

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.32097 of 2019

and

Cr1.M.P.No.17626 of 2019

- 1.Karunamoorthi,
S/o.Natarajan
- 2.Kalidas,
S/o.Natarajan
- 3.Manoranjitham M,
D/o.Madharasalam
- 4.Natarajan,
S/o.Rangasamy
- 5.Kannammal,
W/o.Natarajan
- 6.Kesavan @ Kesavamoorthi,
S/o.Vellingiri
- 7.Kalpana,
W/o.Ranganathan
- 8.Ranganathan,
S/o.Arumuga Konar
- 9.Hariharan,
S/o.Dhandapani
- 10.Dhandapani,
S/o.Arumugam
- 11.Suganyadevi,
W/o.Dhandapani
- 12.Murugesan,
S/o.Kirushnasamy



WEB COPY

vs

1.State rep. by
The Inspector of Police,
Sulur Police Station,
Coimbatore District.
(CRIME.NO.869/2019)

... Respondents

2.Sowndarya,
W/o.Karunamoorthi

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.869 of 2019 dated 20.10.2019 on the file of the first respondent police and quash the same.

For Petitioners : Mr.W.Camyles Gandhi

For Respondent No.1 : Mr.S.Karthikeyan
Additional Public Prosecutor

For Respondent No.2 : Mr.K.Vasanthanayagan

ORDER

This Criminal Original Petition has been filed praying to quash the F.I.R. registered in Crime No.869 of 2019 dated 20.10.2019 on the file of the first respondent police, as illegal.

2. Heard Mr.W.Camyles Gandhi, learned counsel appearing for the petitioners, Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent police and Mr.K.Vasanthanayagan, learned counsel appearing for the second respondent.

3. The petitioners 1 to 12 are arrayed as accused nos.1 to 12 in Crime No.869 of 2019 on the file of the first respondent police. The said F.I.R. has been registered for the offences punishable under Sections 294(b), 323, 324, 506(1) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

4. The learned counsel appearing for the petitioners would contend that the first petitioner herein is the husband of the second respondent. Due to matrimonial dispute, in the year of 2019, the first petitioner filed Original Petition in H.M.O.P.No.191 of 2019 before the learned II Subordinate Judge, Coimbatore, under Section 13(1)(1-b) of the Hindu Marriage Act,

1955, wherein he prayed the relief of dissolution of marriage, which had happened on 30.03.2017. Now, the said petition is pending for the commencement of trial.

5. Only in the said circumstances, in order to threaten the petitioners, on 20.10.2019, the second respondent lodged a false complaint before the first respondent police and thereupon, without any enquiry, the first respondent police registered a case, which is nothing but an abuse of process of law. According to him, the averments found in the impugned F.I.R. do not constitute a *prima facie* case for the offences under Sections 294(b), 323, 324, 506(1) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. Accordingly, he prays to allow this petition.

6. Per contra, the learned Additional Public Prosecutor appearing for the first respondent police on instructions would submit that the averments found in the F.I.R. is not in respect to the matrimonial dispute having by the first petitioner with the second respondent. He would further contend that only for the occurrence dated 20.10.2019, the second respondent lodged the present complaint and therefore, registering the case against the petitioners is not an abuse of process of law.

7. Now, on considering the rival submissions made by the learned counsels appearing on either side, 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 it was 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."

8. Now, applying the ratio laid down by our Hon'ble Apex Court to the case in our hand, in this case in the impugned F.I.R., the second respondent made allegations against the petitioners as during the time of occurrence, the petitioners 1 and 2 by using the rope attempted to murder her. When the same was questioned, all the petitioners herein attacked the *de facto* complainant and caused simple injury. Further, it was alleged that after the occurrence, the second respondent admitted in the Government Hospital, Coimbatore, wherein she was treated as an inpatient from 31.08.2019 to 07.09.2019. Therefore, the averments found in the F.I.R. clearly constitute the *prima facie* case for the offences under Sections 294(b), 323, 324, 506(1) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, for which, a case has been registered. Since the averments found in the F.I.R. constitute a *prima facie* case for the cognizable offence, which needs elaborate enquiry.

9. In the judgment of **CENTRAL BUREAU OF INVESTIGATION vs. A.RAVISHANKAR PRASAD AND OTHERS** reported in (2009) 2 SCC (Cri) 1063, wherein our Hon'ble Apex was held as follows;

"Inherent powers of High Court under Section 482 CrPC are meant to act *ex debito justitiae* to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. These inherent powers can be exercised in the following category of cases: (i) to give effect to an order under the Code; (ii) to prevent abuse of the process of court; and (iii) to otherwise secure the ends of justice. Extraordinary power under Section 482 CrPC should be exercised sparingly and with great care and caution."

10. Now applying the ratio laid down in the above referred judgment, only in the circumstances that the registration of the case itself is an abuse of process of law, inherent powers can be exercised to prevent abuse of process of law. But here it is a case, the petitioners did not indicate the circumstances, in which, the registration of the F.I.R. itself is an abuse of process of law. Accordingly, the petition filed by the petitioners is devoid of merits.

11. In the light of the above discussions, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

-sd/-

Assistant Registrar (cs)

//True Copy//

Sub Assistant Registrar

sri

To

1.State rep. by
The Inspector of Police,
Sulur Police Station,
Coimbatore District.

2.The Public Prosecutor,
High Court, Madras.

+1 C.C.to MR.W.CAMYLES GANDHI,ADVOCATE SR.NO.38711

+1 C.C.to MR.P.VIJAYA KUMAR,ADVOCATE SR.NO.39093

CrI.O.P.No.32097 of 2019 and
CrI.M.P.No.17626 of 2019

RSV (CO)
UMY (19/12/2020)



WEB COPY