



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 03.01.2018

DELIVERED ON : 11.01.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P. (MD)No.1172 of 2013

and

M.P. (MD)No.1 of 2013 and C.M.P. (MD)No.11843 of 2016

1.Soundari

2.Charles Feromeo

3.Dominic Xavio

... Petitioners/Accused No 2 to 4
Vs.

1. The State Rep. by

The Sub-Inspector of Police,

Kanyakumari Police Station,

Kanyakumari District.

(Crime No.385/2010)

...1st Respondent/Complainant

2.Mrs.Thusnevis Mary Rose ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the proceedings in C.C.No.71 of 2012 on the file of the Judicial Magistrate Court No.I, Nagercoil and quash the same.

For Petitioners

: Mr.K.Vamanan

For R1

: Mr.K.S.Duraipandian

Additional Public Prosecutor

For R2

: Mr.A.R.Kannappan

ORDER

The petitioners herein are Accused Nos.2 to 4 in C.C.No.71 of 2012 pending on the file of the Judicial Magistrate Court No.I, Nagercoil, They filed this application for quashing the abovesaid case.

2.Now, on going through the charge sheet filed by the first respondent police, it seems that on 17.10.2010 at 11.30 a.m. in Rajasangeetha Street, Kanyakumari, at the time when the Advocate Commissioner appointed in O.S.No.186 of 2009, begin to examine the witnesses, the petitioners and one another accused assaulted the second respondent/de-facto complainant and others and thereby, they committed the offences under Sections 323, 294(b) and 506(ii) IPC.

3.The grounds raised by the petitioners for this petition, is that there are so many contradictions available in the place of <https://hservices.ecourt.gov.in/hservices/> in respect of assault committed by them. Even if the contention raised by the petitioners is true one, it should be decided only by the learned trial Judge at the time of trial. So,



without examining any witness, this Court is not in a position to accept the grounds raised by the petitioners.

4. In the case of **Central Bureau of Investigation Vs. A. Ravishankar Prasad and others** reported in **2009 (2) SCC (Cri) 1063**, our Hon'ble Apex Court has held the powers of High Court under Section 482 Cr.P.C., as follows:

"Inherent powers of High Court under Section 482 Cr.P.C. are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent the abuse of process of court. These inherent powers can be exercised in the following category of cases: (i) to give effect to an order under the Code; (ii) to prevent abuse of process of court; and (iii) to otherwise secure the ends of justice. Extraordinary power under Section 482 Cr.P.C. should be exercised sparingly and with great care and caution. The High Court would be justified in exercising the power to prevent injustice and secure the ends of justice. India has largely inherited provisions of inherent powers from English jurisprudence, and therefore principles decided by the English courts are of relevance. Crown Court has inherent power to protect its process from abuse. The English courts have also used inherent power to achieve the same objective.

Exercise of inherent powers would entirely depend on the facts and circumstances of each case. The object of incorporating inherent powers in Cr.P.C. is to prevent abuse of process of court or to secure ends of justice. Both English and the Indian Courts have consistently taken the view that inherent powers can be exercised in those exceptional cases where the allegations made in FIR or the complaint, even if are taken on their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused.

When the settled legal position is applied to the facts of this case, it is not possible to conclude that complaint and charge-sheet *prima facie* do not constitute any offence against the respondents. The charge-sheet on the other hand



reveals substantial material on record making a clear case under Section 120-B read with Section 420 IPC against respondents and their connivance with the bank officials. It is also not possible to conclude that material on record taken on face value make out no case under Section 120-B read with Section 420 IPC against respondents. Prima facie, this is one case where adequate material is available on record to proceed against the respondents.'

5. Now, considering the decision of our Hon'ble Apex Court with the case in our hand, no doubt, the petitioners have not raised any ground for believing that abuse of process of law is occurred in filing the charge sheet. Further, in the case of **Sugesan Transport Pvt. Ltd., Vs. The Assistant Commissioner of Police and others** reported in **2016 (5) CTC 577**, this Court clearly held that 'where a specific provision exists under the Code to deal with a given situation, invocation of Section 482 Cr.P.C. is clearly barred.' Accordingly, the petitioners are having right to approach the trial Court based on the same grounds in the course of trial. Instead of that, filing this petition under Section 482 Cr.P.C. is unwarranted. However, according to the petitioners, the case was taken on file in the year 2010. Hence, it is appropriate to give some direction to the learned Judicial Magistrate No.I, Nagercoil, for completing the trial within a specified time.

6. Accordingly, this Criminal Original Petition is dismissed with a direction to the learned Judicial Magistrate No.I, Nagercoil, to dispose C.C.No.71 of 2012 within a period of three months from the date of receiving a copy of this order. Considering the fact that the first petitioner, being female accused, I am inclined to dispense with her personal appearance. Accordingly, the personal appearance of the first petitioner is dispensed with unless the learned Magistrate feels that her presence is required for the disposal of the case. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.I,

Nagercoil



2. The Sub-Inspector of Police,
Kanyakumari Police Station,
Kanyakumari District.

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

+1cc to Mr.K.Vamanan, Advocate Sr.No.42132

+1cc to Mr.A.R.Kannappan, Advocate Sr.No.42115

SMN2

VB/MR/SAR4/14.02.2018/4P/6C

order made in
Crl.O.P. (MD) No.1172 of 2013
11.01.2018