



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.10.2018
CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WEB COPY

Cr1.O.P.[MD].No.19150 of 2018

1.Indhumathi
2.Raji

: Petitioners

Vs.

1.The Director General of Police,
Santhome High Road,
Chennai.

2.The Superintendent of Police,
Theni District, Theni.

3.The Inspector of Police,
Thenkarai Police Station,
Theni District.

: Respondents

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the respondent police not to harass the petitioners in Crime No.309 of 2018 on the file of the Inspector of Police, Thenkarai Police Station, Periyakulam without adhere ring to the mandatory provision of law contemplated under Section 41 A of Criminal Procedure Code, 2009.

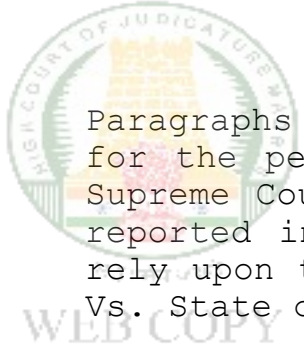
For petitioners : Mr.K.P.S.Palanivel Rajan
For Respondent : Ms.K.Suyambulinga Bharathi
Government Advocate (Cr1.Side)

ORDER

This petition has been filed to direct the respondent police not to harass the petitioners in respect of Crime No.309 of 2018.

2.The learned counsel for the petitioners submits that an FIR has been registered by the respondent police against the petitioners and two others in Crime No.309 of 2018 for the offence punishable under Sections 406, 465, 468, 471, 420 294(b) and 506(1).

3.The learned counsel for the petitioners would submit that the respondent police cannot call the petitioners for enquiry and they have to necessarily comply with the provisions of 41(1) Cr.P.C.. For that purpose the learned counsel for the petitioners have relied upon the judgment of Hon'ble Supreme Court reported in 2014 (3) SCC (Cr1) 449 in the case of Arenesh Kumar vs. State of Bihar. The learned counsel for the petitioners would specifically relies upon



Paragraphs 7.3, 10 and 12 of the said judgment. The learned counsel for the petitioners further rely upon the judgment of the Hon'ble Supreme Court in the case of Rini Johar vs. State of Madhya Pradesh reported in 2016 (11) SCC 703. The learned counsel would further rely upon the judgment of this Court in the case of Shanmugavadivel Vs. State of Tamil Nadu reported in 2015(2) L.W. (cr1) 627.

4.The learned counsel by relying upon the above said judgments would submit that the respondent police cannot mechanically call the petitioners for enquiry and seek to arrest him without following the guidelines given by the Hon'ble Supreme Court.

5.In the considered view of this Court, a petition not to harass itself is not something contemplated under the Code of Criminal Procedure. It is merely a practice that has been developed by this Court for a long period of time. Therefore, this Court exercises its jurisdiction under Section 482 Cr.P.C., in a petition for not to harass with lots of limitations and it is entertained mainly on the ground that the person, who is not an accused in a case or the dispute between the parties, which is civil in nature, is not taken before the police station and concerned persons are not harassed in the police station. In a case, where there is an FIR registered against any person, in the considered view of this Court, a petition not to harass is not maintainable at all.

6.In view of the above, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1.The Director General of Police,
Santhome High Road, Chennai.

2.The Superintendent of Police,
Theni District, Theni.

3.The Inspector of Police,
Thenkarai Police Station,Theni District.

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

+1CC to Mr.K.P.S.Palanivel Rajan, Advocate, SR.No.92527

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