

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CrI.O.P.No.973 of 2017

and

CrI.M.P.No.728 of 2017

Dhalapathy

... Petitioner

Vs.

1.State rep. by
The Inspector of Police,
R-5, Virugambakkam Police Station,
Chennai-600 041.

2.Sumathi

... Respondent

Prayer: Petition filed under Section 482 Cr.P.C., to call for the records pertaining to FIR in Cr.No.1269 of 2016 on the file of the Inspector of Police, R-5 Police Station, Virugambakkam, Chennai and to quash the same as against the petitioner.

For Petitioner :Mr.M.Venkatachalapathy, SC
for Mr.A.Selvendran

For Respondent-1:Mrs.P.Kritika Kamal

For Respondent-2:No Appearance

O R D E R

The petitioner herein, who has been arrayed as the second accused has filed the present petition seeking to quash the FIR in Cr.No.129 of 2016 on the file of the first respondent police dated 01.02.2016.

2.Heard Mr.M.Venkatachalapathy, learned Senior Counsel appearing for the petitioner and Mrs.P.Kritika Kamal, learned counsel for the first respondent.

3.The case of the defacto complainant is that she had been residing at Door No.368 A, Plot 5, A & N Builders, Duraisamy Road, Natesan Nagar, Virugambakkam, Chennai-92, in which address she had kept about Rs.14 lakhs cash, 15 sovereigns of gold jewellery and 4 ½ kgs of silver articles in her wardrobe. After about 9 months preceding the date of complaint, she found some of her jewelleries missing and since it could not be traced, she used to wear other jewelleries while attending functions. On 20.08.2016, the defacto complainant found all her jewelleries missing including the cash of Rs.14 lakhs kept in her wardrobe. When she had enquired about this with her son, she was informed that the first accused/Vijay along with the petitioner herein use to come to her house often. According to the defacto complainant on 20.08.2016, the first accused alone came to the defacto complainant's house, who had requested to use the toilet in her house and by that time he had stolen her silver lamp (kuthuvilakku) which came to be found out. On 21.08.2016, the first accused had confessed to the defacto complainant that he only had stolen all the jewelleries and the cash and had promised to pay Rs.30 lakhs within two weeks. After expiry of two weeks, since the first accused failed to pay the amount, she had lodged the complaint on 09.09.2016, for theft of her jewelleries and cash. The first respondent police had registered the complaint in Cr.No.129 of 2016 against the first accused/Vijay and the petitioner herein which is impugned in the present petition.

4.The learned Senior counsel for the petitioner submitted that the entire averments in the complaint was false and that the defacto complainant's son had requested the first accused to pledge some of the defacto complainant's jewels weighing 57 gms and 58 gms on his behalf with the Corporation bank, which the first accused had obliged. After that, based on the second respondent's complaint, the first accused was taken to police station where he was coerced to issue three cheques on 02.08.2016. Subsequently on 30.08.2016, the first accused had returned all the gold ornaments to the second respondent herein and even after that the present complaint has been filed with a mala-fide intention. Since the petitioner/second accused was not involved in the entire events, he sought for quashing of the FIR as against him.

5.The learned Government Advocate (Crl. Side) appearing on behalf of the first respondent on the other hand submitted that the investigation is pending and that it was premature to quash the proceedings at this stage. Even otherwise, the allegations as against the first respondent of having coerced the first accused to issue cheques is false and baseless and therefore sought for dismissal of the petition.

6.I have given careful consideration to the submissions made by the respective counsels.

7.The overt act attributed to the petitioner herein was that when the defacto complainant had found her jewellerys and cash missing, her son had informed her that Vijay/first accused and her brother/petitioner herein use to visit their house frequently. Apart from this overt act as against this petitioner, there are no other averments to implicate the petitioner in the entire episode.

8.The possibility of the petitioner herein/second accused of having involved in the alleged crime seems to be remote in view of the following facts revealed before this Court. It is the case of the defacto complainant that the first accused was caught red handed while stealing a silver lamp from her house. It is also the case of the defacto complainant that after the first accused was questioned about this, he had confessed that he alone is responsible for having taken the entire gold and silver articles as well as cash and undertaken to pay a sum of Rs.30 lakhs for all the missing articles and cash. Her grievance in the complaint is that the first accused had not honoured his promise to pay a sum of Rs.30 lakhs for the value of gold and silver articles as well as the cash. The question as to whether the second accused/petitioner was involved in the alleged crime is already answered by the defacto complainant herself in her complaint. She had categorically informed the police in writing that it was the first accused alone who had taken all her valuables and cash and that he had promised to repay the sum and that when she had asked him to repay the sum, he had failed to do so. Hence, the complaint does not implicate the petitioner herein in the alleged crime at all.

9.It is further seen that prior to the complaint, the first accused herein had issued a legal notice to the second respondent herein alleging that the second respondent's son had requested the first accused to pledge certain jewellerys belonging to the second respondent herein and it is in consequence of his request that he had collected the

jewelleries from the second respondent's son. It is further stated in the legal notice that the first accused issued certain cheques towards the value of the stolen goods and cash under coercion. The first accused also claims that he returned all the valuables. In the legal notice, there is no averment involving the petitioner/second accused at all. Likewise, as stated earlier the complaint also does not implicate the petitioner herein/second accused. The version of the complainant, as well as her son, as revealed from the aforesaid findings indicates that the petitioner herein had not involved in the alleged theft of valuables/cash and as such, it can only be concluded, that the complaint does not disclose a prima facie offence as against the petitioner herein.

10. I am conscious of the fact that the proceedings which is sought to be quashed before this Court is an FIR. If at all, the first respondent intends to register the complaint based on the averments made therein, they ought to have arrayed the first accused alone as a suspect in the crime. Since there was no prima facie case as against the petitioner herein/second accused, it is settled law that when allegations in the FIR does not disclose the commission of an offence against an accused, the High Court would be entitled to exercise its inherent jurisdiction under Section 482 Cr.P.C., for quashing the same. In the instant case, this Court is convinced that the FIR does not disclose a cognizable offence as against the petitioner herein/second accused is concerned and therefore the continuation of investigation, based on nil foundation, would amount to an abuse of power of the police, necessitating interference to secure the ends of justice. It is the further view of this Court that the present case against the petitioner/second accused is concerned, is an exceptional case where no cognizable offence is made out against the petitioner herein, from a bare reading of the complaint, as well as the admitted case of the complainant that it was the first accused alone who had involved himself in the alleged crime and therefore it would be appropriate to invoke the inherent powers of this Court under Section 482 of Cr.P.C.

11. In view of my above findings, the investigation in Cr.No.129 of 2016 on the file of the first respondent herein, as against the petitioner/second accused stands quashed. The first respondent is at liberty to proceed with the investigation as against the first accused or any other person who may be involved. Though this Court has quashed the investigation as against the petitioner herein/second accused is concerned, it is made clear that the petitioner herein/second accused shall co-operate with the Investigating

Officer during the course of investigation, if he is called upon to give his statement as a witness.

12. With the above observations, the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/
Assistant Registrar

/True copy/

To Sub Assistant Registrar

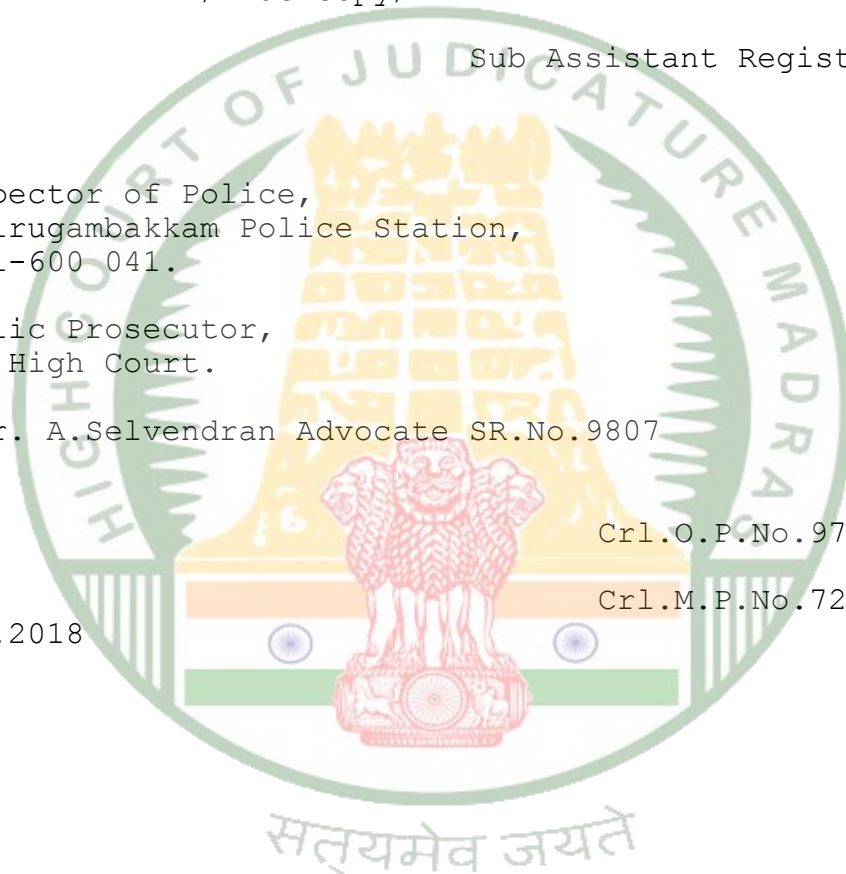
1. The Inspector of Police,
R-5, Virugambakkam Police Station,
Chennai-600 041.

2. The Public Prosecutor,
Madras High Court.

+1cc to Mr. A. Selvendran Advocate SR.No.9807

SDR 26.03.2018

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