

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.12.2020  
PRONOUNCED ON : 11.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

CRL.O.P.NO.22815 OF 2019  
AND  
CRL.M.P.NO.11924 OF 2019

1. Sivaraj
2. Manikandan
3. Murugan
4. S.Kumar
5. Shahul Hameed
6. Gowrishankar

..Petitioners/Accused 1 to A4, A6, A7

Versus

1. State rep. By  
The Inspector of Police,  
Chitlapakkam, Chennai.

2. Capt.Dr.V.Ravi

..Respondents

Prayer: Petition filed under Section 482 Cr.P.C., to call for the records in Cr.No.486 of 2019 on the file of the Inspector of Police, Chitlapakkam Police Station, Chennai / 1<sup>st</sup> respondent herein and quash the same.

For Petitioners : Mr.R.Karthikeyan  
For Respondents : Mr.S.Karthikeyan (for R1)  
Additional Public Prosecutor.  
No Appearance (for R2)

O R D E R

This Criminal Original Petition has been filed seeking the relief to quash the FIR registered in Cr.No.486 of 2019, on the file of the Inspector of Police, Chitlapakkam Police Station, Chennai / 1<sup>st</sup> respondent herein

2. Heard Mr.R.Karthikeyan, learned counsel appearing for the petitioners as well as Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the 1<sup>st</sup> respondent police and perused the materials available on record.

3. Even after showing the name of the 2<sup>nd</sup> respondent in the cause list, none have appeared.

4. The case of the petitioners is that claiming himself as an International Bar Council Member, the 2<sup>nd</sup> respondent herein, lodged a police complaint against the petitioners alleging that he was an Advocate of the Supreme Court of India and his mother-in-law, aged about 68 years expired, due to nearby new construction and the resultant noise and air pollution. His further allegation is that even after the death of his mother-in-law, new building work is continuing and when he had informed to stop the work, due to the death of his aunty, Accused Nos.1 to 7, in this case along with rowdy elements trespassed into his apartment and by using vulgar language, threatened him that if he comes out of his house, he would be done away. He also made telephonic calls from May 2019 to July 2019 and finally on 08.07.2019, saying that the accused are threatening him that if he comes out of his house, he would be murdered, the 2<sup>nd</sup> respondent requested action to be taken in the above complaint.

5. Upon the said allegation, the 1<sup>st</sup> respondent police registered a case in Crime No.486 of 2019, against the petitioners herein, for the offence under Sections 147, 448, 294 (b) and 506(i) of IPC r/w Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 and commenced the investigation.

6. The learned counsel appearing for the petitioners would contend that the complaint given by the 2<sup>nd</sup> respondent is a false one and the averments found in the said complaint has not disclosed the prima facie case for the offence now narrated in the FIR. The 1<sup>st</sup> and 2<sup>nd</sup> petitioners are the owners of the construction company and the other petitioners are working under them as Supervisors and labourers. The petitioners have been in the house construction business for a very long time and the buildings were constructed in the neighbouring premises after taking all the necessary precautions. Only the complainant who had been threatening the petitioners herein, have lodged a false complaint with bald allegations. The 1<sup>st</sup> respondent police, even without conducting an enquiry and also without even questioning the accused, who are all threatening him, had registered the frivolous FIR. The other petitions given by the petitioners are pending for enquiry. Therefore, registering the case against the petitioners is nothing but an abuse of process of law, because of the reason that no such incident had happened as narrated by the 2<sup>nd</sup> respondent.

7. Per contra, Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the 1<sup>st</sup> respondent police would contend that the investigation in this petition mentioned Crime No.486

of 2019, has progressed. However, he has produced the CD file, which relates to the case of the 2<sup>nd</sup> respondent.

8. Now, on considering the rival submissions made by the learned counsel appearing on either side, in the complaint given before the police, the 2<sup>nd</sup> respondent herein has made allegations against the petitioners as during the time of construction, due to the noise and air pollution, his mother-in-law aged about 68 years expired. In this regard, when the 2<sup>nd</sup> respondent requested the petitioners to stop the work, the present petitioners along with some rowdies trespassed into his apartment and threatened him with vulgar words. Further they frequently attempted to murder the 2<sup>nd</sup> respondent.

9. On going through the said averments found in the FIR, the same discloses the offence of Sections 448 and 294(b) and 506(i) IPC. In this regard, on going through the CD file, which has been produced by the 1<sup>st</sup> respondent police, it seems apart from the 2<sup>nd</sup> respondent, 4 other witnesses have been examined by the investigation officer. Further, one accused named as Shivaraj was arrested and afterwards, his confession statement was also recorded. More than that, he has been produced before the Judicial Magistrate for sending him to the judicial custody. Added further, the witnesses, examined on the side of the prosecution, in their statements have narrated the occurrence, as stated by the 2<sup>nd</sup> respondent.

10. Therefore, culling out the entire statements recorded by the investigation officer, discloses prima facie case against the accused / petitioners as alleged by the 2<sup>nd</sup> respondent. At this juncture, it is relevant to see the judgment of our Hon'ble Apex Court in the case of SAU. KAMAL SHIVAJI POKARNEKAR vs. THE STATE OF MAHARASHTRA & ORS. in Criminal Appeal No. 255 of 2019, wherein our Hon'ble Apex Court has held 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."

11. Now applying the ratio laid down in the above referred judgment, herein also, as already observed, since the averments found in the complaint discloses a prima facie case, it cannot be said that the FIR registered against the petitioners, is an abuse of process of law. Hence, this Court is of the firm view that the FIR registered against the petitioners needs an elaborate investigation.

12. Therefore, in the light of the above observations, the present Criminal Original Petition stands dismissed. Consequently, the connected, Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CJ CONF)

//True Copy//

Sub Assistant Registrar

Ars

To

1.The Inspector of Police,  
Chitlapakkam Police Station,  
Chennai.

2. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.40808

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Pre-delivery order in  
Crl.O.P.No.22815 of 2019  
and Crl.M.P.No.11924 of 2019

RLD(CO)  
KKV/06/01/2021