

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 15.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P.Nos. 9208 & 22111 of 2015
and MP.Nos.1 & 2 of 2015

CRL.O.P.No.9208 of 2015 :-

M.Manoharan

... Petitioner

Vs.

The State Rep by
The Inspector of Police,
Guduvancherry Police Station,
Kancheepuram District.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to transfer the investigation in Crime No.221 of 2015 on the file of the respondent police to some other independent agency like CBCID or any other competent agency to investigate the matter.

For Petitioner : Mr.N.R.Elngo, Senior Counsel
For Mr.T.Arockia dass

For Respondent : Mr.Mohammed Riyaz
Additional Public Prosecutor.

CRL.O.P.No.22111 of 2015 :-

G.Mohanakrishnan

... Petitioner

Vs.

1. The Inspector of Police,
H-2, Guduvancherry Police Station,
Kancheepuram District.
(Crime No.221 of 2015)

2. M.Manohar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records connected with FIR No.221 of 2015 on the file of the first respondent and quash the same.

For Petitioner : Mr. B.Kumar, Senior Counsel
For Mr.B.Sathish Sundar

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.N.R.Elngo, Senior Counsel
For Mr.V.Subramanian

C O M M O N O R D E R

The petition in Crl.O.P.No.22111 of 2015 has been filed to quash the FIR in Crime No.221 of 2015, registered for the offence under Section 306 of IPC, on the file of the first respondent.

2. The learned Senior Counsel appearing for the petitioner in Crl.O.P.No. 22111 of 2015 submitted that the second respondent lodged complaint that his son died hanging himself at his resident on 11.03.2015. The deceased was under the care of the petitioner, since he was studying law course in the School of Excellence, Chennai. During the period of his study, the deceased was mingled with the petitioner's family as one of the family member. After completion of his studies, he enrolled as an advocate and he was living at Oorapakkam in a flat purchased by his father, the second respondent herein. While being so, the petitioner used to engage the deceased for the cases and the petitioner found that the deceased neglected the case entrusted to him. On 11.03.2015, through his new Advocate contacted the deceased to hand over the bundle to the new counsel. However, the deceased refused to hand over the bundle and replied that the petitioner should talk to him. On the date itself, the deceased committed suicide by hanging himself.

2.1. He further submitted that the entire complaint does not disclose any offence as against the petitioner and the petitioner did not instigate or abet the deceased to commit suicide. The learned Senior Counsel further relied upon the caneta of judgements as follows :-

- (i) 2015(9) SCC 639 - State of Kerala Vs. S.Unnikrishnan Nair
- (ii) 2017(1) SCC 483 - Gurcharan Sigh Vs. State of Punjab
- (iii) 2018(7) SCC 781 - Vaijnath Kondiba Khandke

3. Per contra, the learned Senior Counsel appearing for the second respondent filed counter and submitted that on 11.03.2015, when the deceased was in work at his office, the petitioner called him over phone and spoke to him for more than 25 minutes. Without any reasons, the petitioner abused him as if, the deceased cheated him by getting lump sum amount as fees and trashed him to the core by using filthy language for not visiting him. Further he submitted that the petitioner has used inhuman, scandalous words abusing his mother and the same let the deceased into depression and became broken hearted. Therefore, the deceased extremely upset by the language used by the petitioner and immediately rushed to his house and committed suicide. Further he submitted that only it is a FIR stage, and it cannot be quashed on its threshold. When there is specific

avernments to make out the case for the offence under Section 306 of IPC, it cannot be quashed. He further submitted that, the deceased also sent message to his colleague and friends through his mobile about the systematic harassment and as such he committed suicide. Therefore, he prayed for dismissal of the quash petition.

4. The learned Additional Public Prosecutor submitted that the FIR registered in Crime No.221 of 2015 for the offences under Section 306 of IPC and the investigation is still pending.

5. Heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.N.R.Elango, learned Senior Counsel appearing for the second respondent.

6. On perusal of records, it is seen that the petitioner is the sole accused in Crime No.221 of 2015 registered for the offence under Section 306 of IPC. There is specific allegations in the FIR that the petitioner is a care taker of the deceased, while he was studying law and thereafter he joined in the Advocate office as junior. Admittedly, the petitioner engaged the deceased for some matters and with regards to this, there was a dispute between them. Therefore on the fateful date, the petitioner phoned to the deceased and thereafter the deceased committed suicide. Therefore, there is a prima facie case made out as against the petitioner to attract the offence under Section 306 of IPC.

7. In this regard it is relevant to rely the recent judgement of the Hon'ble Supreme Court of India passed in CrI.A.No.515-516 of 2018 dated 09.04.2018 in the case of Munshiram Vs. State of Rajasthan and anr., as follows:-

"11.Having heard the learned counsel for both the parties and perusing the material available on record we are of the opinion that the High Court has prematurely quashed the FIR without proper investigation being conducted by the Police. Further, it is no more res integra that Section 482 of CrPC has to be utilized cautiously while quashing the FIR. This court in a catena of cases has quashed FIR only after it comes to a conclusion that continuing investigation in such cases would only amount to abuse of the process. In this case at hand, the court abridged the investigation which needed to ascertain certain factual

assertions made in the FIR concerning the existence or non-existence of any prior mental condition of the deceased prior to the commission of suicide.

12. We are apprised of the FSL report which categorically states that the handwriting of the deceased and the handwriting as present in the suicide note has similarities. Further, the status report filed before the High Court notes as under: During investigation, after receiving information of the deceased Brijesh Singh from the hospital and after recording death FIR 15/13 under section 174 CrPC, investigation was started. Handwriting was recovered from the place of incident during inspection, which was identified by the complainant as the handwriting of his son and same was taken into custody. Statements under section 161 CrPC of complainant Munshi Ram, witnesses Sh. Ajay Kumar, Hakam Singh, Smt. Ombati, Smt. Rekha, Smt. Meena, Smt. Pushpa, and Sh. Sher Singh were recorded. Thereafter, Munshi Ram got registered FIR No.318/2013. The post-mortem and panchayatnama of the deceased was done and during this, written unsigned note was recovered from the half pant of the deceased and the same was also taken into possession. The post-mortem of the dead body of the victim was conducted. The clothes worn by the deceased were taken into custody and the dead body was handed over to the family members for last rites. On 3.8.2013, the file was forwarded to Ld. ACC, Sadar for further investigation who sent the suicide note to FSL for examination. Call details of the suspect were obtained and on 17.2.2014, the main file was entrusted to Ld. AACP, Vaishali Nagar. FSL Report with regard to suicide note was obtained by him. On 18.2.2014, case file was sent to Deputy Commissioner for further investigation who took statements of Smt. Shrawni Devi, Smt. Vimla Devi, Smt. Kalawati, Smt. Radha Agarwal, Smt. Manju Chowdhary, Shri Deepakshi @ Charu, Shri Harish Agarwal under section 161 CrPC. Based on the

investigation carried out as per the order no 8225-27 of DCP in case no 318/13 by the Deputy Commissioner and based on the evidence available on record, it is established that Accused persons (1) Khushboo (2) Dharampal (3) Smt. Sushila (4) Hawa Singh have committed offence under section 306 IPC. Accused Smt. Khushboo W/o Brijesh Singh D/o Dharampal Singh caste Bawaria, Age 25 years, Sushila W/o Shri Dharampal Singh caste Bawaria, Age 43 years and Dharampal Singh S/o late Shri Ram Singh caste Bawaria, Age 45 years were arrested in this case. Remaining enquiry. Accused Hawa Singh could not be arrested since he was absconding and since 8.8.2014, the Hon'ble High Court has stayed the investigation. The Status Report of facts is being sent to you. (emphasis supplied) 13. In light of the fact that the enquiry was pending and there are aspects which may require investigation, we are of the considered opinion that the High Court erred in quashing the FIR at the threshold itself without allowing the investigation to proceed. We cannot agree with the reasons provided under the impugned judgment concerning certain factual assertions made by the Respondents as to the condition of the deceased and reasons for committing suicide because acceptance of the said would not be in consonance with the settled jurisprudence under Section 482 of CrPC as laid down by various judgments of this Court."

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8. The Hon'ble Supreme Court of India held in another judgement passed in Crl.A 1487 of 2018 dated 28.11.2018 in the case of Narayan Malhari Thorat Vs. Vinayak Deorao Bhagat and anr., as follows :-

"13. We now consider the facts of the present case. There are definite allegations that the first respondent would keep on calling the wife of the victim on her mobile and keep harassing her which allegations are supported by the statements of the mother and the wife of the victim recorded during investigation.

The record shows that 3-4 days prior to the suicide there was an altercation between the victim and the first respondent. In the light of these facts, coupled with the fact that the suicide note made definite allegation against first respondent, the High Court was not justified in entering into question whether the first respondent had the requisite intention to aid or instigate or abate the commission of suicide. At this juncture when the investigation was yet to be completed and charge-sheet, if any, was yet to be filed, the High Court ought not to have gone into the aspect whether there was requisite mental element or intention on part of the respondent.

14. We, therefore, find merit in the submissions advanced on behalf of the appellant. The judgment and order under appeal is, therefore, set aside and the present appeal is allowed. Since the investigation into the matter was stalled as a result of the petition under Section 482 Cr.P.C., we direct the concerned authorities to complete the investigation as early as possible."

9. In the above cases, the FIRs have been registered for the offence under Section 306 of IPC. The said FIRs were not quashed by the Hon'ble Supreme Court of India held that it is no more res integra that Section 482 of Cr.P.C. has to be utilized cautiously while quashing the FIR. The Hon'ble Supreme Court of India in a catena of cases has quashed the FIR only after it comes to a conclusion that continuing investigation in such cases would only amounts to abuse of the process. In the case on hand, the investigation is very much needed to ascertain certain factual assertions made in the FIR, as such the above judgments squarely applicable to the case on hand. In view of the above judgments, the judgments relied upon by the learned Senior Counsel for the petitioner are not helpful to the case of the petitioner.

10. It is also relevant to rely upon the latest judgment of the Hon'ble Supreme Court of India passed in CrI.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."

11. It is seen from the First Information Report that there is a specific allegation as against the petitioner, 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 the FIR discloses 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. Therefore, this Court is not inclined to quash the FIR.

12. In the result, the Criminal Original Petition in Cr.O.P.No.22111 of 2015 stands dismissed. Consequently, connected miscellaneous petitions are closed.

CrI.O.P.No.9208 of 2015 :-

13. The petition in CrI.O.P.No.9208 of 2015, has been filed to transfer the investigation in Crime No.221 of 2015 on the file of the first respondent to some other investigating agency ie., CBCID.

14. The learned counsel appearing for the petitioner in CrI.O.P.No. 9208 of 2015, submitted that the case has been registered in Crime No.221 of 2015 in the year 2015, and thereafter there is no progress in the investigation. Therefore, he prayed to allow this petition.

15. It is seen that the accused filed quash petition before this Court in CrI.O.P.No.22111 of 2015, as such the respondent is not able to proceed with the investigation. In view of the order passed in CrI.O.P.No.2111 of 2015, now the respondent has no impediment to proceed with the investigation in Crime No.221 of 2015.

16. Considering the above facts and circumstances, the transfer of investigation would affect the investigation as such this Court is not inclined to transfer the investigation. However, the respondent is directed to complete the investigation in Crime No.221 of 2015 within a period of four

weeks from the date of receipt of copy of this order and file final report before the concerned jurisdictional Magistrate.

17. With the above directions, the Criminal Original Petition in Crl.O.P.No.9208 of 2015 stands disposed of.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Inspector of Police,
H-2, Guduvancherry Police Station,
Kancheepuram District.
2. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.T.Arockia dass, Advocate sr.37224

+1cc to Mr.B.Sathish Sundar, Advocate sr.37285 (25/07/2019)

CRL.O.P.Nos. 9208 & 22111 of 2015
and MP.Nos.1 & 2 of 2015

nr 12/06/2019

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