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CrI.O.P.No.4517 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.4517 of 2022

and

CrI.M.P.No.2311 of 2022

Sivasakthiraj
S/o.Ayyandurai

.. Petitioner

Vs.

1.State represented by
The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
Crime No.12 of 2021

2.Kowsalya,
D/o.Jayaraman

.. Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records and quash the proceedings as against the petitioner in Crime No.12 of 2021 pending on the file of first respondent.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondents : Mr.A.Gopinath
Government Advocate [CrI.side] [R1]
No appearance [R2]



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.12 of 2021 pending on the file of first respondent.

2. The case of the prosecution is that the *de facto* complainant got acquainted with A1, who is a doctor. They started having physical intimacy. Thereafter, A1 is said to have stopped contacting the *de facto* complainant. Under such circumstances, on 27.09.2021, the *de facto* complainant is said to have visited the house of A1 and at that point of time, the *de facto* complainant was abused by A1 and the petitioner (A2), who is the elder brother and they also intimidated her when she insisted for marrying A1. Based on this complaint, a First Information Report came to be registered by the first respondent in Crime No.12 of 2021 against four named accused persons for offences u/s.294(b), 323, 417 and 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.



3. Heard Mr.M.Mohamed Riyaz, learned counsel for petitioner and Mr.A.Gopinath, learned Government Advocate [Crl.side] appearing on behalf of first respondent. Though notice has been served on the second respondent and her name has also been printed in the cause list, there is no representation on the side of the second respondent.

4. When the matter was taken up for hearing, learned Government Advocate [Crl.side] appearing on behalf of the first respondent submitted that during the pendency of this petition, investigation was completed and a final report was filed before the Judicial Magistrate II, Mettur and the same was taken on file in C.C.No.220 of 2023.

5. When this Criminal Original Petition was entertained, this Court, by an interim order dated 01.03.2022, stayed the investigation in Crime No.12 of 2021. In spite of the same, the first respondent has proceeded further to complete the investigation and file a final report before the Court below. Such final report will not come in the way of the petitioner agitating this petition since it has been filed in the teeth of an interim order that was passed by this Court. In view of the same, this Court will consider this



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petition filed by A2 seeking for quashing the First Information Report against him.

6. On carefully going through the complaint, it is seen that the *de facto* complainant had an affair with A1 and both of them seem to have regularly had physical intercourse. According to the *de facto* complainant, A1 cheated her by not marrying her and had physical intercourse on a false promise that he will marry. The petitioner is the elder brother of A1 and he has been roped in this case on the ground that he also joined A1 and abused and threatened the *de facto* complainant.

7. The charge against the petitioner is for offences u/s.323 and 506(ii) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

8. To establish the offence of criminal intimidation, a mere oral threat is not enough. There must be evidence to show that the threat is a real one and it should not be an empty threat. Law on this issue has been settled by the Apex Court in ***Vikram Johar v. State of Uttar Pradesh and another***



[2019 (4) SCC (Crl.) 795]. Insofar as the charge u/s.323 IPC is concerned, the complaint read as a whole, does not anyway implicate the petitioner for causing hurt to the *de facto* complainant. The ingredients u/s.319 IPC has not been satisfied.

9. Insofar offence u/s.4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, is concerned, even according to the *de facto* complainant, the entire incident had taken place at the house of the accused persons and not in a public place and hence, the offence u/s.4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, is also not made out against the petitioner.

10. In the light of the above discussion, the continuation of the criminal proceedings as against the petitioner [A2] will amount to abuse of process of law which requires the interference of this Court u/s.482 Cr.P.C.

11. Accordingly, the proceedings in Crime No.12 of 2021 pending on the file of first respondent is hereby quashed insofar as the petitioner herein is concerned. This shall be brought to the notice of the Court below where



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N.ANAND VENKATESH, J

gm

C.C.No.220 of 2023 is pending and the Court below shall delete the name of the petitioner from the proceedings.

In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

01.08.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
gm

To

- 1.The Judicial Magistrate II,
Mettur.
- 2.The Inspector of Police,
All Women Police Station,
Mettur, Salem District.
- 3.The Public Prosecutor
Madras High Court, Madras.

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