

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2015

CORAM:

THE HON'BLE Ms.JUSTICE K.B.K.VASUKI

CrI.O.P.No.18943 of 2014
and
MP.No.1 of 2014

1.Arumugasamy
2.Ravisankar
3.Kadhirvel
4.Madheswaran
5.Saraswathi

...Petitioners

Vs.

1. State rep. By
Inspector of Police,
District Crime Branch,
Salem District.

2. Rajamanickam

3. Selvi

...Respondents

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the records pertaining to the proceedings in Crime No.20 of 2014 on the file of the District Crime Branch at Salem and quash the same.

For Petitioners : Mr.A.Thiyagarajan

For 1st Respondent : Mr.C.Emalias, APP

For Respondents 2 & 3 : Mr.M.Vijay Anand for
M/s.Sree Sun Associates

O R D E R

The petitioners herein are A4 to A8 in District Crime Branch, Salem Cr.No.20/2014 registered in the name of one Rajamanickam for the offences under Sections 464, 468, 471, 420, 147, 506(ii), 120(B) IPC against the petitioners and others on the basis of the joint complaint given by the respondents 2 and 3/R.Rajamanickam and Selvi dated 1.4.2014. Though the complaint was sent to the Deputy Superintendent of Police, District Crime Branch, Salem on 1.4.2014, the same was registered on 3.6.2014 in pursuance of the order of this court dated 8.5.2014 made in CrI.OP.No.11826/2014, thereby directing the second respondent police to register the case, based on the complaint given by the petitioner therein, if any cognizable offence is made out and to investigate the same in accordance with law.

2.The reading of the complaint reveals that the same was filed against 4 set of accused i.e., A1 to A3, A4 to A8 and A9 and A10 and A11 and A12 and the present petitioners are arrayed as A4 to A8. As far as the present petitioners are concerned, the allegations raised against them are that the petitioners herein 4 to 8 have, by claiming that A8 Saraswathi married Shanmugasundaram, who is none else than the brother of the second respondent Rajamanickam and husband of the third respondent Selvi, created forged documents and created encumbrance over the property belonging to the defacto complainants. It is the further case of the complainants against the petitioners herein that the petitioners along with other accused armed with deadly weapons, assembled in front of the house of the second respondent at 7.30pm on 30.3.2014 and threatened the respondents 2 and 3 herein not to appear before the Civil Court concerned for the suits filed challenging the validity of the forged documents, failing which, they will murder them like that of six murders in Dasanayakkanpatti, Salem and they also attempted to assault them with deadly weapons.

3.The petitioners have come forward with the present petition for quashing the FIR on the ground that there was delay in preferring the complaint and the genuineness of the documents can be ascertained only by the civil court and the allegations raised in the complaint are bald, vague and without any material particulars, as such, the same do not make out any cognizable offence.

4.Whereas, the relief sought for herein is seriously opposed both by the first respondent police and the respondents 2 and 3/defacto complainants. The first respondent Investigating Officer in his counter, narrated in detail the manner of investigation and the materials collected in the course of investigation and as to how the

statement of the witnesses corroborated the allegations raised in the complaint.

5.It is stated in the detailed counter filed by the respondents 2 and 3 that there are enough materials to show that the signatures found in the documents relied on by the petitioners and others are forged and there was no marriage between A8 Sarawathi and deceased Shanmugasundaram and Saraswathi remained legally wedded wife of one Natarajan during the relevant point of time and during the subsistence of first marriage with Natarajan, A8 Sarawathi obtained false document as if she is the wife of Shanmugasundaram and created encumbrance over the property belonging to the defacto complainant Rajamanickam and Shanmugasundaram which was after his death, succeeded by his sister and wife/respondents 2 and 3 herein.

6.Heard the rival submissions made on both sides and perused the records.

7.As already stated above, FIR is registered in the name of the second respondent Rajamanickam on the basis of the joint complaint given by the second respondent Rajamanickam and the third respondent Selvi. The third respondent Selvi is widow of Shanmugasundaram and Venkatraj Konar, Chinraj Konar and Shanmugasundaram were late brothers of the second respondent Rajamanickam. After the death of Venkatraj Konar and Chinraj Konar as bachelors, the properties belonging to them were inherited by their surviving brother and sister Shanmugasundaram and Rajamanickam in equal shares. Thereafter, Shanmugasundaram executed a will in favour of his wife Selvi/third respondent herein in respect of his property and died on 24.8.2005. According to the Respondents 2 and 3, 3 set of accused totally numbering 12 have created number of documents by forging the signatures of the brothers of Rajamanickam and created encumbrance over the properties inherited by the respondents 2 and 3 and the accused also jointly came to their house, armed with deadly weapons and criminally intimidated them.

8.The particulars made available herein would reveal that there are number of civil suits pending by and against deceased Shanmugasundaram and Rajamanickam and against different set of accused in respect of the properties in question. The main allegations raised against the petitioners herein are that they created documents as if the fifth petitioner Saraswathy is the legally wedded wife and legal heir of Shanmugasundaram and documents are crated during the subsistence of her marriage with one Natarajan. Serious allegations are raised against the petitioners in paras 3 and 4 at page 2 of the complaint. The complainants have also

raised serious allegations in para 4 at page 3 regarding the act of criminal intimidation done by the petitioners and others. The witnesses also during the course of investigation have given statements corroborating the allegations raised in the complaint. The petitioners have come forward with the present petition for quashing the FIR, pending investigation into the same. In my considered view, the allegations raised in the complaint and as spoken by the witnesses do prima facie make out the cognizable offences as stated above.

9.As rightly argued by the learned counsel for the respondents, the present complaint do not fall under the categories of cases referred to in the decision reported in 1992 Supp (1) SCC 335 (State of Haryana and others v. Bhajan Lal and others), wherein, the Hon'ble Apex court, while dealing with the powers of the High court to quash the FIR in exercise of the inherent powers under section 482Cr.P.C or extraordinary power under Article 226, has clearly observed 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. The extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice. 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. Having observed so, the Hon'ble Apex court has illustrated the following seven categories of cases, wherein the extraordinary power under Article 226 or the inherent powers under section 482 Cr.P.C can be exercised by the High court either to prevent abuse of process of any court or otherwise to secure the ends of justice to quash the FIR itself, which reads as follows:

"(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.

(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."

The Hon'ble Supreme Court, having found that the allegations made in the complaint do constitute a cognizable offence, justifying the registration of a case and an investigation thereon and having found that the case does not fall under any one of the categories of cases formulated above, was pleased to set aside the order of the High court insofar as it relates to quashing the FIR is concerned. In my considered view, the FIR, which is sought to be quashed in the present criminal original petition also does not fall under any one of the categories as stated above. The allegations raised in the FIR are sufficiently clear and cogent to make out prima facie commission of cognizable offence and it is fit case to be investigated into and the same does not call for exercise of inherent power under section 482 Cr.P.C. to quash the FIR itself.

10. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is quashed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

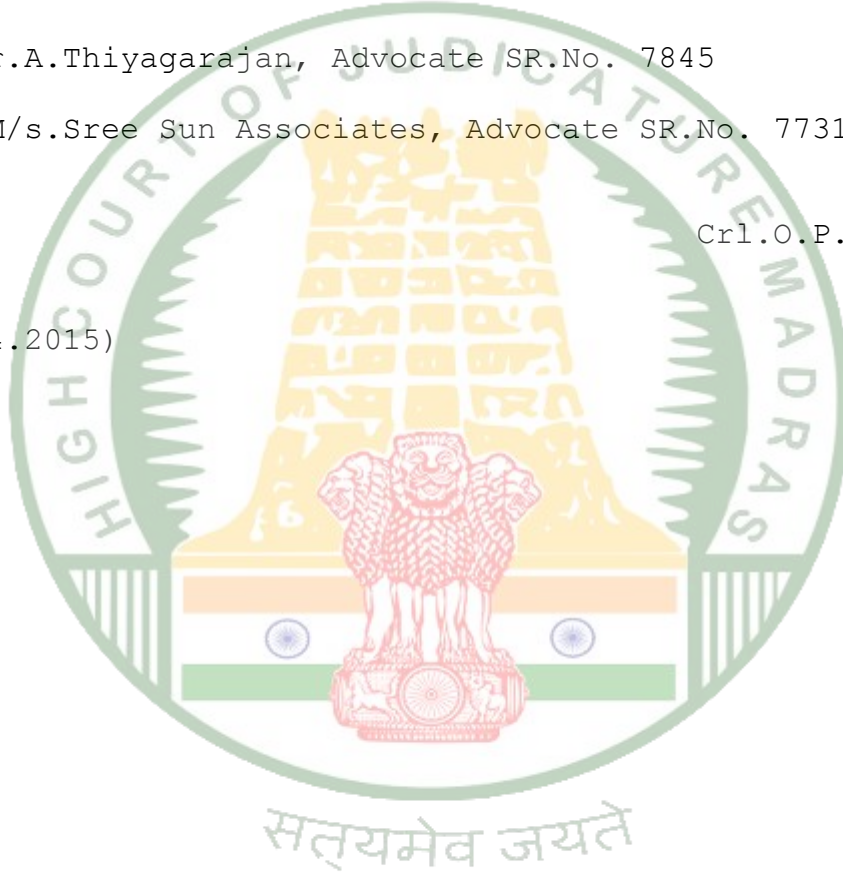
1. The Inspector of Police,
District Crime Branch,
Salem District.
2. The Public Prosecutor,
High court, Madras.

1 CC to Mr.A.Thiyagarajan, Advocate SR.No. 7845

2 CCs to M/s.Sree Sun Associates, Advocate SR.No. 7731

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EV (CO)
PSI (01.04.2015)



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