

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 08.01.2019
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.Nos.29536 and 14754 of 2018
And
Crl.M.P.Nos.17338 and 7457 of 2018

P.Sakthi Kumar ... Petitioner in
Crl.O.P.29536/2018
P.Mariammal ... Petitioner in
Crl.O.P.14754/2018

Vs.

1.The State of Tamilnadu
Rep by its Inspector of Police,
CCB-1, Vepery, Chennai-600 007.

2.S.Subitha @ S.Shri. Subitha
... Respondents in both Crl.O.Ps.

3.Mrs.Vijayalakshmi Balaji
(3rd respondent is impleaded
as per the order of this
Hon'ble Court dated 23.11.2018
made in Crl.M.P.No.15739 of 2018
in Crl.O.P.No.14754 of 2018)
... Respondent in Crl.O.P.14754/2018

Prayer in Crl.O.P.No.29536 of 2018:
Petition filed under Section 482 of Cr.P.C., seeking
to call for entire records pertaining to Crime No.374 of
2016 dated 29.11.2016 on the file of the 1st respondent for
the alleged offences under Sections 465, 467, 468, 474, 420
and 120-B of the Indian Pinal Code, 1860 and quash the same.

Prayer in Crl.O.P.No.14754 of 2018:
Petition filed under Section 482 of Cr.P.C., seeking
to call for entire records in Crime No.374 of 2016 on the
file of the 1st respondent for the alleged offence under
Sections 465, 467, 468, 474, 420, 120-B of the Indian Penal
Code, 1860 and quash the same illegal, incompetent and
without jurisdiction by allowing the present criminal
original petition.

For Petitioners : Mr.V.Srikanth
in Crl.O.P.29536/2018
Mr.V.Lakshminarayanan
for M/s.MA.P.Thangavel
in Crl.O.P.14754/2018

For Respondents : Mr.R.Ravichandran for R1
Government Advocate (Crl. Side)
Mr.S.Karthikeyan for R2
in both Crl.O.Ps.
Mr.S.R.Raghunathan for R3
in Crl.O.P.14754/2018

C O M M O N O R D E R

The petitioners have filed these petitions seeking to call for the records in Crime No.374 of 2016 on the file of the first respondent and to quash the same.

2.The petitioners are arrayed as A1 and A2 in Crime No.374 of 2016 for the offences punishable under Sections 465, 467, 468, 474, 420 and 120B of IPC. The petitioners herein are none other than the brother and mother of the defacto complainant/ second respondent. The defacto complainant is the elder daughter of one Pichaimani who passed away on 11.10.2015. The said Pichaimani was doing real estate business and he was in possession of number of properties. Due to serious illness, he was admitted in Fortis Malar Hospital, Adyar, Chennai, as inpatient on 27.09.2015. While being so, the defacto complainant learnt that the said Pichaimani had executed settlement deed on 09.10.2015 in favour of his son/ petitioner in Crl.O.P.No.29536 of 2018 and his wife/ petitioner in Crl.O.P.No.14754 of 2018 had signed as witness in the said settlement deed. Hence, the defacto complainant lodged the complaint.

3.In the complaint the defacto complainant has stated that her father Pichaimani was diagnosed with cancer during early 2013 and was under treatment and from then he became disoriented and his conscious level subdued. It is also stated that her father was admitted in Fortis Malar Hospital, Adyar, Chennai, as inpatient on 27.09.2015 and he was completely disoriented and on 07.10.2015 he was shifted to Intensive Care Unit and he breathed his last on 11.10.2015. Hence the document alleged to have been executed by her father at his residence cannot be true and the same is nothing but a forged document.

4.In the complaint the defacto complainant has also stated that the said document does not contain the signature of her father, but only his thumb impression. Her brother Sakthikumar in connivance with her mother and Sub-Registrar, Neelangarai, had cleverly fabricated a settlement deed dated 09.10.2015 and registered the same and thereby illegally usurping the schedule mentioned 19

properties and thereby committed dishonest misappropriation of her father's property.

5.The Death Summary issued by Fortis Malar Hospital reveals that the said Pichaimani was admitted in the hospital with complaints of disorientation, generalized weakness, giddiness and turbid urine. Patient was a known case of T. cell lymphoma (not on treatment) chronic liver disease T2DM, CKD and peripheral arterial disease. Patient had urethral fistula and gangrene in right toe. Patient was admitted in ICU and was started on high level antibiotic (imipenam), vasopressor (nor adrenaline), anti encephalopathy measures (duphalac, rifaximin, bowel wash), dialysis for renal failure with albumin support. Swab from the urethral stricture grew E.Coli. Patient improved with above measures and was shifted ward 04.10.2015.

6.The Death Summary further reveals that the Patient had recurrence of sepsis in the same admission with worsening consciousness and drop in BP.Swabbing of the urethral culture grew E.Coli and klebsiella and swabbing from the toe gangrene grew E.Coli. Patient was started on high level antibiotic with fungal and anaerobic cover and was shifted to ICU on 07.10.2015 for supportive measures. Patient was restarted on nor adrenaline. In view of respiratory distress Pichaimani was intubated and put on ventilatory support. Escalated the antibiotic to teicoplanin. Urology, Nephrology and Vascular surgeon opinion was obtained. In spite of the above measures patient condition worsened and had cardio respiratory arrest on 11.10.2015 and was declared dead at 11.23 pm.

7.The defacto complainant filed complaint dated 30.06.2016 before the law enforcing agency and the same was assigned Complaint No.2938/CCB/Visitors/2016. Initially, the law enforcing agency conducted petition enquiry and thereafter closed the same on the ground that the dispute is civil in nature. Thereafter, the defacto complainant filed petition under Section 482 of Cr.P.C. before this Court in Crl.O.P.No.16584 of 2016 seeking to direct the respondent to register the First Information Report.

8.This Court vide order dated 08.08.2016 made in Crl.O.P. No.16584 of 2016 set aside the closure report and directed the Deputy Commissioner of Police to nominate a competent Officer in the rank of Inspector of Police to re-enquire into the complaint and to take action in accordance with law. Thereafter, the law enforcing agency registered the case in Crime No.374 of 2016. Challenging the same, these criminal original petitions have been filed before this Court.

9.The learned counsel appearing for the petitioners would submit that for the very same issue, already the defacto complainant has instituted a civil suit before this Court seeking partition and separate possession, past profits, future profits under Order 20 Rule 12 of CPC and to declare the settlement deed and gift deed as null and void. Inorder to wreck vengeance, the defacto complainant has filed the complaint before the law enforcing agency which is un-warranted and prayed to quash the FIR.

10.In support of his contentions, the learned counsel appearing for the petitioners relied upon the following decisions of the Hon'ble Apex Court:

(i)1987 (Supp) Supreme Court Cases 146 (Sardool Singh and another Vs. Smt.Nasib Kaur);

(ii)(2007) 12 Supreme Court Cases 1 (Inder Mohan Goswami and another Vs. State of Uttaranchal and others);

(iii)(2009) 7 Supreme Court Cases 495 (Devendra and others Vs. State of Uttar Pradesh and another);

(iv)(2011) 7 Supreme Court Cases 59 (Joseph Selvaraja Vs. State of Gujarat and others);

(v)(2001) 3 Supreme Court Cases 33 (Tukaram Annaba Chavan and another Vs. Machindra Yeshwant Patil and another);

(vi)(2009) 8 Supreme Court Cases 751 (Mohammed Ibrahim and others Vs. State of Bihar and another);

(vii)The decision of the Jammu and Kashmir High Court reported in 2001 SCC OnLine J&K 42 (Surjeet Singh Vs. State and another); and

(viii)The decision of the High Court of Delhi at New Delhi reported in 2017 SCC OnLine Del 10637 (Smt. Shalini Dhingra Vs. State).

11.Per contra, the learned counsel appearing for the second respondent/ defacto complainant would submit that the hospital records clearly shows that the defacto complainant's father was admitted in Fortis Malar Hospital, Adyar, Chennai, as inpatient on 27.09.2015 in ICU. Thereafter he was shifted to ward on 04.10.2015. Again he was shifted to ICU on 07.10.2015 for supportive measures and he breathed his last on 11.10.2015. However, the settlement deed as well as the Will have been executed on 09.10.2015 at his house at No.3/3B, Sivasami Avenue, Dr.M.G.R.Road, Pallavakkam, Chennai. Hence, the defacto complainant lodged the complaint.

12. In support of his contentions, the learned counsel appearing for the second respondent relied upon the following decisions:

(i) The decision of the Hon'ble Apex Court reported in (2015) 11 Supreme Court Cases 260 (Taramani Parakh Vs. State of Madhya Pradesh and others), the relevant portion of which reads as follows:

"11. Referring to earlier decisions, in Amit Kapoor vs. Ramesh Chander, it was observed:

"27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express

legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot

take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. State of W.B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283], Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre [(1988) 1 SCC 692 : 1988 SCC (Cri) 234], Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36], Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059], G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513], Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703], Pepsi Foods Ltd. v. Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400]; State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497], Ganesh Narayan Hegde v. S. Bangarappa [(1995) 4 SCC 41 : 1995

SCC (Cri) 634], Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283], Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd. [(2000) 3 SCC 269 : 2000 SCC (Cri) 615], Shakson Belthissor v. State of Kerala [(2009) 14 SCC 466 : (2010) 1 SCC (Cri) 1412], V.V.S.Rama Sharma v. State of U.P. [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356], Chunduru Siva Ram Krishna v. Peddi Ravindra Babu [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297], Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82], State of Bihar v. P.P.Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192], Lalmuni Devi v. State of Bihar [(2001) 2 SCC 17 : 2001 SCC (Cri) 275]; M. Krishnan v. Vijay Singh [(2001) 8 SCC 645: 2002 SCC (Cri) 19], Savita v. State of Rajasthan [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and S.M.Datta v. State of Gujarat [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201]).

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

(ii) The decision of the Hon'ble Apex Court made in CrI.A.No.12 of 2018 etc batch (arising out of S.L.P.(CrI.) No.5155 of 2017 batch) in the case of Dineshbhai Chandubhai Patel Vs. State of Gujarat and others, the relevant portion of which reads as follows:

"26) The law on the question as to when a registration of the FIR is challenged seeking its quashing by the accused under Article 226 of the Constitution

or Section 482 of the Code and what are the powers of the High Court and how the High Court should deal with such question is fairly well settled.

27) This Court in *State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors.* (AIR 1982 SC 949) had the occasion to deal with this issue. Y.V. Chandrachud, the learned Chief Justice speaking for Three Judge Bench laid down the following principle:

"Whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation in the offence to be completed for collecting materials for proving the offence.

The condition precedent to the commencement of investigation under S.157 of the Code is that the F.I.R. must disclose, *prima facie*, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under S.157 of the Code. Their right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the F.I.R., *prima facie*, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences.

28) Keeping in view the aforesaid principle of law, which was consistently followed by this Court in later years and on perusing the impugned judgment, we are constrained

to observe that the High Court without any justifiable reason devoted 89 pages judgment (see-paper book) to examine the aforesaid question and then came to a conclusion that some part of the FIR in question is bad in law because it does not disclose any cognizable offence against any of the accused persons whereas only a part of the FIR is good which discloses a prima facie case against the accused persons and hence it needs further investigation to that extent in accordance with law.

29) In doing so, the High Court, in our view, virtually decided all the issues arising out of the case like an investigating authority or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code at this stage.

30) The High Court, in our view, failed to see the extent of its jurisdiction, which it possess to exercise while examining the legality of any FIR complaining commission of several cognizable offences by accused persons. In order to examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an appellate Court. The question, in our opinion, was required to be examined keeping in view the contents of the FIR and prima facie material, if any, requiring no proof.

31) At this stage, the High Court could not appreciate the evidence nor could draw its own inferences from the contents of the FIR and the material relied on. It was more so when the material relied on was disputed by the Complainants and visa-se-versa. In such a situation, it becomes the job of the investigating authority at such stage to probe and then of the Court to examine the questions once the charge sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

32) In our considered opinion, once the Court finds that the FIR does disclose prima facie commission of any cognizable offence, it should stay its hand and allow the investigating machinery to step in to initiate the probe to unearth the crime in accordance with the procedure prescribed in the Code.

33) The very fact that the High Court in this case went into the minutest details in relation to every aspect of the case and devoted 89 pages judgment to quash the FIR in part lead us to draw a conclusion that the High Court had exceeded its powers while exercising its inherent jurisdiction under Section 482 of the Code. We cannot concur with such approach of the High Court.

34) The inherent powers of the High Court, which are obviously not defined being inherent in its very nature, cannot be stretched to any extent and nor can such powers be equated with the appellate powers of the High Court defined in the Code. The parameters laid down by this Court while exercising inherent powers must always be kept in mind else it would lead to committing the jurisdictional error in deciding the case. Such is the case here."

13. Heard the arguments advanced on either side and perused the materials available on record.

14. The issue before this Court is whether this Court has power to quash the FIR by exercising its jurisdiction under Section 482 of Cr.P.C. Section 482 of Cr.P.C. reads as follows:

"Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

15. Perusal of the decisions relied upon by the learned counsel appearing for the second respondent, particularly,

(2015) 11 Supreme Court Cases 260 (Taramani Parakh Vs. State of Madhya Pradesh and others), discloses that though there are no limits of the powers of the Court under Section 482 of the Code, the more the power, the more due care and caution has to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

16. Perusal of the decision further discloses that the Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

17. Perusal of the decision further discloses that where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

18. In the present case, expressing any opinion will definitely affect the investigation of the case. Hence, this Court consciously refrain himself from expressing any opinion with regard to the veracity of the complaint. On a perusal of the complaint and the death summary issued by Fortis Malar Hospital, this Court finds that a prima facie case has been made out to proceed with the investigation in the manner known to law. The same view was already expressed by this Court in its order dated 08.08.2016 made in Crl.O.P.No.16584 of 2016. In the said order, this Court has set aside the closure report and directed the Deputy Commissioner of Police to nominate a competent Officer in the rank of Inspector of Police to re-enquire into the complaint and to take action in accordance with law.

19. In view of all the above, I am not inclined to quash the FIR at this stage. The criminal original petitions are accordingly dismissed. The law enforcing

agency is directed to act in accordance with law.
Consequently, connected miscellaneous petitions are also closed.

Sd/--
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
CCB-1, Vepery, Chennai-600 007.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.M/s.MA.P.Thangavel , Advocate SR.No. 2254

+1cc to Mr.S.R.Raghunathan , Advocate SR.No. 2015

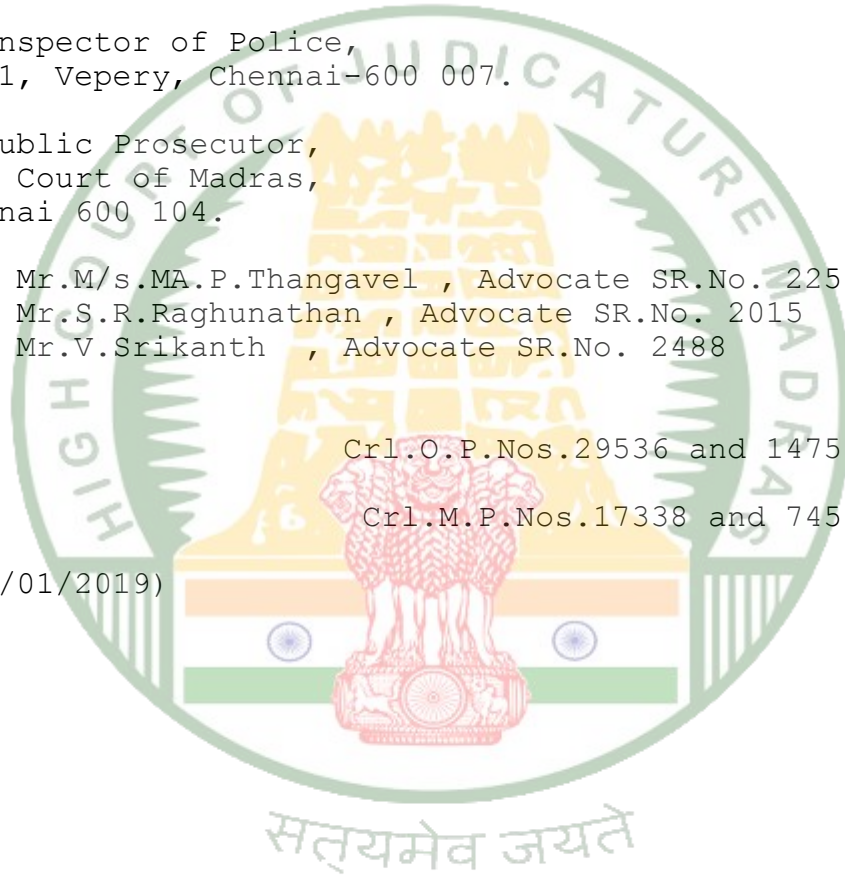
+1cc to Mr.V.Srikanth , Advocate SR.No. 2488

Crl.O.P.Nos.29536 and 14754 of 2018

And

Crl.M.P.Nos.17338 and 7457 of 2018

A.SK(24/01/2019)



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