



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.(MD)No.1961 of 2016

and

Crl.O.P(MD) Nos.1007 & 1008 of 2016

1) Jayakodi @ K.M.Muthukrishnan

2) Kasiviswanathan

3) Chezien

... Petitioners /
Accused Nos.1 to 3

Vs.

1) Solamalai

2) S.Sakunthaladevi

3) S.Saravanapandian

...Respondents

* RR 2 and 3 are impleaded as per the order of this Court dated 24.03.2016 made in Crl.M.P.(MD) No.2499 of 2016 in Crl.O.P.(MD) No.1961 of 2016.

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in connection with C.C.No.257 of 2015 on the file of learned Judicial Magistrate No.II, Madurai and quash the same in respect of this petitioners/respondent Nos.1 to 3/ Accused Nos.1 to 3.

For Petitioners : Mr.C.Arul Vadivel @ Sekar

For RR 2 & 3 : Mr.T.Chandrasekaran

For Mr.T.Joseph Jeyakumar

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O R D E R

The accused Nos.1 to 3/petitioners in C.C.No.257 of 2015 on the file of the learned Judicial Magistrate No-II, Madurai have filed this petition to quash the proceedings pending against them in C.C.No.257 of 2015.



2. This case in C.C.No.257 of 2015 was filed by way of a private complaint by the first respondent/ complainant under Section 200 Cr.P.C before the concerned Magistrate. According to the learned counsel for the first respondent/ complainant, he is the cultivating tenant of S.No.51/3 measuring 1 Acre and 68 cents at Managiri village. The petitioners have attempted to disturb the peaceful cultivation of the land and therefore, the first respondent/complainant has filed a civil suit before the District Munsif Court, Melur on 30.08.2013 in O.S.No.317 of 2013 and obtained an order of interim injunction as against these petitioners.

3. Despite injunctions granted by this Court, the accused nos.1 to 3/ petitioners herein have entered into the land on 02.07.2014 and abused the first respondent/complainant with filthy words. The first petitioner assaulted the complainant with a stick, the second petitioner caught hold of him and the third petitioner is said to have pelted stones and they have also criminally intimidated the first respondent/complainant.

4. This complaint was filed by the first respondent/complainant before the Judicial Magistrate No.II, Madurai on 13.10.2014 and the sworn statement of the first respondent/complainant was also taken by the Judicial Magistrate on 13.10.2014. Apart from the sworn statement of the first respondent/complainant Solaimalai, the learned Magistrate has also examined the Special Sub Inspector of Police, one Kanagaraj and one Duraipandi, Head Constable of Melur Police Station and after satisfying that a *prima facie* case is made out, has issued summon to the petitioners on 16.10.2015.

5. Aggrieved over the same, these petitioners have filed this application to quash the proceedings pending against them in C.C.No.257 of 2015 on the file of Judicial Magistrate, No.II, Madurai. This Court, by order dated 04.02.2016, while admitting this petition has also granted an order of Interim Stay for further proceedings in C.C.No.257 of 2015.

6. Heard Mr.Arul Vadivel @ Sekar for S.Muniyandi as well as Mr.T.Chandrasekaran, learned counsel appearing for Mr.T.Joseph Jeyakumar, learned counsel for the respondents/complainants.

7. When the matter was taken up for hearing, it is represented by the learned counsel appearing on either sides that the complainant Solaimalai, the first respondent herein died on 14.11.2015. The learned counsel for the petitioners, by referring <https://hdservices.com/govt/mse/verys1> has stated that the learned Magistrate based on the materials available pertaining to the complaint as well as on the sworn statement of the complainant has taken cognizance of the



complaint and also issued summons. In the absence of the complainant, there is no material to establish a case as stated in the complaint. Admittedly, though two persons have been cited as witnesses, the brother-in-law of the first respondent/complainant namely one Murugesan and one Achi @ Ayyavu, S/o Karuppan have been referred as witnesses in the complaint but their role at the time of occurrence has not been stated either in the complaint or in the sworn statement.

8. Mr.Chandrasekaran, learned counsel for the complainant would vehemently oppose that even though the first respondent/complainant is no more, the other witnesses are there to proceed with the complaint and has also produced several judgments to that effect that even in the absence of the complainant, the complaint can be proceeded by the legal heirs. A petition for impleading the legal heirs has also been filed and in support of the same, Mr.Chandrasekaran, learned counsel for the complainant has cited judgments in support of his contentions.

9. Per Contra, Mr.Arul Vadivel @ Sekar, learned counsel for the accused nos.1 to 3/petitioners would submit that when there is no material available either in the complaint or in the sworn statement that the other witnesses, who have been cited in the complaint namely one Manoharan and Achi @ Ayyavu were present at the time of occurrence, by allowing the complaint to proceed will be an abuse of process of law and the trial before the Court would be a futile exercise. He also relied upon the judgment of the Hon'ble Supreme Court in the case of **Pepsi Foods Ltd., vs Special Judicial Magistrate** reported in 1998 (5) SCC 749 wherein the Hon'ble Supreme Court has stated that "*summoning of the accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course*".

10. The learned counsel for the petitioner would further submit that in the absence of the complainant, there is no legal evidence as such to allow the complaint to proceed and accordingly, it is liable to be quashed. The learned counsel for the petitioners would also further submit that even for the alleged injuries no wound certificate has been marked on behalf of the complainant.

11. The Hon'ble Supreme Court in **State of Haryana and others. v. Bhajan Lal and others**, reported in MANU/SC/0115/1992, had issued certain guidelines, by way of a rigid formula, where the inherent powers of this Court under Section 482 Cr.P.C., can be invoked to quash the First Information Report or a Complaint. For better appreciation, the same is extracted thus:

<https://hcservices.ecourts.gov.in/hcservices/>

1. 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.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code, except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. 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.

4. Where, the allegations in the F.I.R. 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 a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made 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.

6. 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.

7. Where a criminal proceeding is manifestly attended with mala fide 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."

12. By referring to paragraph no.4 of the judgment passed by the learned Judge of this Court in the case of **Devarajan and others vs., the State rep., by the Assistant Commissioner of Police Central Crime Branch, Chennai and others**, the learned counsel for the petitioner would submit that the application for impleading the legal heirs has been filed by all the legal heirs of the complainant, which would make the process of trial as a mockery and in view of the judgments rendered by the Hon'ble Court, the same cannot be entertained.

13. Considering the rival submissions, it appears that there is a civil dispute pending between the petitioners as well as the



complainant and Civil suits are also pending between the parties. It appears that the first respondent/complainant has obtained an order of interim injunction which is not marked as a document along with the complaint. Even assuming that there was an injunction in his favour, according to the first respondent/complainant, it appears that on 02.07.2014, the petitioners/Accused Nos.1 to 3 have trespassed into the lands cultivated by the first respondent/ complainant and have abused him with filthy words and also criminally intimidated him. Neither in the complaint nor in the sworn statement, the first respondent/complainant has stated about the presence of other two witnesses namely Murugesan and Achi @ Ayyavu at the time of occurrence or in the place of occurrence.

14. Admittedly, the complainant is the only witnesses to establish the occurrence that is said to have taken place on 02.07.2014. The first respondent/complainant is no more and therefore, in such circumstances, due to the absence of any legal evidence to proceed with the complaint, it would be a vexatious exercise in allowing the complaint to be proceeded and therefore, this complaint is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1) The Judicial Magistrate No.II,
Madurai.

2) The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.MUNIYANDI, Advocate (SR-60891[F] dated
12/04/2019)

Order made in

Crl.O.P. (MD)No.1961 of 2016

Dated:

12.04.2019