

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.19930 of 2015 & CrI.O.P.No. 6605 of 2019
and M.P.No.1 of 2015 & CrI.MP.No. 3642 of 2019

CrI.O.P.No.19930 of 2015 :-

S.Asokan

... Petitioner

Vs.

1. The State rep by
The Inspector of Police,
J-8, Neelangarai Police Station,
Chennai (Cr.No.693 of 2015)

2. S.Ravirathinam

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Cr.No.693 of 2015 on the file of the first respondent police and quash the same.

For Petitioner : Mr.C.S.Dhanasekaran

For Respondents

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.

For R2 : Mr.K.M.Vijayan, Senior Counsel
For Ms.R.T.Shamala

CrI.O.P.No.6605 of 2019 :-

S.Ravirathinam

... Petitioner

Vs.

1. The State rep by
The Inspector of Police,
J-8, Neelangarai Police Station,
Chennai

2. A.R.Suresh

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Cr.No.692 of 2015 on the file of the first respondent police and quash the same.

For Petitioner : Mr.K.M.Vijayan, Senior Counsel
For Ms.R.T.Shamala
For Respondents
For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor.
For R2 : Mr.C.S.Dhanasekaran

C O M M O N O R D E R

These petitions have been filed to quash the FIR in Crime Nos. 693 and 692 of 2015 respectively, on the file of the first respondent both registered for the offence under Sections 147, 148, 448, 427 and 506(ii) of IPC.

2. The learned Senior Counsel appearing for the petitioner in CrI.O.P.No.6605 of 2019, submitted that the petitioner is the first accused in Crime No.692 of 2015, registered for the offences under Sections 147, 148, 448, 427 and 506(ii) of IPC. The second respondent lodged false complaint alleging that he is the power agent of one Asokan and others and he is looking after the property. On 27.02.2015, the petitioner and others were attempted to trespass over the land and threatened him with dire consequences. He further submitted that the petitioner also lodged a complaint as against the said Asokan and the same was also registered in Crime No.693 of 2015 for the offences under Sections 147, 148, 448, 427 and 506(ii) of IPC. He also submitted that it is a case in counter and the petitioner is in possession of the disputed property and when the said Asokan and others attempted to trespass into the land, the petitioner lodged a complaint in advance but the same was registered only on the next day. Therefore, he prayed for quashment of the Crime No.692 of 2015.

3. The learned counsel appearing for the petitioner in CrI.O.P.No. 19930 of 2015 submitted that the petitioner is arraigned as first accused in Crime No.693 of 2015, on the file for the first respondent registered for the offences under Sections 147, 148, 448, 427 and 506(ii) of IPC. He further submitted that the petitioner and his bother and sister have inherited the disputed property and they are in possession of the said property. The second respondent lodged false complaint alleging that on 27.02.2015, the petitioner and others were attempted to trespass over the land and threatened him with dire consequences. Originally, second respondent along with his henchmen trespassed into the property and damaged the values therein. In this regard the petitioner lodged a complaint in Crime No.692 of 2015 on the file for the first respondent registered for the offences under Sections 147, 148, 448, 427 and 506(ii) of IPC. Therefore, he prayed for quashment of the

Crime No.693 of 2015.

4. The learned Additional Public Prosecutor would submit that the both the cases are counter cases and the investigation is pending with the first respondent police.

5. Heard Mr.K.M.Vijayan, learned Senior Counsel appearing for the petitioner in Crl.O.P.No.6605 of 2019 and for the second respondent in Crl.O.P.No.19930 of 2015, Mr.C.S.Dhanasekaran, learned counsel appearing for the petitioner in Crl.O.P.No.19930 of 2015 and for the second respondent in Crl.O.P.No.6605 of 2019 and also Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent in both petitions.

6. It is seen from the both FIRs that the complainant in the one FIR is the accused in the another FIR. Both the complaints have been lodged alleging that on 27.02.2015, at about 5.30 p.m., the accused person along with 50 others have trespassed into the property and damaged the property to the tune of Rs.5 lakhs and also threatened the security with dire consequences. On perusal of records, both the complaints which sought to be quashed in both the petitions are counter cases. Admittedly, there are civil suits are pending between them.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the

complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

.....
9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

8. It is also seen from both the First Information Reports that there is a specific allegation as against the accused persons, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that both the FIRs disclose prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code. Further it is seen that these are case in counter and therefore this Court is not inclined to quash both the First Information Reports.

9. Considering the above facts and circumstances, it is appropriate to direct the first respondent to conduct enquiry in Crime No. 692 of 2015 and Crime No.693 of 2015, by following the PSO 566, and file final report within a period of three months from the date of receipt of copy of this Order.

10. In view of the above directions, this Criminal Original Petition stands disposed of. Consequently connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

rts
To

1. The Inspector of Police,
J-8, Neelangarai Police Station,
Chennai.

2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1 CC to Mrs.P.T.Shyamala, Advocate sr 36433.

+5 Ccs to Mr.C.S.Dhanasekaran, Advocate sr 36440.

CRL.O.P.No.19930 of 2015 &
Crl.O.P.No. 6605 of 2019
and M.P.No.1 of 2015 &
Crl.MP.No. 3642 of 2019

PMS (CO)
SP(29/04/2019)

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