

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.28870 of 2017

1.Parthiban

2.Mariyammal

3.Ramachandran

4.Surendran

5.Murali @ Magesh .. Petitioners

Vs.

1.State by
The Inspector of Police,
T6 Avadi Police Station,
Ambattur District.
Crime No.1583 of 2017

2.Dharani .. Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in Crime No.1583 of 2017 pending on the file of the Inspector of Police, T6-Avadi Police Station, Ambattur District and quash the First Information Report pending against the petitioners.

For Petitioners : Mr.D.Thirumoorthy

For Respondent 1 : Mr.C. Iyyapparaj
Additional Public Prosecutor

For Respondent 2 : Mr.S.Silambu Selvam

O R D E R

This petition has been filed seeking to quash the proceedings in Crime No.1583 of 2017 pending on the file of the Inspector of Police, T6-Avadi Police Station, Ambattur District, insofar as the petitioners herein are concerned.

2.The grievance of the second respondent/defacto complainant is that there was a civil dispute between the defacto complainant and the petitioners/accused. When the surveyor came to measure the land, the petitioners herein along with five others were assaulted the defacto complainant. Hence, he made a complaint, which was registered in Crime No.1583 of 2017.

3.The petitioners herein have been arrayed as first, second, third, fourth and fifth accused respectively in Crime No.1583 of 2017. During the investigation, the petitioners herein and the defacto complainant have amicably resolved the dispute among themselves.

4.It is also pertinent to note that the defacto complainant as well as the petitioners/accused are personally present before this Court. In order to identify themselves, the petitioners and the 2nd respondent/ defacto complainant have submitted the photo copies of their Identity Cards viz., Parthiban - Aadhar Card No.506549581415, Mariyammal - Aadhar Card No.577000765091 Ramachandran -Aadhar Card No. 606462626444, Surendran - Aadhar Card No.947444029421, Murali @ Magesh - Aadhar Card No.211761950247 and Dharani - Aadhar Card No.774302038967 and after verification of the originals, the same are recorded.

5.The second respondent /defacto complainant has also agreed to quash the proceedings in Crime No.1583 of 2017, insofar as the petitioners herein are concerned and to that he filed an affidavit dated 15.12.2017 to the effect.

6.The learned Additional Public Prosecutor opposed the proposition and submitted that the partial quashing of the FIR, with regard to five accused alone is not permissible in law. He also submitted that the offence made out in the complaint are non-compoundable and a heinous offences and therefore, objected to having the FIR quashed, insofar as these petitioners alone are concerned.

7.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 a FIR can be quashed in part, on the basis of the facts of each case and when 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.

8.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 reported in CRM-M-16847-2014 by relying on three other Judgements of the same Court wherein it was held that partial quashing of the FIR is

permissible. Likewise, the other Judgement of Punjab and Haryana High Court in Crl.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 (Crl.) 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) if 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."

9. In view of the aforesaid precedents and in order to meet the ends of justice, it would be appropriate to entertain the prayer sought for by these petitioners.

10. Recording the affidavit filed by the defacto complainant, the proceedings in Crime No.1583 of 2017, on the file of the first respondent police is partially quashed, insofar as these petitioners are concerned. The Criminal Original Petition is 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 petitioners herein are involved in any other offence, it is open to him to charge the petitioners for such an offence.

11. The affidavit filed by the 2nd respondent/defacto complainant dated 15.12.2017 shall form part of the order.

AFFIDAVIT FILED BY THE DHARANI/2nd RESPONDENT

I, Dharani, son of Balaji, Hindu, Aged about 30 years residing at No.9, Thiru.Vi.Ka Street, Konambedu, Chennai - 600 077, temporarily come down to Chennai, do hereby solemnly affirms and sincerely state as follows

I am the 2nd Respondent herein and as such I am well acquainted with the facts and circumstances of the case.

1.I submit that based on the complaint filed by myself the 1st respondent police had registered a case against the petitioners for the offences punishable under sections 147, 148, 294(b), 323, 324, 379, 506(i) of IPC and the case is now pending investigation.

2.The case of the Prosecution is that I am the Defacto Complainant in this case on 03.12.2017 at about 10.00am I had visited a property situated near Vellammal School at Paruthipattu belongs to one Mr.Magesh, and it was about to purchased by K.S.Ravi, the said property was about to be purchased by the said Ravi from the said Magesh. On that day it was informed by them that the Surveryor was coming up there to measure the land. I submits that the further case is that there the petitioners along with 5 others assaulted me and abused me by filthy language and snatched the Gold Chain and broken my mobile Phone.

3.I submit that the further case is that on that day the above petitioners had assaulted me. retaliating the same the group also had assaulted them. The petitioners submit that in their side 2nd petitioner herein had lodged a complaint against the 2nd respondent and their members before the 1st respondent

police and the case was registered in Crime.No.1582 of 2017 dated 04.12.2017 for the offences punishable under section 147, 148,294(b), 324 of IPC. The petitioners submit that both the parties had amicably settled the case and the compromise were arrived between both the parties.

4.I submit that at the time of this settlement both parties amicably settled to withdraw the Criminal Case pending against each other on the file of the 1st respondent Police. I submit that now we are ready to go compromise and ready to compound the offences. I submit that I have no objection to quash the proceedings against the petitioners 1 to 5.

Under these Circumstances therefore it is humbly prayed that this Hon'ble Court may be pleased to call for the records in Crime.No.1583 of 2017 pending on the file of the Inspector of Police, T6-Avadi Police Station, Ambattur District and quash the First Information Report pending against the Petitioners and thus render justice.

Solemnly affirmed at Chennai, on
this the 15th day of December, 2017
an signed his name in my presence
after explaining the contents in Tamil

Sd/-
BEFORE ME,
Sd/-
ADVOCATE:CHENNAI

Sd/-
Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

nl
To

1.The Inspector of Police,
T6 Avadi Police Station,
Ambattur District.

2. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.S.Silambu, Advocate Sr.No.91356

PPA (CO)
sm:8.1.2018

Cr1.O.P.No.28870 of 2017