



Crl.O.P.No.3680 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.04.2023

PRONOUNCED ON : 28.04.2023

CORAM

THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3680 of 2023

and

CrL.M.P.No.2305 of 2023

Xavier Thomas Pari

...

Petitioner

Vs.

1.The State by:

Inspector of Police,

W-22, All Women Police Station,

Mylapore Police Station, Chennai.

2.Rosy Sesuraj

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in connection with Crime No.12 of 2019 dated 22.11.2019 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.K.Suresh Babu

Assisted by Mr.Aadeish J.B.

For Respondents : Mr.S.Santhosh

Government Advocate (Crl.Side) (R1)

: Mr.B.Kumarasamy

for Mr.V.Rajiv Rufus (R2)



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ORDER

This Criminal Original Petition has been filed to call for the records in connection with Crime No.12 of 2019, dated 22.11.2019, on the file of the first respondent and quash the same.

2.The learned counsel for the petitioner submitted that petitioner is an accused in Crime No.12 of 2019 registered for the offences under Sections 498(A), 323 & 506(1) IPC and Section 66 of the Information Technology Act, 2000. This case was registered for the offences said to have taken place in 2016. As a first plea, he submitted that the allegations made in the FIR are totally false. Even assuming that the allegations are true, the offences alleged in the FIR registered are now barred by limitation. There is no possibility for the Court to take cognizance even if the final report is filed for the offences alleged in the FIR. De facto complainant and her daughter, who is the wife of petitioner are in the habit of giving repeated false complaints. The present complaint was given in continuation to the complaints from March 2018 and October 2018. This statement shows that they had given complaints repeatedly in 2018. Multiple complaints, especially, false complaints are violative of Article 21 of the Constitution of India. Petitioner's wife had



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earlier given a complaint against the petitioner before the Kent police, UK.

Finding that there is no sufficient evidence to support the complaint, the Kent police, UK, refused to charge the petitioner. Petitioner and his wife were living separately from the date when the complaint was given at Kent police, UK, by the petitioner's wife. Therefore, there is no question of their living jointly and petitioner committing offences against his wife. Petitioner's mother filed Crl.O.P.No.34594 of 2019 for quashing the proceedings in Crime No.12 of 2019 dated 22.11.2019 and that was allowed by this Court. This Court has observed at several places that the allegations made in the FIR are not possible and probable and therefore, quashed the proceedings. Petitioner is also entitled for the same relief. Therefore the petition.

3.In response, the learned Government Advocate (Crl.Side) submitted that FIR allegations make out a case of commission of cognizable offence by the petitioner and the investigation is pending.

4.The learned counsel for the second respondent submitted that though the criminal proceeding against the petitioner's mother was quashed in



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Crl.O.P.No.34594 of 2019, this Court confirmed the continuation of investigation against the petitioner. Petitioner was indulged in commission of offences of cruelty against the daughter of the defacto complainant. The offence under Section 498(A) IPC is a continuing offence and therefore, there is no question of this case being hit by limitation under Section 468 Cr.P.C. Petitioner uploaded obscene photograph of the defacto complainant's daughter. In the light of the specific allegations made against the petitioner, it is necessary that the allegations must be properly investigated and final report to be filed.

5.Considered the rivals submissions and perused the records.

6.The gist of the FIR allegations are that marriage between petitioner and the defacto complainant's daughter was celebrated on 10.07.2016. This is a second marriage to the defacto complainant's daughter. After the marriage, defacto complainant's daughter came to know that petitioner's eyesight was poor and he could not be able to see properly at night. She has to clean the toilet at midnight as the petitioner made it dirty due to his eyesight issue.



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Petitioner's family threatened defacto complainant's daughter not to tell this to

anyone. Defacto complainant's daughter is permanently employed in UK and

she took care of majority of the expenses. On her effort, petitioner went to

UK through the sponsorship given by the defacto complainant's daughter.

Defacto complainant's daughter found that petitioner had physical

relationship with many girls. Her daughter was physically and mentally

tortured by him and his family members. During 2016, marriage was

registered for visa purpose. After that, defacto complainant's daughter went

to petitioner's house, where, she was locked in the house by keeping the dog

outside. Petitioner misbehaved with the defacto complainant's daughter and

he took video. Then, they threatened the defacto complainant's daughter not to

tell this to anyone. Defacto complainant's daughter made a complaint to the

local police in UK. But they could not pursue the complaint for the reason

that the incident had happened in India. In January 2017, when the defacto

complainant visited the petitioner's house, she was emotionally harassed and

insulted. Then they stopped communicating with the defacto complainant.

Petitioner made a threat to desert defacto complainant's daughter and marry a

white girl. He even made a threat to burn the defect to complainant's daughter

to ashes. In December 2017, defacto complainant's husband's brother went to



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the house of the accused and asked them to stop harassing the defacto complainant's daughter and that was received with cold response. Petitioner had taken money from the joint account and opened account online without the consent of the defacto complainant's daughter. Petitioner demanded Rs.10lakhs for the purpose of divorce. Petitioner is always after the property of the defacto complainant. There is a threat to the life of the defacto complainant's daughter. In the said circumstances, the complaint was given. It is seen from the complaint allegations that most of the incidents made in the complaint had happened in UK. There are some incidents which said to have happened in India as well.

7.In support of his submissions, the learned counsel for the petitioner relied on the following judgments for the following propositions.

1.The judgment of Hon'ble Supreme Court in ***Amritlal v. Shatilal Soni & Others, 2022 Livelaw (SC) 248*** has been relied on for the proposition that for the purpose of computing the period of limitation u/S. 468 CrPC, the relevant date is the date of filing the complaint or date of institution of prosecution and not the date on which the magistrate takes cognizance of offence.



2. In the case of ***Sri Karan Menon v. State of Karnataka, Law Finder Doc ID #2012573*** Hon'ble Karnataka High Court has quashed the FIR on the ground of delay in lodging the complaint and even otherwise no plausible explanation has been given for the delay.

3. The judgment of Hon'ble Supreme Court in ***Krishna Lal Chawla & Others v. State of U.P & Another, Law Finder Doc ID # 1816686*** has been relied on for the proposition that multiple complaints by the same party against the same person with respect to the same incident, whether cognizable or private complaint, not only impermissible but also violative of Article 21 of Constitution of India.

4. The judgment of Hon'ble Apex Court in ***Thota Venkatesewarlu v. State of A.P Tr. Principal Section & Another, Law Finder Doc ID #268353*** has been relied on for the proposition that offence which has been committed by an Indian Citizen outside India would be covered by S. 188 CrPC and for such offences to be tried in India, previous sanction of the Central Government is mandatory.

5. The case in ***Swapnil & Others v. State of Madhya Pradesh, Law Finder Doc ID # 554018*** has been relied upon to show that the Supreme Court has quashed the FIR u/S. 498A & 506 on the grounds that there is no question of domestic violence as the wife has been living separately;



allegations are vague and bereft of details; veiled object behind lame prosecution is to harass petitioner.

6.The judgment of Hon'ble Supreme Court in ***Mahendra Singh Dhoni v. Yerraguntla Shyamsundar, CDJ 2017 SC 455*** has been relied on for the proposition that once the complaint is quashed in entirety because of lack of allegations against the accused, the same benefit has to be extended to the co-accused.

8.Petitioner produced a copy of the refused charge letter given by the Kent police on the basis of the complaint given by the defacto complainant's daughter. Refused charge letter was given for the reason that the evidence available was insufficient. However, it was also recorded that if further evidence were to become available, the decision to refuse the charge may be reconsidered. There are several allegations made in the FIR, especially, against the petitioner stating that he took video when he misbehaved with her. He physically and mentally abused her, made death threats, took money from her account without her permission, demanded Rs.10lakhs for the purpose of divorce etc. There is a specific allegation that petitioner made a death threat to burn the defacto complainant's daughter into ashes. Cruelty stated to have started from Chennai and continued to UK.



9. The legal position with regard to quashing of FIR is very well settled in the case of *State of Haryana and others Vs. Bhajan Lal and others* reported in *1992 Supp(1) SCC 335*. The relevant portion of the judgment is extracted hereunder:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.



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(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the



proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

10.The previous sanction contemplated under Section 188 Cr.P.C. is required only for enquiry or trial. In the case before hand, the offences are committed in India and out of India. Therefore, there is no question of



considering the necessity of sanction at this stage. It is pertinent to extract the

relevant portion of the order in ***Thota Venkateswarlu Vs. State of A.P.(S.C)***

10.The language of S.188 Criminal Procedure Code is quite clear that when an offence is committed outside India by a citizen of India, he may be dealt with in respect of such offence as if they had been committed in India. The proviso, however, indicates that such offences could be inquired into or tried only after having obtained the previous sanction of Central Government. AS mentioned hereinbefore in Ajay Aggarwal's case (supra), it was held that sanction under Section 188 Criminal Procedure Code is not a condition precedent for taking cognizance of an offense and if need be, could be obtained before the trial begins. Even in his concurring judgement, R.M. Sahai,J., observed as follows:-

“29. Language of the section is plain and simple. It operates where an offence committed by a citizen of India outside the country. Requirements are, therefore, one commission of an offence; Second by an Indian citizen; and third that it should have been committed outside the country.”



Although the decision in Ajay Aggarwal's case (supra) was rendered in the background of a conspiracy alleged to have been hatched by the accused, the ratio of the decision is confined to what has been observed hereinabove in the interpretation of Section 188 Criminal Procedure Code. The proviso of Section 188, which has been extracted hereinbefore, is a fetter on the powers of the investigating authority to inquire into or try any offense mentioned in the earlier part of the Section, except with the previous sanction of the Central Government. The fetters, however are imposed only when the stage of trial is reached, which clearly indicates that no sanction in terms of Section 188 is required till commencement of the trial. It is only after the decision to try the offender in Inida was felt necessary that the previous sanction of the Central Government would be required before the trial could commence.

11. Accordingly, upto the stage of taking cognizance, no previous sanction would be required from the Central Government in terms of the proviso to Section 188 of Criminal Procedure Code. However, the trial cannot proceed beyond the cognizance stage without the previous sanction of the Central Government.

11. In the light of the specific allegations made against the petitioner, this Court is of the view that the allegations make out commission of



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cognizable offences by the petitioner against the defacto complainant and her daughter. The allegations have to be necessarily investigated. The quash petition filed by the petitioner's mother though allowed, this Court also permitted the continuation of investigation against the petitioner. The offence under Section 498A IPC is a continuing offence and there is no question of limitation barring taking cognizance of the offence, if final report is filed.

12.Thus, this Court is of the view that the FIR allegations must be necessarily investigated for the respondent police to form an opinion whether to file a positive or negative final report.

13.In this view of the matter, this Court dismisses this Criminal Original Petition. Consequently, connected miscellaneous petition is also closed.

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

28.04.2023



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To:

- 1.The Inspector of Police,
W-22, All Women Police Station,
Mylapore Police Station, Chennai.
- 2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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Pre-delivery Order in
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and
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