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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP (MD) No.8715 of 2019

and

Crl.MP (MD) No.5470 of 2019

- 1.Malarvannan
- 2.Malaiyalam
- 3.Ganeshpandi
- 4.Pasumpon

... Petitioners/Accused Nos.1 to 4

Vs.

- 1.The State through
The Inspector of Police,
Checkanoorani Police Station,
Madurai District.
(Crime No.206 of 2019)

...1st Respondent/Complainant

- 2.Sheeba

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to FIR in Crime No.206 of 2019 dated 24/05/2019 on the file of the 1st respondent and quash the same.

For Petitioners : Mr.N.Ananthapadmanabhan
for M/s.APN Law Associates

For 1st Respondent : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

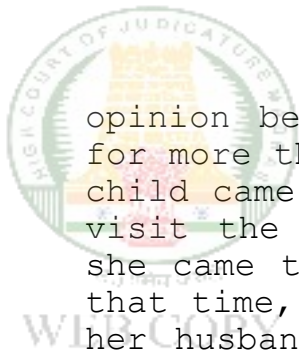
For 2nd Respondent : Mr.N.Anandakumar

O R D E R

The petition has been filed seeking quashment of the case in Crime No.206 of 2019 on the file of the 1st respondent.

2.The de-facto complainant lodged a complaint with the following allegations:-

The marriage between A1 and herself was performed some 10 years back. They begotten a female child. Because of difference of



opinion between the husband and wife, they were living separately for more than two years. A1 sent divorce notice, on 07/02/2019. The child came to her father's house in Chekkaoorani. The child used to visit the house of her father-in-law. On 23/05/2019, on vacation, she came to Madurai. At that time, her child was found missing. At that time, the father told her that on 06/05/2019 at about 7.00 pm, her husband, his brother, mother and father came to the house and asked him to send the child along with them. Even though, he refused, the child was taken by force. So, they went the accused house on 23/05/2019 at about 3.00 pm. When they were prevented from entering into the house and abused in filthy language and criminally intimidated. So based upon the complaint given by the de-facto complainant, a case in Crime No.206 of 2019 for the offences under sections 294(b), 363 and 506(i) IPC has been registered.

3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that the first petitioner is the natural guardian of the child, so the question of abetting, kidnapping the child does not arise at all and the offences under sections 294(b) and 506(i) IPC are also not attracted, even on the basis of the allegation that has been made in the complaint.

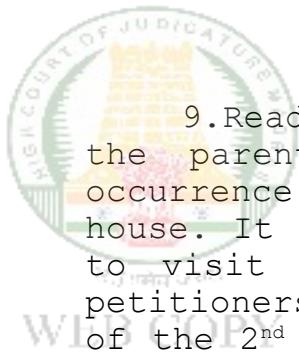
4. Heard both sides.

5. The learned Government Advocate (Criminal side) has circulated a copy of the final report, which was prepared on 21/10/2019. Because of the stay that was ordered by this court, it has not been presented before this court. Even reading of the draft final report, as mentioned earlier, does not attract any of the offences under section 294(b) and 506(i) IPC. Fortunately, there is no charge for the offence under section 363 IPC. Since stay order has been granted by this court, the development can also be taken into account for considering this petition.

6. It is a case of matrimonial dispute between the husband and the wife. Let us first take the filing of the criminal complaint and the subsequent criminal proceedings.

7. It is unfortunate to note that in spite of best efforts, that have been taken by this court to settle the issue between the parties, it did not succeed for one or other reason. So this court did not want to go into the issue at whose fault, the matrimonial dispute occurred between the husband and wife. Suffice to say that now there is no possibility of settlement between the parties.

8. It is equally unfortunate to note that in the melee that occurred between the husband and wife, the child is also involved. It appears that the child has become the victim of the trouble between the husband and wife in which the in laws have been roped.



9. Reading of the FIR shows that the child was in the hands of the parents of the de-facto complainant at the time of the occurrence. The petitioners alleged to have taken the child to the house. It is also admitted by the 2nd respondent that the child used to visit the house of the grand parents, who are some of the petitioners herein. When there is a specific stand taken on the part of the 2nd respondent that there was a cordial relationship between the child and the grand parents, how the second respondent is able to maintain the criminal complaint stating that the child was abducted, kidnapped by force is not understandable. Absolutely, it is nothing, but *mala fide* allegation. So at no stretch of imagination, the offence under section 363 IPC can be attracted. According to the petitioners, her father is the natural guardian. Naturally, he is entitled to have the custody of the child. In stead of taking legal action, it appears that the 2nd respondent has chosen to file this criminal complaint.

10. It is also very unfortunate to note that the first respondent even without resorting to the conciliation before registering the FIR has registered the case. even without making any efforts to settle the issue between the husband and wife.

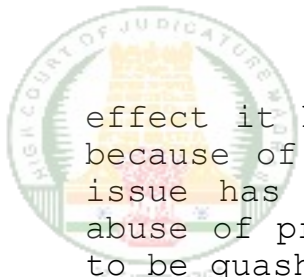
11. Reading of the complaint shows that the complaint was received, on 23/05/2019 at about 4.00 pm. It was registered in CSR No.160 of 2019 and on the next day, the case has been registered, on 24/05/2019, probably on the ground of allegation of criminal intimidation and abused in filthy language are stated. Now coming to the contents in the FIR, this court is of the considered view that absolutely the allegations mentioned in the FIR does not attract the ingredients of the offence under section 506(i) IPC.

12. Section 503 IPC reads as follows:-

"503.Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

13. Reading of the allegations does not even remotely attract the definition of section 503 IPC.

14. Similarly section 204(b) IPC also the nature of the abusive language used by the accused persons is not at all stated. More over, it has been stated that when he entered into the house, at that time, they were abused. So section 294(b) IPC in such circumstances does not attract. Since there is no allegation to the



effect it happened in the public place or hearing in the public or because of the abuse, annoyance was caused to the others. A simple issue has been given a criminal colour, which clearly amounts to abuse of process of court and law. On the sole ground, it is liable to be quashed.

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15. In the result, this criminal original petition is **allowed**. The impugned FIR in Crime No.206 of 2019 is hereby quashed against the petitioners. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Inspector of Police,
Checkanoorani Police Station,
Madurai.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order Made in
Crl.OP (MD)No.8715 of 2019
29.04.2022

PKP/09.06.2022/4P/3C