

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.No.4224 of 2019 and
Cr1.M.P.Nos.2551 & 5094 of 2019

G.D.Rajkumar

... Petitioner

Vs.

1.The State represented by Inspector of Police,
C-2, Race Course P.S.(L&O),
Coimbatore City

2.S.Lakshmipathy

... Respondents

PRAYER: Criminal Original Petition filed under Section 482
Cr.P.C. praying to call for the records relating to Crime No.98
of 2019 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.Sathish Parasran,
Senior Counsel
for Mr.C.Maniprabhu

For Respondents

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

For R2 : Mr.N.Senthil Kumar

ORDER

This petition has been filed to quash the FIR in Crime No.98
of 2019 on the file of the first respondent registered for the
offence under Sections 354 (c) I.P.C. and Section 4 of Tamil
Nadu Prohibition of Harassment of Women Act, 2002 and Section 66
(e) of the Information Technology Act, 2000.

2. The learned Senior Counsel appearing for the petitioner
submitted that the petitioner is the sole accused in Crime No.98
of 2019 registered on the complaint lodged by the second
respondent herein. The petitioner is the absolute owner of the
property situated at Door No.1068 in the premises called "Gopal
Bagh", Avinashi Road, Coimbatore. In the said property there
exists a compound wall on the eastern side. In this regard
there is a dispute between M/s.Sri Krishna I-Tech Management
Solutions Private Limited namely, the second respondent in
respect of the compound wall. To settle the said issue, the

petitioner as well as the second respondent requested the Town Sub Inspector of Survey, Central Zone, Coimbatore on 17.07.2014 to survey the disputed property on the basis of their respective deeds. On the basis of surveyor report the compound wall is situated within the extent and boundary of the property owned by the petitioner. There was a dispute in the surveyor report on which a petition filed before the Assistant Director of Land Survey and Records and he has passed order on 23.06.2017 and confirmed the petitioner's possession and enjoyment of the said disputed compound wall as against which the second respondent defacto complainant preferred an appeal before the District Revenue Officer, Coimbatore and the said appeal was allowed by order dated 10.08.2018.

2.1. He further submitted that the major portion of the building put up by the petitioner rests on the compound wall and therefore, to watch the construction activity in the disputed wall to ascertain if any damage caused to the building, the petitioner lodged a complaint before the Commissioner of Police, Coimbatore on 17.08.2018 but to no avail. As such, the petitioner has no other option than to install CCTV cameras at three different spots inside the premises as a security measure. As excepted by the petitioner on 10.01.2019, the second respondent and his men had maliciously demolished a portion of the compound wall on the southern end which contained boundary mark fixed by the authorities during the survey. The petitioner also filed a suit in O.S.No.59 of 2019 on the file of the District Court, Coimbatore against the second respondent for declaration and permanent injunction. Thereafter, the petitioner left on a business trip to Germany on 30.01.2019. He further submitted that while being so, on 02.02.2019, the first respondent directed the security officer to remove the security cameras mounted at the overhead tank and to reinstall the same at some other point based on the petition registered by the second respondent herein. In the meanwhile the first respondent entered into their property and also seized DVR which contains images, captures of CCTV cameras from the security room. Thereafter the first respondent registered FIR in Crime No.98 of 2019. He further submitted that all the CCTV cameras were connected to one digital vedio recorder (DVR) which was seized by the first respondent and on the basis of the same FIR was registered as against the petitioner.

2.2. Even according to the first respondent, the offence registered as against the petitioner is not at all attracted and it is sheer abuse of process of law. Already, the petitioner filed a suit in O.S.No.59 of 2019 for declaration and injunction and it is pending and as such it is a civil dispute between the petitioner and the second respondent herein in which the first respondent ought not to have interfered with the civil dispute. He further submitted that even from the complaint there is no

allegation of harassment faced by any of his workers to attract Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1988. Likewise, Section 354(c) I.P.C. is also not attracted as against the petitioner since nothing was captured in the CCTV cameras as alleged by the second respondent. Therefore, the entire allegations are not attracted in the offence registered by the first respondent.

2.3. He further submits that pursuant to the direction of the first respondent on 02.02.2019 the petitioner's employees engaged the services of a company called 'Skycam' a CCTV installation service provider and reinstallation works were carried out on 05.02.2019 and 06.02.2019. Further an inspection of those CCTV footages captured before reinstallation would show that there is not a single image of any woman captured in any of the CCTV cameras on 02.02.2019, the date on which the offence allegedly took place. Therefore he prayed for quashment of the FIR.

3. Per contra, the learned counsel for the second respondent defacto complainant filed counter and vacate stay petition and submitted that the second respondent purchased the property on 19.05.2014 situated at TS.No.10/1051, 10/1054 Old Survey No.127 & 128 admeasuring 1.88 acres at Avinashi Road, Puliakulam Village, Coimbatore Taluk, Coimbatore District for a valid consideration. While being so, the petitioner very often indulged in disturbing the possession and enjoyment of the second respondent with regard to the dispute over the compound wall and as such the petitioner made application to survey the property and it was confirmed that the compound wall belongs to the second respondent. In fact, the Assistant Director of Land Survey and Records without conducting any enquiry passed order to rectify the FMB sketch. Aggrieved by the said order, the second respondent filed appeal before the District Revenue Officer, Coimbatore and it was allowed and confirmed that the compound wall belongs to the second respondent. The petitioner filed suit in O.S.No.56 of 2019 for declaration and injunction which is pending. While being so, the petitioner installed CCTV cameras at three different spots inside his premises as a security measure. Those were installed to capture video in such a way that it would capture the video footages of the rest room inside the second respondent's campus which is meant for working women and at the house of the Managing Director. The CCTV cameras focussed the rest room and the house of the Managing Director and cameras were installed with malafide intention of the petitioner herein. Therefore, on 05.02.2019 the second respondent lodged a complaint and the same was registered in Crime No.98 of 2019.

3.1.He further submitted that admittedly the petitioner installed CCTV cameras focussing the rest room of the women toilet and the house of the Managing Director and the first

respondent seized digital vedio recorder connected to the CCTV cameras. It has been sent to the Forensic Science Laboratory to examine the video recordings relating to the offence committed by the petitioner herein. The allegations prima facie made out cases to register FIR for the offences as mentioned above against the petitioner herein. Further he submitted that the installation of CCTV cameras focussed the rest room of the woman employees of the complainant is clearly attracting the offence under Section 354 (c) I.P.C. and also attracts the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1988. The offence under Section 66 (e) of the Information Technology Act is also attracted as against the petitioners since the petitioner intentionally installed the CCTV cameras to capture images or vedio records of the house of the Managing Director and also women toilet. Therefore, he sought for dismissal of this quash petition.

4. The learned Additional Public Prosecutor also submitted that the case has been registered in Crime No.98 of 2019 for the offences under Sections 354 (c) I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 66 (e) of the Information Technology Act, 2000 in which the petitioner is the sole accused. On the complaint lodged by the second respondent herein the CCTV cameras installed by the petitioner have been seized and also seized the digital vedio recorder connected to those cameras. The said recorder has been sent to the Forensic Laboratory for getting opinion and awaits report. At this stage, the FIR cannot be quashed since there are specific allegations to make out a case for the offences under Sections 354 (c) I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 66(e) of the Information Technology Act, 2000 and he prayed for dismissal of this quash petition.

5. Heard the learned Senior Counsel for the petitioner, the learned counsel for the second respondent and the learned Additional Public Prosecutor appearing for the first respondent.

6. It is seen that admittedly there is a dispute with regard to compound wall between the petitioner and the second respondent's property. In this regard, the petitioner also instituted civil suit in O.S.No.59 of 2019 before the District Court, Coimbatore for declaration and injunction. In fact, the revenue officials conducted survey and found that the disputed compound wall belongs to the second respondent complainant and became final and it was not challenged before any authorities. Admittedly, the petitioner installed three Closed Circuit Television at three different spots inside the premises of the petitioner. It is also seen from the photographs it was installed focussing the property belongs to the second respondent and it is also seen that CCTV was not only installed

in the building and also it was installed in the tree. It shows the intention to install the CCTV only to capture video photographs in the premises belongs to the second respondent. It also focussed the women toilet used by the employees of the defacto complainant. Therefore, the first respondent immediately seized the CCTV cameras and also digital video recorder connected to the said cameras and have been sent to the forensic science laboratory and awaits report. Now the petitioner challenges the said FIR on the ground that there is no ingredients to make out the offence under Sections 354 (c) I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 and Section 66(e) of the Information Technology Act, 2000.

7. There is specific allegation to attract offence registered by the first respondent against the petitioner. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court in the case of Rafiq Ahmedbhai Paliwala Vs. the State of Gujarat & Ors. in Crl.A.No.506 of 2019, wherein it is held as follows:

"11. The High Court, in our view, instead of quashing the FIR at such a preliminary stage should have directed the IO to make proper investigation on the basis of the FIR and then file proper charge sheet on the basis of the material collected in the investigation accordingly. It was however, not done. It was more so because, we find that FIR did disclose prima facie allegations of commission of concerned offences."

8. It is also 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 - Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors., wherein it is held 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."

9. In view of the same, FIR cannot be quashed on its threshold. That apart, the offences registered as against the petitioner are very serious in nature and it has to be investigated further after receipt of the report from the Forensic Science Laboratory in respect of digital video recorder

connected to those CCTC cameras installed by the petitioner. Therefore, the above judgments of the Hon'ble Supreme Court of India are squarely applicable to the case on hand. Therefore, this Court is of the considered opinion that there are specific averments and allegations to attract the offences as against the petitioner and the quash petition is liable to be dismissed.

10. Accordingly, this Criminal Original Petition is dismissed. However, considering the facts and circumstances of the case, the first respondent is directed to complete the investigation and file final report in Crime No.98 of 2019 before the jurisdictional Magistrate concerned within a period of three months from the date of receipt of a copy of this Order. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.III,
Coimbatore.

2. The Inspector of Police,
C-2, Race Course P.S.(L&O),
Coimbatore City

3. The Public Prosecutor,
High Court of Madras.

+2 cc's to M/s.N.Senthil Kumar, Advocate, Sr.No. 41129

+5 cc's to M/s.N.Senthil Kumar, Advocate, Sr.No. 42994(03.05.19)

+1cc to Mr.G.Maniprabhu, Advocate, S.R.No.42172 (14/08/2019)

Cr1.O.P.No.4224 of 2019 and
Cr1.M.P.Nos.2551 & 5094 of 2019

CSL/29.04.2019

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