



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 05.09.2019

CORAM:

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THE HON'BLE MR.JUSTICE N. ANAND VENKATESH

CRL.O.P.(MD).No. 2805 of 2017

and

CRL.M.P(MD)Nos. 2148 & 2149 of 2017

1. Baskaran
2. Raja Sundara Mery ...Petitioners/Accused Nos.1 & 2

Vs.

1. The State represented by
The Inspector of Police,
Othakkadai Police Station,
Madurai.
(Crime No. 358 of 2014) ...1st Respondent / Complainant
2. R. Kannan ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in C.C.No. 172 of 2014 on the file of the learned Judicial Magistrate, Melur, Madurai District and quash the same.

For Petitioner : Mr.T. Lenin Kumar

For Respondent-1 : Mr.S. Chandrasekaran
Additional Public Prosecutor

For Respondent-2 : Mr.K.G. Arun Kumar

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C. No.172 of 2014 on the file of the learned Judicial Magistrate, Melur, Madurai District.

2. The second respondent/defacto complainant had given a complaint before the first respondent police on 18.08.2014 to the effect that his son-in-law had borrowed a sum of Rs.2 Lakhs (Rupees Two Lakhs Only) from the 1st accused and he was repaying it in installments. While so, the accused persons are said to have come to the house of the defacto complainant on 16.08.2014 and had abused the defacto complainant and his wife in filthy language and had also broken two tube lights and a glass door and intimidated the defacto



complainant and his wife. Based on the said complaint, the first respondent police has registered a First Information Report in Crime No.358 of 2014 for the offences under Section 294(b), 323, 427 and 506(ii) of I.P.C.

3. The case was thereafter taken up for investigation and final report has also been filed before the Court below against the accused persons and the same has been taken on file by the Court below for the very same offence in C.C.No.172 of 2014.

4. The learned counsel for the petitioners submitted that the entire criminal proceedings is an abuse of process of the Court and it is attended with malafides. He further submitted that the son-in-law of the defacto complainant had borrowed a sum of Rs.2,50,000/- (Two Lakhs Fifty Thousand Only) and in discharge of the said amount, he has also issued a cheque on 01.04.2013. This cheque was also dishonoured. Therefore, a complaint was given by the first petitioner/1st accused, before the Commissioner of Police on the ground that the son-in-law of the defacto complainant has cheated the first petitioner/1st accused.

5. The learned counsel for the petitioner further submitted that as a counter blast, the present complaint came to be given by the second respondent only to cover up the offence committed by the son-in-law of the second respondent/defacto complainant.

6. The learned Additional Public Prosecutor appearing on behalf of the first respondent police submitted that there are prima facie allegations made against the petitioners in the final report and there are materials to substantiate the same. He further submitted that at the time of framing of the charge, even a strong suspicion is enough and the grounds that have been raised by the learned counsel for the petitioners are factual in nature and it requires appreciation of evidence. Therefore, the learned Additional Public Prosecutor submitted that there are no grounds to interfere with the final report at this stage and the petition is liable to be dismissed.

7. The learned counsel appearing on behalf of the second respondent, apart from reiterating the stand taken by the learned Additional Public Prosecutor, also submitted that the investigating officer has recorded the statements of the witnesses, who have spoken about the incident and these statements clearly make out the offence against the accused persons. Therefore, the learned counsel also requested this Court to dismiss the petition and make the petitioners face the trial before the Court below.

8. This Court has carefully considered the submissions on either side and the material available on record.

<https://hcservices.ecourts.gov.in/hcservices/> The main ground that has been raised by the learned



counsel for the petitioners is the ground of malafides. In order to substantiate the same, the cheque that was drawn in favorur of the first petitioner by the son-in-law of the defacto complainant has been placed before this Court. Yet another material that has been placed before this Court is the return memo issued by the State Bank of India and the complaint given before the Commissioner of Police. By placing these materials, the learned counsel for the petitioners submitted that the present complaint is a counter blast for the earlier complaint given by the first petitioner and the complaint itself has been given only to cover up the offence of cheating committed by the son-in-law of the second respondent.

10. This Court, while exercising its jurisdiction under Section 482 of Criminal Procedure Code would not normally look into the materials that are produced by the defence. This Court is supposed to look out only the allegations made in the final report and the materials that are collected by the first respondent police. The only exception that has been created by the Hon'ble Supreme Court is where the materials that are relied upon by the defence are sterling in nature and unimpeachable in quality and all such materials produced on the side of the defence can always be looked into while considering the petition for quash filed under Section 482 of Criminal Procedure Code.

11. Keeping the above in mind, this Court finds that the materials that have been placed before this Court are sterling in quality, since they fall in line with the allegations that have been made by the defacto complainant against the petitioners. Even as per the statement of the defacto complainant, the son-in-law had borrowed money from the first petitioner and he had gone away from the place without paying back the money. This money was demanded repeatedly and in spite of the same, it was not paid back and at one such occasion, when the petitioners came to the house of the defacto complainant asking for return of the money, the petitioners are said to have abused the defacto complainant, his wife and his daughter and have criminally intimidated them and caused damage by breaking two tube lights and the front door glass. The incident has been spoken by the defacto complainant, his wife and his daughter. The allegation regarding the offence under Section 323 of I.P.C. is sought to be sustained on the ground that the defacto complainant sustained a simple injury and therefore, he did not go to the Hospital.

12. It is seen from the records that the petitioners have been abusing the defacto complainant right from 14.08.2014 onwards and are said to have threatened the defacto complainant and his family members. Ultimately, the complaint was said to be given on 18.08.2014 for the alleged incident i.e., said to have taken place on 17.08.2014.

<https://hcservices.ecourts.gov.in/hcservices/> can be clearly seen in this case that the very



complaint given by the defacto complainant was a counter blast for the earlier complaint given by the first petitioner. The defacto complainant is trying only to cover up his son-in-law, who owes money to the petitioners and whose cheque got dishonoured, when it was presented for payment.

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14. The complaint itself is attended with malafides and the Judgment of the Hon'ble Supreme Court, in the case of State of Haryana and Others Vs. Bhajan Lal and Others, reported in 1992 Supp (1) Supreme Court Cases 335, squarely applies to the facts of the present case wherein it was held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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7. 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.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases ; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice".

15. The above grounds that have been enumerated by the Hon'ble Supreme Court to quash the criminal proceedings can be made use of in the present case.

<https://hcservices.ecourts.gov.in/hcservices/> the result, the proceedings in C.C. No.172 of 2014



on the file of the learned Judicial Magistrate, Melur, Madurai District is hereby quashed and accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate,
Melur, Madurai District.
2. The Inspector of Police,
Othakkadai Police Station,
Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.LENIN KUMAR, Advocate (SR-85589[F] dated 06/09/2019)

CRL.O.P. (MD) No. 2805 of 2017
05.09.2019

JMN(30.09.2019) 5P : 5C