

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2017

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THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.21568 of 2017

Balau @ Balamurugan

..Petitioner

Vs

1.State Represented by the
Sub Inspector of Police,
Macheri Police Station,
Salem District.
(Crime No. 240 of 2014)

2.G. Nethradevi

..Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records pertaining to the Crime No.240 of 2014 on the file of the first respondent and to quash the same, insofar as the petitioner is concerned.

For Petitioner : Mr.V.P.K.Gowtham
For Respondent 1 : Mr.P.Govindarajan,
Additional Public Prosecutor

For Respondent 2 :Mr.P.Dineshkumar

O R D E R

The Criminal Original Petition has been filed seeking to call for the entire records pertaining to the Crime No.240 of 2014 on the file of the first respondent and to quash the same, insofar as the petitioner is concerned.

2.The case of the second respondent/defacto complainant is that 10 persons had set fire to her house and damaged valuable articles inside the house. She had also named five persons as suspects, who could have been involved in the offence.

3.The petitioner herein is one among the five persons, who have been named as suspects by the defacto complainant. During the investigation, the petitioner herein and the defacto complainant have amicably resolved the dispute among themselves and the defacto complainant was made aware of the facts that the petitioner was not connected in the offence.

4.It is pertinent to note that the defacto complainant as well as the petitioner are personally present before this Court and also have been identified. The defacto complainant filed an affidavit dated 11.10.2017 to the effect that she has no objection if the investigation in Crime No.240 of 2014 is quashed, insofar as the petitioner herein is concerned..

5.Learned Additional Public Prosecutor opposed the proposition and submitted that partial quashing of the FIR, with regard to other accused except the petitioner alone is not permissible in law. He would also submitted that the offence made out from the complaint are non-compoundable and heinous offences and therefore objected to having quash the FIR, insofar as the petitioner is concerned.

6.At this juncture, it would be appropriate to refer to the Judgement of the Hon'ble Supreme Court in the case of Lovely Salhotra and another Vs. State NCT of Delhi and another (Criminal Appeal No.670 of 2017), wherein it has held that an FIR can be quashed in part, on the basis of the facts of each case and would one of the accused has offered to settle the issue amicably with the complainant, he should not be allowed to suffer by refusing to have the investigation quashed as against him.

7.The same proposition has been reiterated in a decision of the Punjab and Haryana High Court, in the case of Balvinder Kumar @ Eidhu Vs. State of Punjab and another in CRM-M-16847-2014 by relying on three other Judgements of the same Court, wherein it was held therein that partial quashing of the FIR is permissible. Likewise, the other Judgement of Punjab and Haryana High Court in CrI.Misc.No.M-23739 of 2010 has held as follows.

"Broad guidelines have been laid down by the Full Bench of this Court in the case of Kulwinder Singh and Ors. Vs. State of Punjab and another 2007(3) RCR (CrI.) 1052 for quashing the prosecution when parties entered into compromise. The Full Bench has observed that this power of quashing is not confined to matrimonial disputes alone. The relevant portion of the Judgement reads as under:-

26.In Mrs.Shakuntala Sawhney v. Mrs. Kaushalya Shawney and others, (1980)1 SCC 63, Hon'ble Krishna Iyer, J. aptly summoned up the essence of compromise in the following words:-

"The finest hour of justice arrived propitiously when parties, despite falling apart, bury the hatchet and weave a sense of fellowship of reunion."

27.The power to do complete justice is the very essence of every judicial justice dispensation system. It cannot be diluted by

distorted perceptions and is not a slave to anything, except to the caution and circumspection, the standards of which the Court sets before it, in exercise of such plenary and unfettered power inherently vested in it while donning the cloak of compassion to achieve the ends of justice. No embargo, be in the shape of Section 320(9) of the Cr.P.C., or any other such curtailment, can whittle down the power under Section 482 of the Cr.P.C.

28. The compromise, in a modern society, is the sine qua non of harmony and orderly behaviour. It is the soul of justice and if the power under Section 482 of the Cr.P.C. is used to enhance such a compromise which, in turn, enhances the social emity and reduces friction, then it truly is finest hour of justice". Disputes which have their genesis in a matrimonial discord, landlord-tenant matters, commercial transactions and other such matters can safely be dealt with by the Court by exercising its powers under Section 482 of the Cr.P.C. in the event of a compromise, but this is not to say that the power is limited to such cases. There can never be any such rigid rule to prescribe the exercise of such power, especially in the absence of any premonitions to forecast and predict eventualities which the cause of justice may throw up during the course of a litigation."

8. In view of the aforesaid precedents, in order to meet the ends of justice, it would be appropriate that the petitioner's prayer to have the proceedings quashed can be entertained, since the petitioner herein is relative to the defacto complainant and also residing in the same village and the overt-acts in the complaint for the criminal offences implicates the other accused only.

9. At this juncture, the learned counsel for the petitioner submitted that they are willing to co-operate with the investigation as a witness.

10. Recording the submissions made by the learned counsel for the petitioner, the proceedings in Crime No.240 of 2014, on the file of the respondent police is partially quashed, insofar as the petitioner alone is concerned. The Criminal Original Petition is partly allowed. It is made clear that the first respondent police is at liberty to proceed with the investigation, insofar as the other accused are concerned.

During the course of investigation, if the investigation officer is of the opinion that the petitioner is involved in any other offence, it is open to him to charge the petitioner for such an offence.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

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To

1.The Sub Inspector of Police,
Macheri Police Station,
Salem District.

2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.V.P.K.Gowtham Advocate,SR.73126

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NR 27/10/2017



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