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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.09.2019

Pronounced on : 24.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) Nos.17640 and 1504 of 2018

and

Crl.M.P.(MD) Nos. 7816, 7817, 642 & 643 of 2018

Sudha

... Petitioner/A1 in
Crl.O.P.17640/2018

Vasantha

... Petitioner/A3 in
Crl.O.P.1504/2018

Vs

1.The Deputy Superintendent of Police,
Tirunelveli District,
Tirunelveli.

... R1 in Crl.O.P.No.
17640/2018

2.The Inspector of Police,
Ambasamuthiram Police Station,
Ambasamuthiram,
Thirunelveli District.
Crl.O.P.1504/2018 &
Crime No.43 of 2017

... R1 in

R2 in Crl.O.P.17640/2018

3.Palanichamy

.. R2 in Crl.O.P.1504/2018 &
R3 in Crl.O.P.17640/2018

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records relating to the proceedings in C.C.No.438 of 2017 dated 20.11.2016 on the file of the Judicial Magistrate, Ambasamuthiram and quash the same insofar as the petitioners are concerned.

For Petitioner : Mr.V.Sasikumar in Crl.O.P.1504/2018
Mr.AR.L.Sundaresan, senior counsel
for Mr.T.Antony Arulraj in Crl.O.P.
17640/2018

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side) for R1 & R2 in
Crl.O.P.17640/2018 and R1 in
Crl.O.P.1504/2018

Mr.R.Anand, for R2 in Crl.O.P.



1504/2018 & R3
in Crl.O.P.No.17640/2018

ORDER

These petitions have been filed to quash the proceedings in C.C.No.438 of 2017 dated 20.11.2016 on the file of the Judicial Magistrate, Ambasamuthiram insofar as the petitioners/A1 and A3 are concerned.

2.The petitioner in Crl.O.P.(MD) No.17640 of 2018 is arraigned as A1 and the petitioner in Crl.O.P.(MD) No.1504 of 2018 is arraigned as A3. The learned senior counsel appearing for A1 and the learned counsel appearing for A3 submitted that on the complaint lodged by the defacto complainant viz., Palanichamy, a case in crime No.43 of 2016 has been registered for the offences under Section 465, 468, 471, 420, 120(B), 167, 201, 109 and 114 of I.P.C. While A1 was working as Sub Inspector of Police, Ambasamuthiram Police Station, an investigation in respect of crime No.204 of 2015 registered for the offences under Sections 147, 294(B), 323, 506(ii) and 379 N.P. of I.P.C. was handed over to her. The said case was registered by A3 viz., Vasantha, who was working as Women Police in the said police station on the basis of the complaint lodged by the same defacto complainant viz., Palanichamy, the 3rd respondent herein. According to the defacto complainant, the said Vasantha/A3 fabricated the complaint and forged the signature of the defacto complainant and the allegation against the A1 is without verifying the same, she has conducted the investigation.

3.The learned senior counsel appearing for A1 further submitted that in fact, the defacto complainant filed an application for transfer of investigation before this Court in Crl.O.P.(MD) No.17819 of 2015 and the same was disposed of with a direction to the Superintendent of Police to nominate a neutral Inspector of Police to investigate the matter. Based on the said direction issued by this Court, the crime No.204 of 2015 has been transferred to the Inspector of Police, Kallidaikurichi Police Station, Tirunelveli District. As far as the present proceedings are concerned, the defacto complainant filed a direction petition in Crl.O.P.(MD) No.24010 of 2015 before this Court and on the direction issued thereon, the present crime No.43 of 2016 has been registered with the allegation that when the defacto complainant was admitted at the Government Hospital, he lodged a complaint before A3 and without registering the said complaint, A3 along with the collusion of A1 fabricated the false complaint and forged the signature of the defacto complainant and registered a case in crime No.204 of 2015. He further submitted that even according to the defacto complainant, A3 only had received the complaint from him and thereafter, fabricated the false complaint and forged the signature of the defacto complainant and the same was handed over to A1 for investigation. Therefore, A1 did not commit any offence as alleged

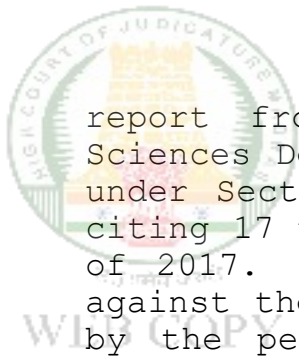


by the defacto complainant. She never fabricated any false complaint and never forged any of the signature in the complaint.

4.He further submitted that after the investigation in crime No.204 of 2016 transferred to the Inspector of Police, Kallidaikurichi Police Station, the investigation has been completed the final report has been filed for the offences under Sections 147, 294(B), 323, 355 and 506(ii) of I.P.C. They have only investigated the complaint lodged by the defacto complainant and filed final report and in fact, there is no allegation as against the petitioners in the said investigation and they have shown the petitioners as L.Ws.18 and 20 to speak about the receipt of the complaint, registration of the complaint and investigation on the said complaint. He further submitted that the allegation against A1 is on the complaint registered by A3, A1, being the Sub Inspector of Police, enquired the complaint without verifying the original complaint given by the defacto complainant. Except this allegation, no allegation is made as against A1. Even according to the defacto complainant, A1 did not register the complaint and in fact, from the statement recorded from the defacto complainant it reveals the malafide intention of the defacto complainant and in the complaint, no such averment as if the accused persons fabricated the complaint. Whereas, the further statement recorded under Section 161(3) of Cr.P.C. has improved his version with allegation as against the petitioners. Therefore, there are contradictions between his own statement and hence, they prayed for quashment of the entire proceedings.

5.Per contra, the learned counsel appearing for the defacto complainant would submit that on 27.08.2015, the defacto complainant and his son were attacked by known persons and taken away the gold chain from them. Thereafter, he was hospitalized for treatment and he lodged complaint through whatsapp on 28.08.2015. However, the said complaint was suppressed and a concocted complaint was created and forged his signature by A1 and A3 and registered the case in crime No.204 of 2015 for the offence under Sections 147, 294(b), 323, 506(ii) and 379 N.P. Hence, the complaint and since on the said complaint, no action was taken, he approached this Court by filing CrI.O.P.(MD) No.24010 of 2014 and on the direction issued by this Court, the present crime No.43 of 2016 has been registered as against the petitioners.

6.He further submitted that in fact, A1 approached this Court to quash the FIR and it was dismissed as withdrawn by this Court vide order dated 09.09.2016. In fact, the defacto complainant also filed a petition to transfer of investigation before this Court in CrI.O.P.(MD) No.4192 of 2016, in which, this Court directed the Deputy Superintendent of Police to monitor the investigation. Thereafter only, the investigation was entrusted with the Deputy Superintendent of Police, District Crime Branch and obtained a



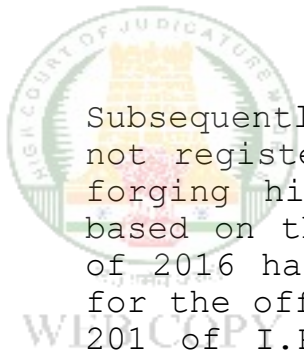
report from the handwriting expert from the Regional Forensic Sciences Department, Madurai and filed final report for the offence under Sections 120(B), 167, 465, 468, 471, 420 and 201 of I.P.C. citing 17 witnesses. The same has been taken on file in C.C.No.438 of 2017. Therefore, there are so many incriminating evidence as against the petitioners to attract the offences. The points raised by the petitioners have to be considered only during the trial before the trial Court and hence, he sought for dismissal of these petitions.

7.The learned Government Advocate (criminal side) submitted that on investigation, they found that the accused persons have fabricated the false complaint and forged the signature of the defacto complainant and registered the case in crime No.204 of 2015. Therefore, the accused persons have committed very serious offences in nature that too being the police officers, they themselves fabricated and forged the signature of the defacto complainant. Therefore, they have been charged for the offences under Sections 120(B), 167, 465, 468, 471, 420 and 201 of I.P.C. and the same has been taken cognizance in C.C.No.438 of 2016 and it is pending for trial. Only because of the pendency of these quash petitions, they could not able to proceed with the trial.

8.He further submitted that the report received from the Regional Forensic Sciences Department revealed that the signature of the defacto complainant has been forged by the accused persons and the entire complaint itself is a fabricated one. Therefore, the disputed question of facts cannot be considered before this Court under Section 482 of Cr.P.C. He further submitted that as per the settled proposition of law settled by the Hon'ble Supreme Court of India in the case in State of Haryana V. Ch.Bhajan Lal reported in AIR 1992 SC 604, the complaint should be inherently improbable and palpably absurd, a rarest of rare cases and the crime attributed against the accused persons herein do not qualify as the rarest of rare cases or they were victimized with malafide intention. He further submitted that this dictum has been followed in catena of cases by this Court as well the Hon'ble Supreme Court of India and hence, he prayed for dismissal of these petitions.

9.Heard the learned senior counsel appearing for A1 and the learned counsel appearing for A3 and the learned counsel appearing for the defacto complainant as well as the learned Government Advocate (criminal side) and perused the materials available on records.

10.There are totally three accused, in which the petitioners are arraigned as A1 and A3 respectively. The petitioner/A1 in CrI.O.P.(MD) No.17640 of 2018 while was working as Sub Inspector of Police and the petitioner/A3 in CrI.O.P.(MD) No.1504 of 2018 was working as Constable in Ambasamuthiram Police Station, Tirunelveli District, A3 received a complaint from the defacto complainant and registered a case in crime No.204 of 2015 for the offences under Sections 294(b), 323, 506(ii) and 370 N.P. of I.P.C.



Subsequently, the defacto complainant found that his complaint was not registered and the accused persons have fabricated the same by forging his signature. Therefore, he approached this Court and based on the direction issued by this Court, a case in crime No.43 of 2016 has been registered as against the petitioners and another for the offences under Sections 120(B), 167, 465, 468, 471, 420 and 201 of I.P.C. and the said case was investigated by the Deputy Superintendent of Police, District Crime Branch, Tirunelveli and he filed final report for the aforesaid offences. Now, the trial Court has taken cognizance in C.C.No.428 of 2017 on the file of the learned Judicial Magistrate, Ambasamuthiram.

11.It is the case of the petitioner in CrI.O.P.(MD) No.17640 of 2018 as argued by the learned senior counsel that when she was working as Sub Inspector of Police, A3 only went to the hospital and received the complaint the from the defacto complainant and registered the same in crime No.204 of 2015 and after registering the complaint, it has been entrusted to A1 to investigation. Therefore, she did not fabricate or forged the signature of the defacto complainant, even according to the case of the prosecution.

12.It is seen from the statement of the witnesses that there is a specific allegation as against A1 to the effect that A1 with all the accused conspired together and only on the direction of A1, A3 went to the hospital and thereafter, fabricated other complaint and forged the signature of the defacto complainant. Further, it is seen from the report of the handwriting expert of the Regional Forensic Sciences Department, Madurai, the signature of the defacto complainant has been forged and the complaint has been fabricated.

13.The statement of the handwriting expert revealed that the person who wrote the red enclosed signatures stamped and marked A1 to A14 and S1 to 23 also wrote the red enclosed signature similarly stamped and marked Q2, but this person did not write the signature marked A1. That apart, the disputed question of fact raised by the petitioners cannot be looked in to here and it can be considered only during the trial before the trial Court.

14.The learned Government Advocate (criminal side) would rely on the judgment of the Hon'ble Supreme Court in **State of Haryana V. Ch.Bhajan Lal reported in AIR 1992 SC 604**, where this Court held as follows:

"i.Where the allegations made in the First Information Report of 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 un-controverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence



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and make out a case against the accused;

iii. 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 conclusion that there is sufficient ground for proceeding against the accused;

iv. Whether the criminal proceedings is manifestly attended with malafide and/or where the proceedings 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."

15. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Cr1.A.No.255 of 2019** dated **12.02.2019** in the case of **Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.**, 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.



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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."

16. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to



its original file for being proceeded with on merits in accordance with law.

17. In view of the above discussion and citations, the criminal proceedings as against the petitioners cannot be quashed at its threshold and it has to be gone in to by full fledged trial. Therefore, the charge cannot be quashed at this stage and these criminal original petitions are liable to be dismissed.

18. Accordingly, these criminal original petitions are dismissed with the liberty to the petitioners to raise all the grounds before the trial Court. Consequently, connected miscellaneous petitions are also dismissed.

19. Since the case is of the year 2017, the learned Judicial Magistrate, Ambasamuthiram is directed to complete the trial and dispose of the case, within a period of six months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar (CS)

Arul
To

1. The Judicial Magistrate,
Ambasamuthiram.
 2. The Deputy Superintendent of Police,
Tirunelveli District,
Tirunelveli.
 3. The Inspector of Police,
Ambasamuthiram Police Station,
Ambasamuthiram,
 4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- +1 cc Mr. T. ANTONY ARUL RAJ , Advocate, SR.No. 88969
+1 cc Mr. V. SASIKUMAR , Advocate, SR.No. 89137

CRL.O.P (MD) Nos.17640 and 1504 of 2018
24.09.2019