



Crl.O.P(MD).No.16742 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 17.07.2023

Delivered On : 14.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.16742 of 2021

and

Crl.M.P.(MD)No.9053 of 2021

Vellaichamy

...Petitioner

Vs

- 1.The Sub Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.
- 2.The Inspector of Police,
Watrap Police Station,
Watrap Circle,
Virudhunagar District.
- 3.Kandhammal

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in P.R.C.No.22 of 2021 dated 29.09.2021 on the file of the learned Judicial Magistrate No.I, Srivilliputtur and quash the same as illegal, abuse of process of Court

For Petitioner	: Mr.A.Natarajan, Senior Counsel For Ms.A.Madhumathi
For Respondents 1 and 2	: Mr.M.Sakthi Kumar Government Advocate (Crl. Side)
For 3 rd Respondent	: Mr.C.Christopher



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ORDER

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This petition is filed to quash the charge sheet in P.R.C.No.22 of 2021 dated 29.09.2021, on the file of the learned Judicial Magistrate No.I, Srivilliputtur.

2.According to the petitioner, the third respondent, defacto complainant filed a complaint before the first respondent that on 16.08.2013, her daughter Rajeshwari committed suicide because of the depression. The petitioner filed a civil suit for partition in O.S.No.273 of 2011 on the file of the District Munsif Court, Srivilliputtur. In fact, the said Rajeshwari is not a party in the suit. The third respondent defacto complainant further alleged that she is the third wife of the petitioner's father and alleged to have got married to K.R.Muthusamy on 04.11.1976 after the death of the petitioner's mother late Ayyammal. Further it was alleged that when the third respondent and deceased Rajeshwari came to attend the Court hearing, the petitioner alleged to have stated that 'வாய்தாவிற்று வாதியும் இராஜேஸ்வரியும் போகும் போதும் வரும் போதும் எதிரியானவரி இராஜேஸ்வரியை பார்த்து இந்த சொத்தை நீ மட்டும் அனுபவிக்கனும் என்று நினைப்பதற்கு செத்தான்ன என்று பேசி வந்துள்ளார்'. Because of such alleged statement made by the petitioner, the deceased said to have consume poison on 16.08.2013 at 10.00 p.m., and died on 22.08.2013.



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3. In the FIR in Crime No.127 of 2018 dated 22.08.2013, there was no allegation against the petitioner except to say that the petitioner has filed a suit for partition. Initially the case was registered under Section 174 of Cr.P.C. The first respondent has filed a final report without conducting proper investigation and application of law. In fact the petitioner has not seen Rajeshwari. The witnesses who are all the members of family, conspired to fix this petitioner by giving false statement and concocted story with fabricated documents. The first respondent failed to consider the vital fact that the petitioner has not filed the suit against the deceased and therefore, the case projected by the first respondent is abuse of process of Court. In fact the death certificate of mother of this petitioner was fabricated by filing false affidavit before the Court alleging that the petitioner's mother died as if on 26.08.1976. In fact the petitioner's mother died only on 26.08.1984. There is no material evidence to show what happened between 16.08.2013 to 22.08.2013, since the deceased was in hospital during those days. Therefore, the said case projected by the respondents is clearly abuse of process of law. Hence, the charge sheet is liable to be quashed.

4. The learned counsel appearing for the petitioner would contend that the third respondent herein has lodged a complaint before the first respondent



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alleging that the third respondent is the third wife of father of the petitioner and thereafter, the father of the petitioner purchased the property in the name of the third respondent and her children. The husband of the third respondent died 2 ½ years back. After his death, the daughter of the third respondent was married to the third respondent brother's son Radhakrishnan. After the demise of third respondent's husband, the petitioner who is son of the third respondent husband's first wife i.e., the petitioner herien filed a suit before the District Munsif Court, Srivilliputtur. For that suit, the third respondent and her daughter used to attend the Court hearing. Because of that suit, her daughter got mental agony. While so, the third respondent gone to her daughter's home at Kataneri.

5.On that time her daughter due to mental agony, on 16.08.2013 at about 10.00 p.m., consumed poison (துத்தம்) and taken vomit. On seeing the same, immediately she was taken to Watrap Government Hospital and first aid was given there. Thereafter, she was referred to Government Hospital, Virudhunagar for further treatment and thereafter, she was taken from Virudhunagar Government Hospital to Rajaji Government Hospital where she died during treatment on 22.08.2013. Hence, she requested to take necessary action. Based on that complaint, FIR has been registered in Crime No.27 of 2013 before the first respondent under Section 174 Cr.P.C.



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6. Therefore, according to the complaint and FIR, there is no reference about the alleged inducement made by the petitioner. Thereafter Section was altered and filed final report alleging that the petitioner threatened the deceased by saying 'வாய்தாவிற்று வாதியும் இராஜேஸ்வரியும் போகும் போதும் வரும் போதும் எதிரியானவர் இராஜேஸ்வரியை பார்த்து இந்த சொத்தை நீ மட்டும் அனுபவிக்கனும் என்று நினைப்பதற்கு செத்தான்ன என்று பேசி வந்துள்ளார்'. Thereby, due to the above inducement the said Rajeshwari committed suicide. No specific date was stated in the final report as to when the petitioner/accused induced the deceased to commit suicide and even as per final report, there is no ingredient to constitute the offence under Section 306 of IPC. After the death of deceased, the third respondent and her family members concocted a story and after thought, they have given statement in order to implead the petitioner in this crime. Further even according to the prosecution, on 16.08.2013, the deceased was taken to Watrap Government Hospital and thereafter, to Virudhunagar Government Hospital and thereafter she was taken to Madurai Rajaji Government Hospital. No records were found in the above said hospitals as to what happened to the deceased. Therefore, the investigation clearly shows that the proper investigation was done and it is clear abuse of process of law. After filing this petition, the case has been committed to Principal Sessions Court, Virudhunagar and then made



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over Additional Mahila Court, Fast Track, Srivilliputhur and the same is pending in S.C.No.195 of 2022. Hence, the aforesaid case is liable to be quashed.

7.The learned Government Advocate appearing for the respondents 1 and 2 would contend that the third respondent has given complaint before the first respondent and the first respondent registered in FIR in Crime No.127 of 2013 and thereafter, the Investigating Officer investigated the case and on investigation, *prima facie* materials are available to constitute the offence as against this petitioner and thereafter, filed final report. The witnesses also categorically given statement by implicating the accused during the course of investigation, thereby the police have filed the final report.

8.The learned counsel appearing for the third respondent would contend that the petitioner is son of the third respondent's husband through first wife and he filed a suit as against the third respondent and the same is pending before Srivilliputhur Court. The husband of third respondent purchased the property in the name of third respondent and her children. The petitioner has filed a civil suit before the District Munsif Court, Srivilliputtur in O.S.No.273 of 2011 as against the third respondent. For the aforesaid case, the third respondent along with her daughter deceased Rajeshwari used to attend the Court for hearings. At that time, the petitioner scolded the deceased by saying

that 'வாய்தாவிற்று வாதியும் இராஜேஸ்வரியும் போகும் போதும் வரும் போதும்



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எதிரியானவர் இராஜேஸ்வரியை பார்த்து இந்த சொத்தை நீ மட்டும்

அனுபவிக்கனும் என்று நினைப்பதற்கு செத்தான்ன என்று பேசி வந்துள்ளார்'.

Thereby, the deceased consumed poison and thereafter, died in the hospital.

Therefore, the third respondent gave a complaint before the first respondent and the Police also registered FIR and then investigated the case and filed final report. Since *prima facie* materials available as against the petitioner, he has to face the trial and thereby, at this stage, the petitioner is not entitled for relief before this Court.

9.This Court heard both sides and perused the materials available on records.

10.On perusal of the records, it is observed that it is admitted that there is civil dispute pending between the petitioner and the third respondent and deceased Rajeshwari is not party to the said suit. There is no contravention that the deceased Rajeshwari is daughter of the third respondent and she consumed poison in her in laws' house on 16.08.2013 and thereafter, she was taken to Watrap Government Hospital where first aid was given and thereafter, she was taken to Virudhunagar Government Hospital and thereafter, she was taken to Madurai Rajaji Hospital, where she died on 22.08.2013. According to the complaint, the deceased Rajeshwari consumed poison and no reason was



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stated for consuming poison. The specific word was mentioned in the complaint as that there is no demand of dowry and her daughter and son-in-law were living happily. In the said complaint and FIR, there is no single word mentioned about the petitioner and inducement caused by the petitioner to the deceased. After consuming poison by the deceased, she was taken to Watrap hospital, where no records to establish that she was consumed poison due to the threats made by the petitioner. Likewise in other hospitals also, no statement of deceased was recorded. From the date of consuming poison, on 16.08.2013 to 22.08.2013, neither the third respondent nor the relations of the deceased have not spoken anything about the alleged inducement made by the petitioner to the deceased for committing suicide. The main allegation against the petitioner is that while attending the Court hearing, the petitioner uttered the words that 'வாய்தாவிற்கு வாதியும் இராஜேஸ்வரியும் போகும் போதும் வரும் போதும் எதிரியானவர் இராஜேஸ்வரியை பார்த்து இந்த சொத்தை நீ மட்டும் அனுபவிக்கனும் என்று நினைப்பதற்கு செத்தான்ன என்று பேசி வந்துள்ளார்'. There is no mention about date of alleged hearing of case and the alleged inducement made by the petitioner either by the third respondent or others. Further there is no materials to show as to whether the deceased was attending the Court hearing, when she was not made as a party to this suit. Even according to the complaint, the deceased was residing with her in-laws on the date of consuming poison.



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11. Moreover, in the civil suit in O.S.No.273 of 2011, the deceased Rajeshwari is not at all party. While so there is no scope to attend the hearing and no scope for alleged occurrence. During the treatment, no statement of the deceased was recorded either by the police or by the doctors. Had the deceased consumed poison due to the threats made by the petitioner, she would have stated the same before the doctors and no any statement was recorded till her death. Had the deceased consumed poison due to threats made by the petitioner, then the family members would have given complaint immediately after consuming poison. But none of the family members had given complaint immediately after consuming poison by the deceased. Even according to the complaint, which was given after death no single word mentioning about the petitioner herein and the threats made by him. Thereafter, only the third respondent and family members roped the petitioner that he scolded the deceased. Even assuming that, the petitioner scolded the deceased that itself will not constitute any offence under Section 306 of IPC. The allegations are bald allegations and no specific date, time and place mentioned. The civil suit is pending from the year 2011 and what necessity arisen to commit suicide in the year 2013 after two years from the date of the suit that too she was not a party to the suit. Even according to the final report, the Investigating Officer in the final report stated that 'மார்க்கெட்டில் கண்ட



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எதிரியானவர் வாதியின் கணவர் இறந்த பின்பு வாதி மற்றும் வாதியின் வாரிசான இராஜேஸ்வரியின் பெயருக்கு வாங்கப்பட்ட சொத்தில் பங்கு கேட்டு திருவில்லிபுத்தூர் முனிசிப்கோர்ட்டில் O.S.No.273/2011ன் பிரகாரம் வாதி மற்றும் ராஜேஸ்வரி மீது வழக்கு தொடர்ந்து வாதியும் இவ்வழக்கில் இறந்த ராஜேஸ்வரியும் வாய்தாவிற்கு போய் வந்துள்ளனர் வாய்தாவிற்கு வாதியும் இராஜேஸ்வரி போகும் போதும் வரும் போதும் எதிரியானவர் இராஜேஸ்வரியை பார்த்து இந்த சொத்தை நீ மட்டும் அனுபவிக்கனும் என்று நினைப்பதற்கு செத்தான்ன என்று பேசி வந்துள்ளார்'.

12.According to the final report, the deceased Rajeshwari also party to the suit. In fact on perusal of the copy of the plaint, it reveals that the deceased Rajeshwari is not a party to the suit above suit. But without noticing the same, the Investigating Officer filed final report alleging that the said Rajeshwari is also party to the suit. Further there is no record to show that on which date the case was posted before the trial Court and when the deceased and the third respondent attended the Court and in the Court, which place the above said altercations were made. There is no materials to show the above facts. Therefore, there is no offence made out as alleged in the FIR and final report.

13.The learned counsel appearing for the petitioner relied on the judgment in the case of *Anand Kumar Mohatta and Ors v. State and Ors.*



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Reported in **MANU/SC/1281/2018**, wherein the Hon'ble Supreme Court in

paragraph no.28 to 29 held as follows:-

“28.It is necessary here to remember the words of this Court in State of Karnataka v. L.Muniswamy and Ors. MANU/SC/0143/1977 : 1977 (2) SCC 699 which read as follows:

7. ...In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a Court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice....

29.We find that the prosecution is mala fide, untenable and solely intended to harass the appellants. We are forfeited in view of the respondent not having made any attempt to recover the deposit of Rs.One Crore through a civil action.”

14.On perusal of the above said judgment, it is clear that in a criminal case, the veil object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the



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High Court in quashing the proceeding in the interest of justice. In the case on

hand also, there is civil dispute between the third respondent and the petitioner and after consuming poison after six days, till her death no complaint was given and no body had spoken about the alleged inducement made by the petitioner and even after death of deceased, at the time of giving complaint, there is no reference about the petitioner as well as the alleged inducement made by the petitioner. Thereafter, during investigation, they developed the theory of abatement to commit suicide. Therefore, this is pure abuse of process of law and thereby, the above case law is squarely applicable to the facts of the present case.

15. Thereafter the third respondent relied upon the judgment in the case of ***Saranya v. Bharathi and another*** reported in ***(2021) 8 Supreme Court Cases 583***, wherein Hon'ble Supreme Court in paragraph no.11 held as follows:-

“11. In Deepak to which one of us (Dr.D.Y.Chandrachud, J.) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander, State of Rajasthan v. Fatehkaran Mehdu, and Chitresh Kumar Chopra v. State (NCT of Delhi), it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that



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the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused charge sheeted or against whom the charge is framed is likely to be convicted or not.”

16.On careful reading of the above said judgment, it is clear that at the stage of framing the charges, the Court has to consider the material only with a view to find out if there is ground for “presuming” that the accused had committed the offence. But in the case of any, the case is under PRC stage and *prima facie*, no offence is made out and the civil suit is also pending between the defacto complainant and the petitioner and the attitude of the complaint shows the abuse of process of law. Therefore, the said case law will not be applicable to the present facts of the case.

17.It is well settled law that the civil dispute cannot be converted into criminal case but in this case, it is classical example of abuse of process of law. From the date of alleged occurrence and till the starting of investigation,



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no single word was spoken by anybody as against the petitioner. Thereafter, only on after thought, the statements were recorded in a parrot-like version.

18.The investigating Officer also failed to investigate about the date of hearing and failed to obtain records that as to whether the petitioner as well the deceased and the third respondent attended the Court soon before the occurrence. These attitudes of the third respondent clearly shows the ill motive to rope the petitioner in the case. Unfortunately the Investigating Officer also failed to investigate the case in a fair manner. This case is classical example for abuse of process of law. In order to prevent the abuse of process of law, this Court shall quash the proceedings by invoking inherent jurisdiction under Section 482 of Cr.P.C.

19.In view of the above said discussions, this Criminal Original Petition is allowed and the case in S.C.No.195 of 2022 on the file of the Additional Mahila Court, Fast Track Court, Srivilliputhur, is quashed. Consequently, connected miscellaneous petition is closed.

14.08.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
Mrn

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To

- 1.The Judicial Magistrate No.I, Srivilliputtur.
- 2.The Sub Inspector of Police,
Nathampatti Police Station,
Virudhunagar District.
- 3.The Inspector of Police,
Watrap Police Station,
Watrap Circle,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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P. DHANABAL,J.

Mrn

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