



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

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THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.O.P.(MD) No.3198 of 2011

and

M.P.(MD).Nos.1 & 2 of 2011

P.Rajkumar

... Petitioner/
Accused No.2

-vs-

1.State rep. through
The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.514 of 2009)

... 1st respondent/
Complainant

2.Tamilselvan

... 2nd Respondent/
Defacto complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records pertaining to the case in C.C.No.125 of 2010 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District and quash the same.

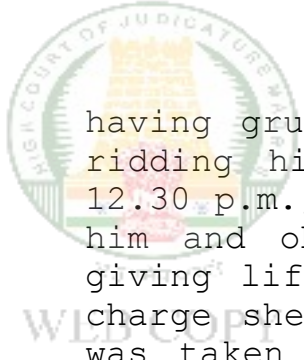
For Petitioner : Ms.J.Anandhavalli

For 1st respondent : Mr.C.Mayilvahana Rajendran,
Addl. Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C.No.125 of 2010 on the file of the learned Judicial Magistrate, Padmanabhapuram, Kanyakumari District.

2.The petitioner is the accused No.2 in C.C.No.125 of 2010. Based on the complaint lodged by the second respondent before the first respondent Police, a case was registered in Crime No.514 of 2009 under Sections 341, 323 and 506(ii) IPC as against the petitioner. The allegation made in the complaint is that A1 has obtained loan to the tune of Rs.10 lakhs from the wife of the defacto complainant and since he did not repay the same, the defacto complainant frequently requested him to repay the same and



having grudge against the same, when the defacto complainant was ridding his two wheeler towards Marudukurichi on 19.07.2009 at 12.30 p.m., A1 along with two other persons intercepted, attacked him and obtained his signature forcibly in a written paper by giving life threat to him. On completion of the investigation, a charge sheet has been filed before the trial Court and the same was taken on file in C.C.No.125 of 2010. Seeking to quash the same, the petitioner/A2 has come up with this petition.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

4. The learned counsel appearing for the petitioner submitted that the petitioner's name has not been arrayed as accused in the FIR and he has been falsely implicated as A2 in this case. He would further submit that there is no specific allegation raised against him. Thus, he sought for quashing of the charge sheet.

5. The learned Government Advocate appearing for the first respondent /Police submitted that there are evidences to show that the petitioner has also involved in the commission of the crime along with A1.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

7. It is the main submission of the learned counsel for the petitioner that his name has not been mentioned in the complaint and there is no specific allegation raised against him. According to the prosecution, there are evidences to prove the involvement of the petitioner.

8. At this juncture, this Court is of the view that it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in **"2013 Cri.L.J.1272 (Rajiv Thapar and others versus Madan Lal Kapoor"**, wherein, the Hon'ble Supreme Court has enumerated the steps required to be followed before invoking inherent jurisdiction by the High Court under Section 482 Cr.P.C., to determine the veracity of prayer made by an accused for quashment of the proceedings, as under:

"(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the



factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice? If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising there from) specially when, it is clear that the same would not conclude in the conviction of the accused."

9. Applying the above dictum laid down by the Hon'ble Supreme Court to the facts and circumstances of the case, I am of the considered view that in this case, none of the steps delineated by the Hon'ble Supreme Court in the above said decision is satisfied and hence, the present Criminal Original Petition is liable to be dismissed.

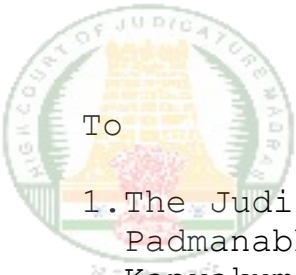
10. Though the learned counsel for the petitioner vehemently contended that there is no evidence to prove the involvement of the petitioner/A2, I am of the considered opinion, the same cannot be decided at this stage and it can be decided only after full trial.

11. In view of the above, this Criminal Original Petition is dismissed. However, it is open to the petitioner to file a petition for dispensing with his personal appearance. On such an application being filed by the petitioner / A2, the trial Court shall dispense with his personal appearance, except the date on which his appearance is required. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(AD-II)

/True Copy/



To

1.The Judicial Magistrate,
Padmanabhapuram,
Kanyakumari District.

2.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Ms.J.Anandhavalli, Advocate Sr.No.6247

GCG

VB/SV/MMS/18.04.2017/4P/5C

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