IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 3.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 10.11.2022	Orders Pronounced On 3.02.2023

Crl.O.P.No.28949 of 2018
and
Crl.MP.No.16917 of 2018

Dr.R.Ramya ... Petitioner

Vs.

1.State by:
The Inspector of Police,
Central Crime Branch-I,
Chennai.
[Crime No.12 of 2017]

2.Noramary ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.5001 of 2018 on the file of the learned Metropolitan Magistrate [CCB & CBCID], Allikulam, Chennai and quash the same.

For Petitioner : Mrs.R.Aparna

For Respondents
R1 : Mr.L.Baskaran
Government Advocate [Crl. Side]
R2 : Mrs.M.Vijayalakshmi
Legal Aid Counsel

ORDER

The petitioner/A3 in C.C.No.5001 of 2018 on the file of the learned Metropolitan Magistrate [CCB & CBCID], Allikulam, Chennai facing trial for the offence under Sections 406, 420, 120(B) and 506(i) IPC filed this quash petition.

2.The case against the petitioner is that the petitioner is the wife of A1/prime accused and the defacto complainant got introduced to A1 through A2 in the year 2011. A2 projected A1 as a person who is into several business, A1 is an Advocate by profession and further, he would participate in the bank auction, bid for the properties and later sell them at a higher rate making some profit. A2 projected that if investments are made with A1, there is a possibility of getting profit of around 4.5% to 6 %. Thereafter, A1 regularly contacted the defacto complainant who collected money from her husband's retirement benefits and also from her daughter who pledged her jewels, thereby the defacto complainant gave Rs.29,50,000/- to A1 in his office at Arcot Road, Kodambakkam, Chennai. At that time, A2 to A4 were present, A1 issued several cheques for the money collected from the defacto complainant and when those cheques were presented for encashment, the same got dishonoured. Thereafter, it was found that A1 indulged in similar activities and cheated several persons. Hence, she lodged a complaint and a case in Crime No.12 of 2017 for the offence under Sections 406, 420 and 120B IPC registered. On completion of investigation, charge sheet filed against five persons for the offence under Sections 406, 420, 120-B and 506(i) IPC listing 15 witnesses and several documents.

3.The contention of the learned counsel for the petitioner/A3 is that except being a divorced wife of A1, she got nothing to do with the A1's business transaction or in any of his activities. She would submit that the petitioner is a Doctor by profession, marriage between the petitioner and A1 was solemnized on 03.09.2000 at Cuddalore. After the marriage, there was demand of dowry and the petitioner/A3 was tortured by A1 and his family members. The petitioner came to know that A1 was not of a decent character, used to borrow money from third parties for exorbitant interest, risk his speculative business, incur heavy loss and even the parents of A1 driven him out from his parental house due to his illegal and immoral activities and lavish expenditure. She would further submit that the persons who gave money to A1 started approaching the petitioner to repay the loans since she is a practicing Doctor having decent income. Further, the petitioner was put to mental agony because of the torture given by the third parties, they went to the extent of threatening by kidnapping the petitioner's minor daughter, by name Pooja Vijay. Unable to withstand any further, the petitioner left the matrimonial home along with her minor daughter, later she filed a petition for divorce in H.M.O.P.No.21 of 2013 before the learned Principal Sub Judge, Cuddalore and thereafter the marriage got dissolved on 25.03.2014. Thereafter, A1 continued his harassment and torture in the guise of visiting the minor daughter, hence the petitioner filed a petition in G.O.P.No.3 of 2016 before the learned Principal District Judge, Cuddalore and the learned Judge by order dated 05.08.2016 declared the petitioner as a

Guardian of the minor daughter Pooja Vijay. Hence, from the first week of February 2011 onwards, there was no relationship between the petitioner and A1.

4.The learned counsel for the petitioner further submitted that in the charge sheet 15 witnesses were listed. L.W.1 is the defacto complainant, L.W.5 and L.W.6 are the husband and daughter of the defacto complainant. L.W.2 another person who handed over money of L.W.7, his brother for the purpose of investment, L.W.3 is yet another person who invested money and L.W.4 on the recommendation of A5 handed over money to A1. All these witnesses who handed over money clearly state that they gave money to A1 for the purpose of investment on the recommendation of either A2 or A5. As regards this petitioner, except for a stray reference by the defacto complainant, her husband and daughter that she was also present when they handed over money to A1 in his office, there was no other overt act against her. This was obviously made only for the purpose of implicating the petitioner. The petitioner is living separately from the year 2011 onwards which was confirmed in the matrimonial and allied proceedings of the

Courts below. The case of the witnesses is that money was handed over to A1 in the year 2012, admittedly during this period, the petitioner was separated from her husband/A1 and living with her parents in Cuddalore. L.W.8 and L.W.9 are the witnesses for the arrest and confession of A4, L.W.10 and L.W.11 are the witnesses for the arrest and confession of A1. The other witnesses L.W.12 and L.W.13 are the Managers of Axis Bank of Nungambakkam and Kodambakkam Branch and L.W.14 is the Branch Manager of Kotak Mahindra Bank, Kodambakkam Branch. All these witnesses state about the account particulars and bank transactions of A1. She further submitted that there is no iota of evidence in any form against the petitioner except for the stray reference as stated above. Hence, she prays for quashing of the case.

5.The learned Government Advocate [Crl. Side] appearing for the first respondent submits that on the complaint of the defacto complainant who is a part time employee of Postal Department, a case came to be registered. In the complaint, the defacto complainant given various dates on which she was lured by A2 who canvassed on behalf of A1. The defacto complainant handed over the hard earned money and the retirement benefits of L.W.5/her husband who was also a postal employee and the money from her daughter/L.W.6 who arranged by pledging her jewels. A1 on receipt of money, given cheques to the defacto complainant and the cheques got dishonoured. A1 for the purpose of luring money was running a business along with A4 in the name of TREND SETTERS and projecting that he was involved in the purchase of auction properties, re-sell the same and thereby, making huge profit. Thus, he cheated L.W.1 to L.W.7, all these witnesses have categorically stated about the entrustment of money, cheating and misappropriation committed by all accused. He further submitted that during investigation, A1 and A4 were arrested and they admitted the offence committed by them. From the confession of A1, laptop, five mobile phones and other incriminating materials recovered from the residence of A1. Further, the Bank witnesses examined, documents were collected and thereafter, charge sheet filed. He further submitted that the petitioner's contention is factual in nature which ought to be decided during trial and not in this quash petition. Hence, he strongly opposes this petition.

6.The learned counsel for the second respondent/defacto complainant submitted that in this case the petitioner's contention is that she is the divorced wife of A1, A2 canvassed on behalf of A1 with the defacto complainant from the year 2011 and the first payment was made on 25.01.2012. Thereafter, regular payments were made on 31.01.2013, 07.02.2012, 11.05.2012 and 15.05.2012. When the money was handed over to A1, the other accused, namely, A2 to A5 were present, though cheques were issued by A1 for receipt of money, the same got dishonoured. She further submitted that the hard earned money of the defacto complainant who is a part time employee in the Postal Department, the retirement benefits of L.W.5/her husband and the money arranged by L.W.6/her daughter by pledging her jewels to the tune of Rs.29,50,000/- was handed over to A1 in the presence of other accused. She would further submit that the petitioner's contention that she got separated from A1/her husband, obtained divorce and also custody of her daughter is a matter of fact. From the divorce petition, it is seen that the petition was filed only in the year 2013 and divorce was obtained on 25.03.2014, likewise Guardian O.P. was filed in the year 2016, hence to escape from the misdeeds committed by her husband now projects a case as though she is a divorced wife, got nothing to do with the business transactions of A1. She further submitted that the petitioner failed to give any such explanation and produced any document to the Investigating Officer during investigation, now belatedly as an after thought making such defence. Hence, she prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials, it is seen that the marriage between petitioner and A1 was solemnized on 03.09.2000, out of their wedlock a girl child was born to them on 24.06.2002, the petitioner is a Doctor by profession, A1 is an Advocate by profession who along with his classmate/A4 running a business in the name TREND SETTERS, collecting money from others with a promise to invest the same in the speculative business and was leading a luxurious life. The petitioner being a Doctor being harassed, facing unpleasant situation due to the conduct and act of A1. Hence, she got separated from matrimonial life in the year 2011, living with her minor daughter in Cuddalore along with her parents. Even the parents of A1 have disowned him, such is the conduct of A1. From the judgments made in HM.O.P.No.21 of 2013 and G.O.P.No.3 of 2016, it is seen that both the Courts observed and recorded that the petitioner left the matrimonial home in the year 2011 and from then on, she was living separately with her daughter in Cuddalore. A1 who is running his business in Kodambakkam, Chennai met L.W.1 to L.W.7 and received money from them. The other accused were connected with A1 in one way or other and as regards this petitioner, except for being the wife of A1, she had no role in the business transactions of other accused. Admittedly, from the year 2011 the petitioner was living separately and the first payment was made only in the year 2012. A stray reference made by L.W.1, L.W.5 and L.W.6 that the petitioner was present at the time of handing over the money cannot be proper, for the reason that from the year 2011, the petitioner was living separately in Cuddalore along with her minor daughter which is recorded in the matrimonial proceedings. Apart from this, there is no iota of materials in any form against the petitioner. In view of the same, this Court finds no reason in continuance of the proceedings against the petitioner, which is nothing but abuse of process of law.

8.Therefore, the case and proceedings in C.C.No.5001 of 2018 against the petitioner/Accused No.3 alone pending on the file of the learned Metropolitan Magistrate [CCB & CBCID], Allikulam, Chennai is hereby quashed. The petition is allowed, accordingly. Consequently, the connected miscellaneous petition is closed.

9.This Court appreciates Mrs.M.Vijayalakshmi, appointed as legal aid counsel for the second respondent/defacto complainant in thorough preparation, effectively defending the second respondent and rendering sincere efforts in this regard.

3.02.2023

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

1.The Inspector of Police,
Central Crime Branch-I, Chennai.

2.The Metropolitan Magistrate [CCB & CBCID],
Allikulam, Chennai.

M.NIRMAL KUMAR, J.

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Pre-delivery order made in

Crl.O.P.No.28949 of 2018

3.02.2023