint, the defacto complainant approached this Court by filing Crl.O.P(MD)No.3852 of 2022 to set aside the closure report of the respondent police and to direct the respondent police to investigate the case. In this case, this Court directed the respondent police to investigate the case. The Investigating Agency should have freedom to go into the allegation and resort a conclusion of its own. Further, the First Information Report cannot be quashed since it does not satisfy the parameter laid by the Hon'ble Supreme Court in the case of **State of**

Haryana vs. Ch.BhajanLal (AIR 1992 SC 604). The reliance placed by the learned counsel appearing for the petitioners is not helpful to his case as already, this Court directed the respondent police to investigate the case in Crl.O.P(MD)No.3852 of 2022. Under such circumstances, quashing of the First Information Report does not arise.

11. In view of the above, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

05.08.2022

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

To

- 1.The Inspector of Police,
City Crime Branch,
Tirunelveli City,
(Crime No.5 of 2022)
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD) Nos.7999 & 8219 of 2022

V.SIVAGNANAM, J.

skn

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