

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.9910 of 2019

A.Shanmugam,
S/o.R.Alliappan

...Petitioner

versus

1. The Sub Inspector of Police,
C4, Pennalurpettai Police Station,
Pennalurpettai,
Thiruvallur District - 602 026.

2. R.Mannatchi Naicker,
S/o.Rama Naicker

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to call for the records and to quash the First Information Report in Crime No.64 of 2018 dated 04.04.2018 pending on the file of C4, Pennalurpettai Police Station, Pennalurpettai, Thiruvallur District - 602 026.

For Petitioner : Mr.M.Chidambaram
For Respondent No.1 : Mr.S.Karthikeyan
Additional Public Prosecutor
For Respondent No.2 : No Appearance

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O R D E R

This Criminal Original Petition has been filed praying to quash the F.I.R. registered in Crime No.64 of 2018 dated 04.04.2018 on the file of the first respondent police, as illegal.

2. Heard Mr.M.Chidambaram, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent police. None appeared on behalf of the second respondent.

3. The case of the petitioner is that on 03.08.2016, at 19.30 hours, the second respondent herein entered into the petitioner's house and assaulted the petitioner's father, namely, R.Alliyappan. In this regard, a complaint has been lodged before the first respondent police in C.S.R.No.122 of 2016. Again on 27.03.2018, the second respondent and his son Venkatesan assaulted the petitioner and due to the same, the petitioner sustained grievous injuries and taken treatment for a period of 9 days as an inpatient. In respect to those offence, the first respondent police had not registered any case alternatively upon the false complaint given by the second respondent, the first respondent police registered a case against this petitioner in Crime No.64 of 2018 dated 04.04.2018, which is an abuse of process of law.

4. Now on going through the averments found in the impugned F.I.R., which has been registered in Crime No.64 of 2018, the second respondent herein made allegations against this petitioner as during the relevant point of time i.e. on 27.03.2018, at about 7.30a.m. when he was performing the cultivating activities, the petitioner herein came and pulled down the de facto complainant and thereafter, by using the filthy language, he assaulted the de facto complainant and made a life threat. After hearing the hue and cry of the de facto complainant, the petitioner ran away from the scene of occurrence.

5. The said averments found in the impugned F.I.R. constituted a prima facie occurrence for the offences under Sections 294(b), 324 and 506(ii) of IPC. Though it was alleged on the side of the petitioner as the said case has been registered falsely for taking vengeance against the petitioner. Since the offence committed by the petitioner as against the human body, the same has to be investigated in a detailed manner. Of course, the copy of the complaints dated 27.03.2018 and 25.02.2019 are not related to the assault made by the de facto complainant, the truthfulness of the complaints given by either parties have to be decided only during the time of investigation.

6. In this regard, the learned counsel appearing for the petitioner make a submission before this Court that the complaint given by the petitioner has not been entertained by the police and therefore, without taking the alternative steps, the petitioner is before this Court for the prayer stated supra.

7. On Considering the same, if the first respondent police is refused to entertain the complaint given by the petitioner, it is for him to follow the procedure laid down in Prabakaran's case reported in 2018 (5) CTC 623. In otherwise without any substantial evidence, arguing as above, is not a ground for quashing the F.I.R. In the case of STATE OF HARYANA AND OTHERS vs. BHAJAN LAL AND OTHERS, reported in 1992 SUPPL. (1) SCC 335, wherein our Hon'ble Apex Court has 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.

(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 FIR 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 FIR 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 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 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."

8. In the judgment rendered in SAU. KAMAL SHIVAJI POKARNEKAR vs. THE STATE OF MAHARASHTRA & ORS. in Criminal Appeal No. 255 of 2019, wherein our Hon'ble Apex Court has observed as follows;

"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 Sonu Gupta v. Deepak Gupta and Ors. 2015 (3) SCC 424. disclosed, there would be no justification for the High Court to interfere.

6. Defences that may be available, or facts/aspects which when established during the trial, may lead to acquittal, are not grounds for quashing the complaint at the threshold. At that stage, the only

question relevant is whether the averments in the complaint spell out the ingredients of a criminal offence or not."

9. Therefore, applying the ratio laid down in the above referred judgments, here it is a case, the truthfulness of the averments found in the F.I.R. has clearly constituted a prima facie case and therefore, the ground raised by the learned counsel appearing for the petitioner is without any substantial peace of evidence, cannot be relied on.

10. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Inspector of Police,
C4, Pennalurpettai Police Station,
Pennalurpettai,
Thiruvallur District - 602 026.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Chidambaram, Advocate, SR39952

Cr1.O.P.No.9910 of 2019

CO(RP)
BDL18/01/2021

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