



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.02.2018

Delivered on : 22.02.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P.(MD)No.1754 of 2013

and

M.P.(MD)No.1 of 2013

1. Abdul Raheem,
Inspector of Police,
Budalur Police Station,
Thanjavur District.

2. Sripriya,
Sub-Inspector of Police,
Budalur Police Station,
Thanjavur District.

3. Ruby @ Therasa ... Petitioners
Vs.

K.Govindaraj ... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to P.R.C.No.22 of 2011, pending on the file of the Judicial Magistrate Court, Thiruvaiyaru, and quash the proceedings as against the petitioners.

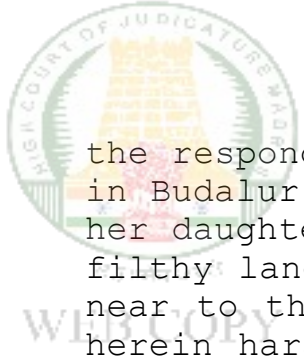
For Petitioners : Mr.M.Karunanithi

For Respondent : Mr.S.Arunachalam

ORDER

The petitioners herein are arrayed as Accused Nos.1 to 3 in P.R.C.No.22 of 2011 pending on the file of the Judicial Magistrate Court, Thiruvaiyaru. The said case was taken on file by the learned Judicial Magistrate, Thiruvaiyaru, based on the complaint given by the respondent.

2. Now, on going through the copy of the complaint given by the respondent, it is alleged that based on the complaint given by the third petitioner herein, the first and second petitioners directed



the respondent and her daughter Dhanalakshmi to appear before them in Budalur Police Station. After appearance of the respondent and her daughter, both the first and second petitioners abused them in filthy language and also assaulted the daughter of the respondent near to throat by using Lathi. Further, the petitioners 1 and 2 herein harassed the respondent and demanded to pay Rs.5,000/- and instructed to admit the case, which was proposed to be registered against the respondent and his daughter and thereby, in order to save the reputation, the respondent paid Rs.4,000/- to the petitioners 1 and 2 and saved his daughter from the hands of the petitioners 1 and 2. Thereafter, both of them admitted the case, which was registered against them and paid the fine amount. Subsequent to the said event, the daughter of the respondent went to the stage of mental depression, for which, she got treatment from the Psychiatrist. After getting treatment from the Psychiatrist for her daughter, the respondent sent a complaint to the higher police officers, but no action was taken against the petitioners.

3. After receiving complaint from the respondent, the learned Judicial Magistrate, Thiruvaiyaru, examined three witnesses on the side of prosecution and take the case on file as P.R.C.No.22 of 2011.

4. In the above situation, the petitioners herein have filed this Criminal Original Petition to quash the entire proceedings pending against them as illegal.

5. Now, the counsel, who is appearing for the petitioners submitted that previously the neighbour of the respondent called as Rubi @ Therasa, now, the third petitioner herein lodged a complaint before the first petitioner and thereby, a case has been registered and afterwards, the guilt of the respondent and her daughter was admitted before the learned Judicial Magistrate, Thiruvaiyaru and thereby, they paid the fine amount awarded by the learned Magistrate. Further, he added that only for the abovesaid reasons, the respondent lodged a complaint against the petitioners 1 and 2 only in order to take revenge against them. For which, the learned counsel appearing for the petitioners relied on a judgment of the Hon'ble Apex Court in **M.N.Ojha and others Vs. Alok Kumar Srivastav and another** reported in **2010 (1) SCC (Cri) 101 : 2009 (9) SCC 682**, wherein it has been held as follows:

''30. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons involved as accused in the complaint.''

<https://hcservices.ecourts.gov.in/hcservices>

6. So, applying the observation made by our Hon'ble Apex Court,



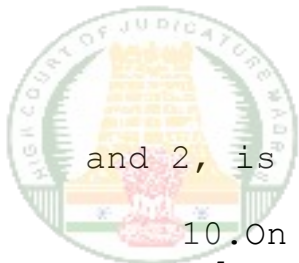
this Court is having the duty to analyze whether the complaint given by the respondent is under exert pressure and for harassing the petitioners. In this occasion, if really, the respondent lodged a complaint against the petitioners to take revenge, there is no necessity to get treatment from the Psychiatrist for her daughter. The prescription sheet issued by the Psychiatrist corroborates with the averment viz., with regard to the treatment given by the Psychiatrist. Furthermore, the petitioners are residing in remote Villages. Without any education, it is automatic on the part of those people to accept the compulsion given by the police officer for admitting the guilt. Moreover, on going through the copy of the complaint, as of now, the learned Judicial Magistrate, Thiruvaiyaru, examined three witnesses before assigning the P.R.C. Number. In the above circumstances, since the case is in preliminary stage, this Court cannot conclude that the complaint given by the respondent is only to take revenge.

7.The next contention raised by the learned counsel appearing petitioners is that the respondent herein in the application filed before the learned Judicial Magistrate, Thiruvaiyaru, seeking the relief to initiate action against the petitioners under the provisions of the Protection of Human Rights Act, 1993, but here the third petitioner is not having assigned with any public duty and thereby, the relief sought by the respondent as above, is not maintainable. Now, considering the said argument, it is relevant to refer the decision of this Court in **Kamamuttai @ Shahul Hameed Vs. Jamal Mohammed** reported in **2008 (1) MLJ (Cr1) 982**, wherein it has been held as follows:

''Since the petitioner is not a public servant, the provisions of Human Rights Act, 1993, cannot be invoked against him for violation of Human Rights.''

8.Now, considering the observation of this Court, it is true that the third petitioner herein is not a public servant and thereby, taking cognizance against the third petitioner under the provisions of the Human Rights Act, is nothing but illegal. However, on going through the entire papers submitted by the petitioners, it is seen that the same does not disclose the fact that on what provision and for what offence, the cognizance was taken by the learned Magistrate.

9.Lastly, the learned counsel appearing for the petitioners submitted that since the petitioners 1 and 2 are working as Inspector of Police and Sub-Inspector of Police respectively, sanction under Section 197 Cr.P.C. is necessary for prosecuting them under the provisions of criminal law. Further, he added that only at the time of discharging the duties, the respondent and her daughter were retained in the Police Station and therefore, without any sanction, taking cognizance against the petitioners 1



and 2, is nothing but abuse of process of law.

10. On considering the said arguments advanced by the learned counsel appearing for the petitioners, it is true that while the public servant at the time of discharging his duty, if any lapse is found on his part, for prosecuting them, sanction is necessary. But, in this case, as per the version of the respondent, beating the respondent along with his daughter is nothing but illegal.

11. In **K.Dhamodharan Vs. R.V.Narbabi** [Crl.O.P.(MD)No.4529 of 2006, dated 10.11.2006], this Court has held as follows:

'25. Detaining a person in the police station for eight long hours without providing any food may not attract any offence under the Indian Penal Code. But definitely it constitutes violation of human right to life, liberty and dignity of an individual. Therefore, it is not a simple case where some offences under the Indian Penal Code have been allegedly committed by the accused as against the complainant. Human Rights Violation as per the definition of Section 2(d) of the Protection of Human Rights Act, 1993 is prima facie made out in the complaint.'

12. In the above circumstances, in a complaint filed by the respondent, he made an averment as without any reason, the petitioners 1 and 2 detained him with his daughter in the police station and therefore, this Court cannot come to the conclusion that only in the course of official duty, the respondent and his daughter were detained in the police station. Accordingly, the argument advanced by the learned counsel appearing for the petitioners is not having any merit.

13. Having regard to the powers of this Court under Section 482 Cr.P.C., our Hon'ble Supreme Court in **Pratibha Vs. Rameshwari Devi and others** reported in **2007 (12) SCC 369**, has held as follows:

'9. In **Pratibha Rani Vs. Suraj Kumar** [1985 (2) SCC 370 : 1985 SCC (Cri) 180], this Court at P.395 observed as follows: (SCC para 59)

'59. ... It is well settled by a long course of decisions of this Court that for the purpose of exercising its power under Section 482 Cr.P.C. to quash a FIR or a complaint the High Court would have to proceed entirely on the basis of allegations made in the complaint or the documents accompanying the same per se. It has no jurisdiction to examine the correctness or otherwise of the allegations.' '



14. Furthermore, in **State of Maharashtra Vs. Ishwar Piraji Kalpatri and others** reported in **1996 (1) SCC 542**, our Hon'ble Apex Court has held as follows:

''23. This Court has consistently taken the view that the Court should not except in extraordinary circumstances, exercise its jurisdiction under Section 482 Cr.P.C., so as to quash the prosecution proceedings after they have been launched. In K.P.S. Gill case [1995 (6) SCC 194 : 1995 SCC (Cri.) 1059], it was inter alia, observed that: (SCC p.203, para 8)

''We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the first information report or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.''

15. So, considering the abovesaid two decisions, now, the case, which was required to be quashed is in the stage of committal to the Sessions Court. So, without giving an opportunity to the petitioners herein, this Court cannot come to the conclusion that the allegation made by the respondent is utterly falsehood. Accordingly, the remedy is available to the petitioners to face the trial or by filing an application to discharge at the time of framing charges. Without availing the said remedy, the petitioners herein have straightaway filed this Criminal Original Petition, for quashing entire proceedings in P.R.C.No.22 of 2011, pending on the file of the Judicial Magistrate Court, Thiruvaiyaru, which is not justifiable.

16. In the result, the petition seeking quashment of the criminal proceedings in P.R.C.No.22 of 2011, on the file of the Judicial Magistrate Court, Thiruvaiyaru, stands dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(RTI)



To

The Judicial Magistrate,
Thiruvaiyaru.

+ 1 cc TO Mr.M.Karunanithi , Advocate in SR No. 50333
+ 1 cc TO Mr.S.Arunachalam , Advocate in SR No. 50749

smn2

AE/SV MMS/SAR2/06.03.2018/6P/4C

order made in
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