

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.33746 of 2019

1.R.Sathik Basha,
S/o.Rafik Mohammed

2.J.Rafik Mohammed,
S/o.Late John Mohammed

... Petitioners

versus

1.State represented by :
The Sub Inspector of Police,
Arakkonam Town Police Station,
Arakkonam Town - 631 001,
Vellore District.

2.K.Suresh,
S/o.Krishnamoorthy

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to call for the records relating to the F.I.R. in Crime No.651 of 2018 dated 04.11.2018 on the file of the first respondent police and quash the same.

For Petitioners : Mr.R.Venkatesan
For Respondent No.1 : Mr.S.Karthikeyan
Additional Public Prosecutor
For Respondent No.2 : No Appearance

ORDER

This Criminal Original Petition has been filed praying to quash the F.I.R. registered in Crime No.651 of 2018 dated 04.11.2018 on the file of the first respondent police, as illegal.

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

3. The learned counsel appearing for the petitioners would contend that the averments found in the F.I.R. do not establish a prima facie case under Section 399 of IPC. The first respondent police by utilising the service of the second respondent obtained a false complaint against the petitioners and registered a case, which is nothing but an abuse of process of law. According to the petitioners, they are falsely implicated in this case and they are no way connected with the alleged crime. Accordingly, he prays to quash the F.I.R. registered in Crime No.651 of 2018.

4. Per contra, the learned Additional Public Prosecutor appearing for the first respondent police on instructions would submit that only upon the complaint given by the second respondent, the first respondent police registered a case. Further, he would submit that without conducting investigation, it cannot be said that registering the F.I.R. itself is an abuse of process of law.

5. Now, on considering the rival submissions made by the learned counsels appearing on either side, to decide the issue in this petition, it would be relevant to see the averments found in the petition mentioned F.I.R. In the said F.I.R., the de facto complainant has stated that during the time of occurrence, the petitioners herein are assembled together and made preparation for committing dacoity. In other words, in the said complaint, he has not stated about the person, who speaks about the preparation in respect to the dacoity. In the complaint, though he was named 5 persons as accused, in the absence of specific averment against the petitioners, it cannot be said that the petitioners are all joint together and attempted to make preparation for committing dacoity.

6. Here, it is a case, in the complaint given by the second respondent, he made allegations against the petitioners as during the relevant point of time, the petitioners and 3 others made conspiracy for committing the offence of dacoity. In other words, nothing was averred against the petitioners in respect to the preparation and attempt.

7. In general, mere intention to commit an offence cannot constitute an offence. In the complaint, the de facto complainant / second respondent did not say anything about the words uttered by the petitioners in respect to the preparation and attempt. Without hearing the conversation happened between the accused, nobody come to the conclusion that they made conspiracy for committing the offence.

8. Though it was stated as the petitioners are having dangerous weapons that alone is not sufficient to hold that the

said weapons were possessed by the accused only for the purpose of committing the dacoity. More than that, without knowing the details of the accused, the second respondent lodged the complaint against the petitioners and others, as they made preparation for committing the offence.

9. In respect to the question of F.I.R., our Hon'ble Apex Court in the case of R.P.KAPUR vs. STATE OF PUNJAB reported in AIR 1960 SC 866, has held as follows;

"(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge."

10. Therefore, applying the ratio laid down in the above referred judgment, here it is a case, the allegations made in the F.I.R. at its face value itself do not constitute the offence as alleged. Therefore, it is a fit case for exercising the jurisdiction under Section 482 Cr.P.C. Accordingly, the F.I.R. registered in Crime No.651 of 2018 is quashed.

11. In the result, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sri

To

1.State represented by :

The Sub Inspector of Police,
Arakkonam Town Police Station,
Arakkonam Town - 631 001,
Vellore District.

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2.The Public Prosecutor,
High Court, Madras.

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SSV(CO)
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