

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.31013 OF 2019

AND

CRL.M.P.NO.16879 OF 2019

Shanthi

... Petitioner

Vs.

1. The State rep. by Inspector of Police,
Vigilance and Anti-Corruption,
Salem Detachment, Salem.
(Cr.No.1/AC/2017 of V & AC)

2. Arappuli

... Respondents

Prayer:

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in Special CC.No.1 of 2019 on the file of the Special Judge, Salem - for the trial of cases under the P.C.Act, 1988, and quash the criminal proceedings on the facts and circumstances of the case.

For Petitioner : Mr.N.A.Ravindran

For Respondents : Mrs.Saradha Devi.V
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in Special C.C.No.1 of 2019 on the file of the Special Judge, Salem - for the trial of cases under the P.C.Act, 1988, and quash the criminal proceedings on the facts and circumstances of the case, insofar as the petitioner is concerned.

2. The petitioner is arrayed as A2 in Special C.C.No.1 of 2019. The case of the prosecution is that defacto complainant made an application for transfer of patta in his name, for that purpose the Village Administrative Officer/A1 demanded a sum of Rs.5,000/- as bribe. The defacto complainant made a complaint to the respondent police regarding this on the very next day.

To ascertain the bonafide of the complaint given by the defacto complainant, a Constable accompanied with the petitioner and gave him a voice recording device to capture the conversation between A1 and the defacto complainant. During that time, A1 had again demanded the money in full and A2 also made an innocuous statement "பிச்சி பிச்சி ஏண்ணா கொடுக்கிற, ஓட்டுக்கா நீ கொடுண்ணா". The very next day a trap was conducted and A1 was arrested and FIR was registered. After the investigation, the petitioner was also implicated as A2. Though her voice was recorded, thereafter she has not involved in any transaction between A1 and the defacto complainant. However, she was roped under Section 109 of IPC and was implicated as A2 in the FIR.

3. This Criminal Original Petition has been filed by A2 challenging the Special C.C.No.1 of 2019 on the ground that originally she was not arrayed as an accused in the FIR and after investigation, she was arrayed as A2 with the aid of Section 109 IPC on the sole allegation that before the trap, the petitioner questioned the defacto complainant "பிச்சி பிச்சி ஏண்ணா கொடுக்கிற, ஓட்டுக்கா நீ கொடுண்ணா". Thereafter, the trap was conducted and the Village Administrative Officer was trapped by DVAC based on the complaint given by the defacto complainant. Challenging the same, the present Criminal Original Petition has been filed.

4. The learned counsel for the petitioner would submit that the petitioner was not arrayed as an accused in the FIR, later she was implicated in the charge sheet on the sole allegation that she was abetting the crime committed by A1, in which she has no active participation.

5. Considering the facts and circumstances, the similar type of issue has been considered by the Hon'ble Apex court and had laid down the principles which are required to be taken into consideration by the High Court while exercising its jurisdiction under Section 482 of Cr.P.C for quashing the proceedings. The following observation was made by the Apex court in State of Haryana Vs. Bhajan Lal:

''(i)Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii)Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156

(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.

(iii)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv)Where, the allegations in the FIR, do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under S.155(2) of the Code.

(v)Where, the allegations in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii)Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.''

6. It could thus be seen that the Hon'ble Apex court held that where the allegations in FIR or complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute a case against the accused, the High Court would be justified in quashing the proceedings. Further, it has been held that where the uncontroverted allegations in the charge sheet and the evidence collected in support of the same do not disclose any offence and make out a case against the

accused, the court would be justified in quashing the proceedings. However, in the present case, there is specific allegation against the petitioner/ A2. Thus the discretionary court cannot interfere with the complaint in the present case where the petitioner was implicated under Section 109 IPC, wherein the allegation was that she had conversation with the defacto complainant "பிச்சி பிச்சி ஏண்ணா கொடுக்கிற, ஒட்டுக்கா நீ கொடுண்ணா" that means "Why are you giving the money in a piecemeal basis?", which is an uncontroverted allegation in the FIR.

7. In view of the above, I do not find any material in this Criminal Original Petition. Accordingly, the quash petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Special Judge, Salem.
for the trial of cases under the P.C.Act, 1988,
2. The Section Officer,
Criminal Records,
High Court of Madras, Chennai.
3. The Public Prosecutor,
High Court, Madras-104.

सत्यमेव जयते

Cr1.O.P.No.31013 of 2019
and
Cr1.M.P.No.16879 of 2019

NRL(CO)
CS/03/03/2020

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