

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2017

CORAM:

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.20933 of 2010

1.Rajaram

2.Manimekalai

... Petitioners/Accused

Vs.

The State rep. by

The Inspector of Police,

Kandamangalam Police Station,

Villupuram District.

(Crime No.94/10)

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the Charge Sheet filed against the petitioners in C.C.No.645 of 2010, on the file of the Judicial Magistrate No.II, Villupuram.

For Petitioners: Mr.P.Nagaraju

For Respondent : Mr.P.Govindarajan

Additional Public Prosecutor

JUDGMENT

The petitioners/accused A1 and A2 preferred this quash petition under section 482 of Cr.P.C. for quashing the final report filed by the Respondent Police in C.C.No.645 of 2010 in connection with Cr.No.94 of 2010 on the file of the learned Judicial Magistrate No.II, Villupuram.

2.The brief case of the petitioner is that:

The prosecution is that one Mr.Jayakannan cultivate Pumpkin crop in his land in Survey No.205/3B for about 0.25 Cents, The life time of the crop was 50 days. The adjoining land owners (the petitioners/accused) own a 12 Acres of land and cultivating sugarcane. There was a previous enmity between them and also litigations were took place earlier. On 02.04.2010 at about 3 PM while the defacto complainant visiting his fields the accused were spraying pesticides to their Sugarcane crops. After 2 days the defacto complainant noticed that the pumpkin crops in his

field were wilted. He enquired about the same with his neighbours and labourers and they told that the petitioners sprayed the Sugarcane pesticide to his pumpkin crops and the defacto complainant occurred a loss of Rs.25,000/- and he filed compliant before the respondent police, there was no action, so he filed a private complaint before the learned Judicial Magistrate No.II, Villupuram to register a complaint against the petitioners/accused under sections 447, 435 r/w 34 of IPC. The learned Judicial Magistrate was pleased to forward the complaint to the respondent police under Section 156(3) of Cr.P.C. On receipt of the complaint copy, the respondent police registered a case in Cr.No.94 of 2010 for offences under sections 447 and 435 r/w 34 of IPC. On further investigation, the respondent police filed the final report on 24.6.2010. Aggrieved over the same, the petitioners preferred this quash petition before this Court.

3.The learned counsel for the petitioners submits that there was no such incident took place and more over they are not in habit of doing the agricultural works like spraying the pesticides, especially the 2nd petitioner being a women she never engages such type of activities, they engaged labours to do that jobs. So false complaint was filed by the defacto complainant in order to harass the petitioner. The respondent police also registered the compliant in a mechanical manner without conducting proper investigation and they filed a charge sheet under the sections 447 and 435 as mentioned in the private complaint.

4.The learned counsel for the petitioners submits that the ingredients of section 435 will not attract the alleged offence committed by the petitioners.

5.Section 435: Mischief by Fire or Explosive damage to amount of one hundred or (in case of Agricultural produce) ten rupees

Essential ingredient of the section

An offence under this section has the following constituents:

- 1) That the accused caused mischief
- 2) That he did so by fire (or) any explosive substance
- 3) That accused intend to cause (knew it likely to cause) he would cause damage to any property
- 4) Damage amounted to Rs.100/- upward agricultural produce Rs.10/- upwards.

Explosive Substance defined under Section 2 of the Explosive Substance Act 1908.

The Definition as follows:

In this act "Explosive substance" shall be deemed to included any material for making explosive substance also apparatus, machine implement (or) material (or) intended to be used or adopted for causing or aiding in causing any explosion in or with any explosive substance also any part of such apparent, machine or implement.

6.The Dictionary meaning of word "Explosive is "tending to expand suddenly with loud noise, "tending to explode".

7.The Learned counsel for the petitioners submits that the respondent police investigated the matter after 75 days of occurrence, as per the defacto Complainant version, the crop what he cultivated is 50 days crop. After harvesting the 50 days and after pumpkin the looks wilted combustion.

8.The Learned counsel for the petitioners submits that the respondent police have not obtained any Chemical report from the plant pathology experts that the damage caused to the pumpkin crops were due to the pesticides used by the petitioners/accused.

9.The Learned counsel for the petitioners submits that there is no word about the pesticide name which was used by the petitioner and no recovery was made in this regard.

10.The Learned counsel for the petitioners submits that the respondent police on receipt of the complaint without investigation the same they registered a case and also recorded the statements from the interested witnesses who were closely associated to the defacto complainant.

11.The Learned counsel for the petitioners submits that the petitioners were very much available in the village, and the 1st petitioner approached the respondent police for lodging a complaint for his accident on 23.6.2010. The same was registered in Cr.No.108 of 2010 on 25.6.2010. He also made a representation to the higher police officials about the two FIR's in Cr.No.108 of 2010. Out of all the above the respondent police shown the petitioners as absconding accused and filed the final report.

12.The learned counsel for the respondent objected the arguments made by the petitioners and seek for dismissal of the quash petition.

13.I heard Mr.P.Nagarjau, the learned counsel for the Petitioners and Mr.P.Govindarajan learned Assistant Public Prosecutor for the Respondent and perused the entire materials available on record.

14.Before examining the rival contentions, it is necessary to briefly note the provisions of the Cr.P.C. relating to the receipt and registration of complaints of cognizable offences, and the procedure prescribed for investigation there into culminating in a report being filed by the investigating officer before the concerned Magistrate. The receipt and recording of an

information report is not a condition precedent to the setting in motion of a criminal investigation. There is no reason why the police, if in possession through their own knowledge or by means of credible information through informal intelligence which genuinely leads them to believe that a cognizable offence has been committed, should not, of their own, undertake investigation into the truth of the matters alleged. Section 157 of Cr.P.C directs the police officer shall proceed to investigate the facts and circumstances regarding the information. In truth the provisions as to an information report (commonly called a first information report or an FIR) are enacted for other reasons. Its object is to obtain early information of alleged criminal activity, and to record the circumstances before there is time for them to be forgotten or embellished.

15. Chapter XII of Cr.P.C. relates to information to the police and their powers to investigate. The opening words of Section 154 of Cr.P.C. imply that there has to be an FIR about an incident which constitutes a cognizable offence. Information, given under sub-section (1) of Section 154 of Cr.P.C. is commonly known as the FIR though this term is not used in the Code. It is the earliest and the first information of a cognizable offence recorded by an officer-in-charge of a police station and marks the commencement of the investigation. The investigating agency has to proceed only on information about the commission of a cognizable offence which is first entered in the police station diary, by the Officer In-charge. Section 154 (1) of Cr.P.C. contains four mandates to an officer in charge of a police station. The first enjoins that every information, relating to the commission of a cognizable offence, if given orally, shall be reduced to writing; the second directs that it be read over to the informant; the third requires that every such information, whether given in writing or reduced to writing, shall be signed by the informant and the fourth is that the substance of such information shall be entered in the station house diary. A further directive is contained in sub-section (1) of Section 157 of Cr.P.C. that, immediately on receipt of the information, the officer in charge of the police station shall send a report of every cognizable offence to a Magistrate empowered to take cognizance of the offence and then proceed to investigate the facts and circumstances of the case.

16. The non-qualification of the word "information" in Section 154(1), unlike in Section 41(1)(a) and (g) of Cr.P.C. is to prevent the police officer from refusing to record an information relating to the commission of a cognizable offence, and to register a case thereon, on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, the 'reasonableness' or 'credibility' of the information is not a condition precedent

for registration of a case. The sine qua non for recording an FIR is that there must be an information and that information must disclose a cognizable offence. If information disclosing a cognizable offence, satisfying the requirements of Section 154 (1) of Cr.P.C. is laid before him, the police officer has no option but to enter the substance thereof in the prescribed form i.e., to register a case on the basis of such information. The FIR sets the machinery of criminal law into motion. It is the document on which the entire case of the prosecution is built. The F.I.R has limited use and is not an encyclopedia of the prosecution. It is not the requirement of the law that the minutest details be recorded in the FIR lodged immediately after the occurrence. There is no provision in the Cr.P.C. which requires an investigating agency to provide a hearing to the affected party before registering an FIR.

17. After registration of the FIR, begins the sequence of investigation in a case, collection of evidence during investigation and formation of the final opinion which culminates in the filing of a report under Section 173 of Cr.P.C. The officer in charge of a police station has to commence investigation as provided in Section 156 or 157 of Cr.P.C. on the basis of the entry of the FIR, on coming to know of the commission of a cognizable offence. "Investigation" primarily consists in the ascertainment of the facts and circumstances of the case. By definition, under Section 2(h) of Cr.P.C., it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". Commencement of investigation by a police officer is subject to two conditions, firstly the police officer should have reason to suspect the commission of a cognizable offence as required by Section 157(1) and secondly the police officer should subjectively satisfy himself that there is sufficient ground for entering on an investigation even before he starts the investigation. Clause (b) of the proviso to Section 157(1) of Cr.P.C postulates that the police officer shall draw his satisfaction only on the material placed before him at that stage, namely, the FIR together with the documents, if any, enclosed therewith, before he enters on an investigation. The power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case can the Magistrate intervene and either direct an investigation or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case.

18. Under the Code, investigation consists generally of the following steps: (1) proceeding to the spot, (2) ascertainment of the facts and circumstances of the case, (3) discovery and arrest of the suspected offender, (4) collection of evidence relating to the commission of the offence which may consist of

(a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) formation of the opinion as to whether, on the material collected, there is a case to place the accused before a Magistrate for trial.

19. "Investigation" takes in several aspects and stages ending ultimately with the formation of an opinion by the police officer under Sections 169 or 170 of Cr.P.C. as the case may be, and in forwarding his report to the Magistrate concerned under Section 173(2) of Cr.P.C. Under Section 173(2)(d), the investigating officer should state whether any offence appears to have been committed and, if so, by whom. The Code thus contemplates that the investigating officer should himself assess the evidence collected by him and form his own opinion regarding the complicity of particular persons in respect of the offence alleged. The formation of the opinion, whether or not there is a case to place the accused on trial before a Magistrate, is 'left to the officer in-charge of the police station and that opinion determines whether the report is to be under Section 170 being a 'charge-sheet', or under Section 169 - 'a final report'. Formation of opinion by the police is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

20. The powers conferred on police officers, to investigate into cognizable offences, is unfettered as long as it is legitimately exercised in strict compliance with the provisions of the Cr.P.C. The scheme envisages a Magistrate being kept in the picture at all stages of the police investigation but does not authorize him to interfere with the actual investigation or to direct how that investigation is to be conducted. The Court would not interfere with the investigation or during the course of investigation which would mean from the time of lodging of the first information report till the submission of the report, by the officer in charge of the police station, in Court under Section 173(2) of Cr.P.C, this field being exclusively reserved for the investigating agency.

21. The scheme of the Code is that an investigation is a normal preliminary to an accused being put up for trial for a cognizable offence except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under Section 202 of the Code to order investigation if he thinks fit. While it is open to the Magistrate to accept or disagree with their opinion, he cannot compel the police to form a particular opinion on the investigation and to submit a report as that would encroach on the sphere of the police and compel them to form an opinion so as to accord with the decision of the Magistrate.

22. Where more information than one are given in respect of the same incident, involving one or more than one cognizable offences, it is implied in Section 154 of Cr.P.C. that the officer in charge of a police station need not enter every one of them in the station house diary. It is the information first entered therein which is the FIR postulated by Section 154 of Cr.P.C. All other subsequent information made orally or in writing after the commencement of the investigation, or such other cognizable offences as may come to the notice of the police officer during investigation, are statements falling under Section 162 of Cr.P.C. and cannot be treated as an FIR as it would in effect be a second FIR, will amount to an improvement of the facts mentioned in the original complaint, and hence prohibited under Section 162 of Cr.P.C. The distinction between an information relating to a cognizable offence under Section 154 and a statement under Section 161(3) is that, while the former is required to be signed by the person giving the information, in the latter the statement of the witness is, in terms of Section 162 of Cr.P.C. not required to be signed by him. While the information, referred to in Section 154 of Cr.P.C., results in commencement of investigation of a cognizable offence by a police officer, the statement under Section 161/162 of Cr.P.C. is recorded during the course of the investigation and is among the inputs available to the investigation officer in forming an opinion whether or not there is sufficient evidence or a reasonable ground to forward the accused to the Magistrate. The nature of information received under Section 154 and the names of the witnesses, whose statements are recorded under Sections 161 and 162 of Cr.P.C. also form part of the police report under Section 173(2) and (5) of Cr.P.C. The report as envisaged by Section 173(2) has to be accompanied as required by sub-section (5), by all the documents and statements of the witnesses therein mentioned. One cannot divorce the details which the report must contain as required by sub-section (2) from its accompaniments which are required to be submitted under sub-section (5). The whole of it is submitted as a report to the Court. सत्यमेव जयते

23. There can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences as the police officer has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of Cr.P.C. Whenever further information is received by the investigation agency, it is always in furtherance of the FIR. Where, as a result of further investigation, certain information is gathered a second FIR is unwarranted and, instead, filing a supplementary charge sheet

will suffice. For the same event and offences against the same people, there cannot be a second FIR. Filing of multiple complaints, relatable to the same transaction, must be controlled as it causes tremendous harassment and prejudice.

24.The offences which the petitioners alleged to have committed are stated in F.I.R. in Crime No.94 of 2010, registered at Kandamangalam Police Station, to be under Sections 447 and 435 r/w 34 of IPC. The offences alleged by the petitioners u/s.279 and 337 of IPC was registered in FIR.No.108 of 2010 of same police station. There is no provision in the Cr.P.C. which casts a corresponding obligation on a police officer to register each such information given by different persons as separate FIRs.

25.Every crime is considered an offence against the Society as a whole and not only against an individual even though it is an individual who is the ultimate sufferer. It is, therefore, the duty of the State to take appropriate steps when an offence has been committed. A criminal proceeding is not a proceeding for vindication of a private grievance, but is a proceeding initiated to punish the offender in the interests of society. It is for maintaining stability and orderliness in Society that certain acts are constituted as offences, and a right is given to any citizen to set the machinery of the criminal law in motion for the purpose of bringing the offender to book. Punishment of the offender in the interests of society being one of the objects behind penal statutes enacted for the larger good of society, the right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi. The locus standi of the complainant is a concept foreign to criminal jurisprudence.

26.It is no doubt true that this Court should exercise due circumspection and caution, and not unnecessarily interfere in the final report filed by the Respondent Police. It cannot, however, be lost sight of that in cases where multiple investigations into the very same offence may result in the possibility of the fundamental right of an accused, under Article 21 of the Constitution, being violated non-interference may well result in failure of this Court to discharge its constitutional obligations of safeguarding the fundamental rights of citizens. The right to life and liberty of a citizen imposes a corresponding duty on the rest of the society, including the State, to observe that right, that is to say, not to act or do anything which would amount to infringement of that right except in accordance with the procedure prescribed by law. In other words, conferring the right on a citizen involves the compulsion on the rest of society, including the State, not to infringe that right. Post-violation resort to Article 226 or Section 482 of Cr.P.C. is a remedy for restoration of the right, while pre-violation protection is by compelling observance of

the obligation or compulsion under law not to infringe the right by all those who are so obligated or compelled. If a threatened invasion of a right is removed by restraining the potential violator from taking any steps towards violation, the rights remain protected and the compulsion against its violation is enforced. If the right has already been violated, what is left is the remedy against such violation and for restoration of the right.

27. Ordinarily the power under Section 482 of Cr.P.C. cannot be exercised to do something which is expressly barred under the Code. However, in rare and exceptional cases, a departure can be made. The ultimate exercise of discretion under Section 482 of Cr.P.C. or under Article 226 of the Constitution is with the Court which has to exercise such jurisdiction in the facts of each case. A case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way, or a final report under Section 173(2) has been forwarded to the Magistrate, would be a fit case for exercise of the power under Section 482 of Cr.P.C. or under Articles 226/227 of the Constitution of India.

28. Upon perusal of the statements of all the List witnesses in the Final Report, I am of the opinion that prosecution have not prima facie supplied the case containing the ingredients of the offences alleged except some oral quarrel took place between the parties. I have perused the Sections 435 and 436 of the IPC, which read as under: -

"435. Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees -- Whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

436. Mischief by fire or explosive substance with intent to destroy house, etc.-- Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished with imprisonment for life, or with imprisonment of either

description for a term which may extend to ten years, and shall also be liable to fine."

29. Upon perusal of above Section 436 it is abundantly clear that whoever commits mischief by fire or any explosive substance intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling or as a place for the custody of property, shall be punished. Applying above Section upon evidence of the present case it emerges that the quarrels and disputes were between the parties before the registration of FIR and nothing more than that. The respondent police have not obtained any Chemical report from the plant pathology experts that the damage caused to the pumpkin crops were due to the pesticides used by the petitioners/accused and it cannot be proved by oral evidence. Further the respondent police investigated the matter after 75 days of occurrence and as per the defacto Complainant version, the crop what he cultivated is 50 days crop. There must be some corroborating material in the final report for proving the prima facie case leveled by the Prosecution. Even the loss of Rs.25,000/- reported in the complaint cannot be proved for want of requisite materials to constitute the proof under Section 3 of the Evidence Act. Therefore, if the case would be proceeded nothing would emerge, except the oral testimony of the defacto complainant which will not have any value. The one piece of evidence may confirm the other doubts would be called reasonable if they are free from a zest for abstract speculation. Law cannot afford any favourite other than truth. To constitute reasonable doubt, it must be free from an over emotional response. Doubts must be actual and substantial doubts as to the guilt of the accused person arising from the evidence, or from the lack of it, as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or a merely possible doubt but a fair doubt based upon reason and common sense. It must grow out of the evidence in the case.

30. All the legal points stated above, were the observations made by the Hon'ble Apex Court in various cases and the law laid down in State of Haryana & Ors Vs Bhajan Lal & Ors (1992 supp (1) SCC 335), Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4 and State of Madhya Pradesh Vs S.B. Johari & Ors reported in (2008) 2 SCC page 57.

31. As held by the Hon'ble Supreme Court in the decisions cited supra, when the High Court exercises inherent powers under Section 482 of Cr.P.C., the prime consideration should only be whether the exercise of such power would advance the cause of justice or it would be an abuse of the process of the Court. Having regard to my discussion in the foregoing paragraphs, I hold that launching of prosecution against these petitioners under sections 447 and 435 r/w 34 of IPC at this point of time

is nothing but gross abuse of the process of the Court apart from an exercise in futility.

32.For all the above reasons, I quash the criminal proceedings pending against these petitioners on the file of the C.C.No.645 of 2010 in connection with Cr.No.94 of 2010 on the file of the learned Judicial Magistrate No.II at Villupuram and this criminal original petition is accordingly allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1)The Judicial Magistrate No.II,
Villupuram.

2.The Chief Judicial Magistrate,
Villupuram.

3.The Inspector of Police,
Kandamangalam Police Station,
Villupuram District.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Nagaraju, Advocate, S.R.No. 44855(08/01/2018)

CrI.O.P.No.20933 of 2010

GN(17/12/2018)