

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4235 of 2020 and
Crl.MP.No.2433 of 2020

Tini Korah

... Petitioner

.Vs.

1. The Inspector of Police,
Upper Coonnoor Police Station,
Coonnoor, The Nilgiris,
Tamil Nadu 643 101

2. Sidharth Dube

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.192 of 2019 dated 16.12.2019 pending investigation on the file of the Inspector of Police, Upper Coonnoor Police Station, Coonnoor, Nilgris District and quash the entire proceedings.

For Petitioner : Mr.M.Velmurugan

For Respondents

For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For R2 : Mr.K.V.Sridharan

O R D E R

This petition has been filed to quash the proceedings in Crime No.192 of 2019 dated 16.12.2019 pending investigation on the file of the Inspector of Police, Upper Coonnoor Police Station, Coonnoor, Nilgris District registered for the offences under Section 308 of IPC.

2. The learned counsel for the petitioner would submit that on the complaint lodged by the second respondent, the first respondent registered FIR in Crime No.192 of 2019 for the offences under Section 308 of IPC as against the petitioner herein. Even according to the complainant, there is absolutely no prima facie material to attract the offences under Section 308 of IPC. While the petitioner was returning after his regular event of playing badminton in the late evening met with

an accident. While he was driving his jeep on three road junction, the petitioner was trying to overtake the vehicle belongs to the second respondent and unfortunately met with an accident by hitting on the right hand side of the second respondent's vehicle and thereby caused damages to the vehicle. In fact, no one is sustained any injury. The vehicle was driven by the driver who seemed to have no experience in hill regions. Therefore, the accident took place, in which the petitioner's vehicle also got damaged. Therefore, it is a mere accident and no prima facie material to attract the offences under Section 308 of IPC. Only to wreck vengeance as against the petitioner, false complaint has been lodged by the second respondent.

2.1 He further submitted that the vehicle owned by the second respondent is a banned vehicle and the respondent is not supposed to drive the vehicle on road. The plying of the said vehicle itself is an offence and as such only to escape from the clutches of law, false complaint has been lodged by the second respondent as against the petitioner. There is dispute between the petitioner and the second respondent with regards to construction and payment of money. Therefore, the occurrence is an accident and it took place on coincidence and as such the petitioner never committed any offence under Section 308 of IPC. He also relied upon the following judgments:

- (i) State of Karnataka Vs L.Muniasamy
reported in 1977(2) SCC699
- (ii) State of Haryana Vs Bhajanlal reported in
1992 SUPP (1) SCC335
- (iii) Vineetkumar Vs State of Uttar Pradesh
reported in 2017 (3) scc 669
- (iv) Venkatesh Vs.State rep. by Inspector of Police and
another reported in (2019) SCC ONLINE MAD 25836

3. Per contra, the learned Additional Public Prosecutor submitted that on the complaint lodged by the second respondent, the first respondent registered case as against the petitioner for the offences under Sections 308 of IPC. In the complaint, there is specific allegation as against the petitioner that only to murder the second respondent, the petitioner rammed his heavy vehicle as against the second respondent's vehicle. Fortunately, the second respondent escaped from the attack by the petitioner and his car was damaged extensively. Therefore, the offence under Section 308 of IPC is clearly attracted as against the petitioner. He further submitted that the investigation is under progress.

4. The learned counsel for the second respondent

filed counter and submitted that when the second respondent was proceeding from SIMS Park to Bandisholai in his Toyota motor car and when the vehicle reached somewhere just outside Highfield Estate, the accused attempted to murder him by repeatedly ramming his heavy Mahindra Jeep into his Toyota motor car. In the occurrence, the Toyota Car also heavily damaged. By good fortune, the defacto complainant did not sustain any physical injury. The accused also threatened the defacto complainant saying that he would teach him a lesson. Had the defacto complainant been in a smaller car, had his car toppled over or had it been pushed into the nearby electric transformer, the accused would have succeeded in killing him. The defacto complainant apprehends danger to his life at the hands of the accused. In fact, the accused designedly, with the motive of killing the defacto complainant, to whom he is inimically disposed, a tacit admission of which can be discerned from the affidavit, came from behind driving his Mahindra Thar Jeep bearing registration number TN-37B V 6446 in a rash and reckless manner and deliberately and repeatedly rammed the same against the defacto complainant's car with the object of doing away with him.

4.1 He further submitted that the petitioner had motive to commit the offence. The petitioner is not a stranger to the defacto complainant and as such it is not an accident as submitted by the learned counsel for the petitioner. Therefore, the offences under Section 308 of IPC is clearly attracted as against the petitioner and he sought for dismissal of the quash petition.

5. Heard Mr.M.Velmurugan, learned counsel for the petitioner, Mr.S.Karthikeyan, Additional Public Prosecutor for the first respondent, and Mr.K.V.Sridharan, learned counsel for the second respondent.

6. On the complaint lodged by the second respondent, the first respondent registered FIR in Cr.No.192 of 2019 for the offences under Section 308 of IPC, in which the petitioner is the sole accused. The second respondent is being Senior Journalist had entrusted the construction work of his house to the petitioner herein. After receipt of money, the petitioner abandoned the work and also attempted to defraud the second respondent to the tune of Rs.8 lakhs. While being so, on 15.12.2019, when the second respondent was proceeding from SIMS Park to Bandisholai in his Toyota motor car, and when the vehicle reached somewhere just outside Highfield Estate, the petitioner attempted to murder the second respondent by ramming his heavy mahindra jeep into his toyota motor car. Therefore, the second respondent's car heavily suffered damages in the right side front door of the car and fortunately the second respondent escaped and did not sustain any injury. Further, the

petitioner also threatened him with dire consequences. If the defacto complainant had been in smaller car, he would have been killed by the petitioner. Therefore, the first respondent registered case for offences under Section 308 of IPC as against the petitioner.

7. The learned counsel for the petitioner would submit that there is absolutely no ingredients to attract the offences under Section 308 of IPC, since there is absolutely no injury caused to the second respondent. Even according to him, the accident took place. The offences under Section 308 of IPC would attract when whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years. In the case on hand, there is absolutely no knowledge or intention for the petitioner to hurt or murder the second respondent. It is only an accident took place, in which the second respondent did not sustain any injury. Therefore, the offence itself does not attract as against the petitioner and sought for quashment of the FIR.

8. It is seen from the allegations made in the FIR that the petitioner and the second respondent are known to each other. The petitioner was engaged to construct house for the second respondent, in which he also received money. Thereafter failed to complete the construction and also made second respondent to spend many lakhs for repair of the house. After the occurrence, the petitioner also threatened the second respondent with dire consequences. Therefore, motive is very clear from the petitioner and the first respondent rightly registered case under Section 308 of IPC. That apart, the learned Additional Public Prosecutor submitted that though the petitioner did not sustain any injury, on perusal of the motor vehicle Inspector's report, the second respondent's car's right side completely damaged and as such the intention and motive of the petitioner is very clear that only because to cause hurt to the second respondent, he rammed his vehicle on the second respondent's vehicle. Moreover, it is only FIR and it has to be investigated in depth to find out the truth and only investigation would reveal whether the occurrence is an accident or voluntarily committed by the petitioner. Further, even assuming that the offence under Section 308 of IPC is not attracted as against the petitioner, he categorically admitted that the accident took place and his vehicle is offending vehicle. Therefore, the first respondent rightly registered FIR

as against the petitioner.

9. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar 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."

In view of the above dictum laid down by the Hon'ble Supreme Court of India, the judgments relied upon by the petitioner are not helpful to the case on hand.

10. It is true this Court has ample power to exercise its jurisdiction under Section 482 of Cr.P.C. in quashing the FIR. In the case on hand, there is specific averments to register the case for the offence under Section 308 of IPC. Therefore, the first respondent is directed to conduct investigation and find out the motive behind the occurrence and if the first respondent finds any material to attract the offence under Section 308 of IPC, the first respondent may proceed to file final report for the said offence.

11. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the crime is of the year 2019, the first respondent is directed to complete the investigation in Crime No.192 of 2019 and file a final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Inspector of Police,
Upper Coonnoor Police Station,
Coonnoor, The Nilgiris,
Tamil Nadu 643 101.

+1cc to Mr.K.V.Sridharan, Advocate, Sr.No.31982

CrI.O.P.No.4235 of 2020

rsv (co)
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