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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P. (MD)No.3977 of 2017

and

Cr1.M.P. (MD)Nos.2898 and 2899 of 2017

K.Selvaraj

... Petitioner

Vs.

1.The State Rep. by,

The Inspector of Police,

Nithiraivilai Police Station,

Nithiraivilai, Kanyakumari District.

(Crime No.135 of 2015)

2.P.Joseph

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the final report as made in C.C.No.65 of 2016, on the file of the learned Judicial Magistrate No.II, Kulithurai, Kanyakumari District in relation to Crime No.135 of 2015 on the file of the Inspector of Police, Nithiravilai Police Station, Nithiraviali, Kanyakumari District and quash the same as devoid of merits and illegal.

For Petitioner

: Mr.S.Palani Velayutham

For Respondents

: Mr.A.Robinson

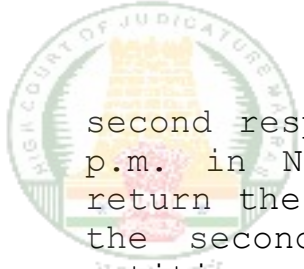
Govt. Advocate (Cr1. Side) for R1

: Mr.K.P.Narayanakumar for R2

O R D E R

The petitioner herein is an employer in Thothur Panchayat on daily wages basis. The second respondent herein filed a written complaint dated 22.04.2015 before the Inspector of Police, Nithiraviali Police Station against the petitioner herein. The second respondent in his complaint has stated that the petitioner had represented to him that he has enough influence and he would be in a position to secure employment for his daughter in a co-operative bank. The petitioner is said to have assured the second respondent herein that if the second respondent herein paid a sum of Rs.1,00,000/-, he would be able to do so. The second respondent herein in his complaint stated that believing the words of the petitioner, he handed over a sum of Rs.78,000/- to the petitioner on 25.03.2014 in the house of the petitioner and in the presence of his wife.

2.According to the second respondent, the petitioner did not secure any such employment for his daughter. Therefore, the



second respondent met the petitioner on 22.04.2015 at about 06.00 p.m. in Nithiraviali village bus-stand and called upon him to return the amount of Rs.78,000/-, which was said to have given by the second respondent to the petitioner on 25.03.2014. The petitioner is said to have refused to comply with the said demand and had criminally intimidated the second respondent. The said incident was allegedly witnessed by quite a few persons in the area. The second respondent therefore approached the first respondent with a written complaint.

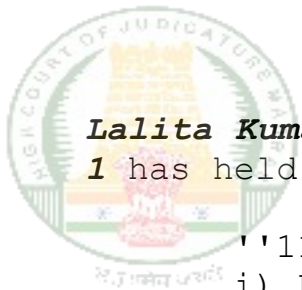
3.Crime No.135 of 2015 was registered under Sections 406, 420, 294(B) and 506(ii) of I.P.C. The first respondent filed the final report and cognizance was taken by the learned Judicial Magistrate No.II, Kulithirai for the aforesaid offence. The petitioner was issued with summons and now the case is posted for examination of witnesses. Since the post of Judicial Magistrate No.II, Kulithirai is vacant, the trial is yet to commence. In order to quash the proceedings, this criminal original petition has been filed by the accused/petitioner.

4.Heard the learned counsel on either side.

5.The learned Government Advocate (Crl. Side) appearing for the first respondent and the learned counsel appearing for the defacto complainant/second respondent submitted that the power to quash the proceedings cannot be exercised as in this case, there are enough materials in the statements recorded under Section 161 of Cr.P.C. by the Investigating Officer. They clearly make out a *prima facie* case. It is always open to the petitioner to establish his innocence by cross examining the witnesses. Therefore, the learned counsel appearing for the second respondent called upon me to dismiss this criminal original petition.

6.I am not persuaded by the objection raised by the learned learned Government Advocate (Crl. Side) appearing for the first respondent and the learned counsel appearing for the defacto complainant/second respondent.

7.The case of the defacto complainant/second respondent herein is that the petitioner had taken a sum of Rs.78,000/- from him on 25.03.2014, promising to secure employment for the defacto complainant's daughter in a cooperative bank and that the petitioner did not fulfil his promise and that when the second respondent demanded the money, the petitioner had criminally intimidated him. These are serious allegations. The complaint itself was admittedly lodged only on 22.04.2015. In fact the complaint refers to an incident that is said to have taken place at about 06.00 p.m. in the local bus-stand. FIR reads
<https://hdservice.courts.gov.in/hdservice/> 06.00 p.m., the complaint was lodged on 22.04.2015. But interestingly, the final report came to be filed on the very next day that is 23.04.2015. The Honourable Supreme Court in



Lalita Kumari Vs. Government of U.P. & Ors reported in (2014) 2 SCC 1 has held as follows:-

'111) In view of the aforesaid discussion, we hold:

i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the



causes of it must be reflected in the General Diary entry.

viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.''

7. In this case, even though the occurrence of criminal intimidation had taken place at 06.00 p.m. On 22.04.2015, the main allegation is in respect of something that had taken place on 25.03.2014. Therefore, in the very nature of things, the first respondent ought to have conducted a preliminary enquiry. Be that as it may, the accused was arrested on the next day. In this case, there are as many as eight witnesses. I fail to understand as to how all the eight witnesses would have been examined within such a short time. Since the FIR itself came to be registered only at 08.00 p.m., obviously the police could not have undertaken any investigation during midnight hours. Only on 23.04.2015, the police could have taken up the investigation. In fact on the said date, the petitioner was arrested. The remand report reads that only at 01.00 p.m. on 23.04.2015, the petitioner was arrested. Therefore, it is obvious that without conducting any proper investigation, the final report came to be filed by the police.

8. The accused is entitled to a fair trial. A fair trial is possible only if there has been a fair investigation. In this case, I am convinced that there has been no investigation at all. The petitioner is said to be only a daily wage employee. It is not known as to how the second respondent was led to believe that the petitioner would be able to secure employment for his daughter and how he was led to hand over a sum of Rs.78,000/-. It appears the entire prosecution has been engineered. The sequence of events probabalizes the petitioner's contentions. Continuing of the impugned prosecution would only amount to an abuse of legal process. The proceedings impugned in this criminal original petition stand quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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To:

1.The Judicial Magistrate No.II,
Kulithurai.

2.The Inspector of Police,
Nithiraivilai Police Station,
Nithiraivilai,
Kanyakumari District.

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-72379[F] dated
01/07/2019)

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-72625[F] dated
02/07/2019)

IAS

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