

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.23055 of 2019

and

Crl.M.P.No.12039 of 2019

J.Kannadasan

... Petitioner

Vs.

1. The State by Inspector of Police,
W.15 All Women Police, Royapuram,
Chennai - 600013.

2.K.Nithya

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and to quash the final report C.C.No.1862/2018 on the file of the XVIth Metropolitan Magistrate at George Town at Chennai pending the trial.

For Petitioner : Mr.D.Charlesmuthushanthan

For Respondents : A.Damodaran, Additional Public
Prosecutor [R.1]

: Notice served, no appearance [R.2]

ORDER

This petition is to quash the charge sheet in CC.No.1862/2018 on the file of the XVIth Metropolitan Magistrate at George Town at Chennai for the offences under Sections 417, 498(A), and 506(1) of IPC.

2. It is alleged in the final report that the petitioner and the defacto complainant got married on 13.04.2009 and the petitioner had demanded dowry of a sum of Rs.1,50,000/- from the defacto complainant. It is further alleged that on 08.11.2017, she received a unanimous call from a third party saying that the petitioner was married to another lady and has two sons out of the said marriage. Thereafter, when the defacto complainant contacted the petitioner, he met her on 12.11.2017 and in the presence of certain third parties, the petitioner agreed to live with the defacto complainant and had dinner on the same day with the defacto complainant. Thereafter, on 13.11.2017 at about 4.30 am, the petitioner abandoned the defacto complainant and left the house and when contacted later he had threatened the defacto complainant with dire consequences.

3. The learned counsel for the petitioner would submit that the petitioner had filed a petition for divorce and a decree of divorce was granted on 19.09.2011. The defacto complainant remained ex parte in the said proceedings. Thereafter, the petitioner was never in touch with the defacto complainant. Further, even prior to the filing of the divorce petition, he had filed a complaint against the defacto complainant before W.6, All Women Police Station, Ayanavaram on 31.03.2010.

4. The learned counsel for the petitioner would further submit that the petitioner after the divorce got married with another lady and out of the said wedlock two children were born. The defacto complainant was aggrieved by the said fact and suppressing the fact of divorce and other earlier proceedings has filed the complaint which has resulted in the impugned final report. In fact, even prior to the complaint on 18.11.2017, she had given a complaint on 13.11.2017 which was withdrawn by her. The entire complaint is false and has been made to wreak vengeance on the petitioner.

5. Though notice was served on the 2nd respondent and her name was printed, none has entered appearance for the 2nd respondent.

6. The learned Additional Public Prosecutor submitted that the final report contains all the allegations and discloses the offenses alleged. The petitioner had cheated the defacto complainant. He had promised to live with her and abandoned her without informing her. Since there are allegations in the final report, the matter has to be adjudicated only in a trial and prayed for the dismissal of the quash petition.

7. This Court has perused the impugned final report.

8. The defacto complainant herself had admitted that the marriage between her and the petitioner got dissolved by way of a decree of divorce. The decree and judgement in IDOP.No.1 of 2011 dated 19.09.2011 reveals that the Court had passed a decree of divorce on the petition filed by the petitioner. This decree of divorce has not been challenged or set aside so far. In view of the same, the petitioner and the defacto complainant are no longer husband and wife and in such circumstances, the offence under

section 498(A) would not be made out.

9. As regards the offence under Section 417 IPC, it is alleged that the petitioner promised to live with the defacto complainant 6 years after the decree of divorce and failed to keep up the promise. This allegation on the face of it appears to be improbable. In any event, the allegation even if accepted to be true would not constitute the offence of cheating within the meaning of Section 415 IPC. As regards the alleged threat, no details have been furnished and a vague allegation about the threat has been made. In order to constitute an offence of criminal intimidation, the act of the accused must constitute a real threat. There is no such allegation in the impugned final report.

10. On an overall reading of the final report, this Court is of the view that the complaint filed by the defacto complainant which is resulted in the impugned final report is only to wreak vengeance on the petitioner.

11. For all the above reasons, the impugned charge sheet is quashed and the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

13.03.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

1. The Inspector of Police,
W.15 All Women Police, Royapuram,
Chennai - 600013.
2. XVIth Metropolitan Magistrate
at George Town at Chennai.

SUNDER MOHAN. J,

shr

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