



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.07.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Cr1.O.P.[MD]No.7476 of 2020

WEB COPY

1.Rajamani Iyyar

2.Priya

... Petitioners/Accused Nos.5&6

Vs.

1.State rep., through its
The Inspector of Police,
District Crime Branch,
Tirunelveli District.
(Crime No.34 of 2019)

... 1st Respondent/Complainant

2.Sethuraja

... 2nd Respondent/Defacto
Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, praying to call for records relating to the FIR in Crime No.34 of 2019 dated 13.11.2019 pending on the file of the first respondent and quash the same and in so far as the petitioners are concerned.

For Petitioners

For R-1

: Mr.K.Krishna

: Mr.S.Chandrasekar

Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking a direction to quash the First Information Report registered in Crime No.34 of 2019, dated 13.11.2019, pending on the file of the first respondent.

2.The learned counsel for the petitioners would submit that the first respondent police registered the above referred case in Crime No.34 of 2019 against six persons in which the petitioners were arrayed as A5 and A6. He would further submit that the petitioners are aged persons and they have not committed any offence as alleged by the defacto complainant and also the petitioners are not directly involved in the alleged offence. Therefore, the petitioners sought for the relief to quash the First Information Report by exercising its power under Section 482 of Cr.P.C.

3.The learned Additional Public Prosecutor appearing for the

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first respondent, on instructions, would submit that now the petition mentioned First Information Report registered in Crime No.34 of 2019, is under investigation. In the said circumstances, it cannot be said that the petitioners are not involved in the occurrence. He would further submit that the averments set out in the First Information Report will clearly disclose the fact that the petitioners are also involved in the alleged offence and thereby the prayer sought for by the petitioner cannot be granted in their favour.

4.Before considering the rival submissions made by the learned counsel appearing on either side, it is necessary to go through the averments set out in the First Information Report which was preferred based on the complaint given by the second respondent in which, in the first paragraph itself the defacto complainant/second respondent has clearly averred as before the occurrence all the accused contacted him with dishonest intention and thereby he sold the paddy from January 2019 to March 2019 to the value of Rs.1,24,03,070/- in which Rs.22,50,000/- is balance to be paid by the petitioners. So considering the said averments with the prayer sought for by the petitioner, it cannot be said that the petitioners are not involved in the alleged occurrence. However, as per the submission made by the learned Additional Public Prosecutor, as of now investigation has not been completed. In the said circumstances, without seeing the final report, making a submission as the petitioner are not directly involved in the alleged occurrence, cannot be believed.

5.Moreover, since this petition is filed by the petitioner to quash the First Information Report, it is necessary to see the judgment reported in **1992 Supp (1) Supreme Court Cases** in the case of **State of Haryana and others Vs Bhajan Lal and others**, wherein, our Hon'ble Apex Court has held as follows:-

"The following categories of cases can be stated by way of illustration wherein the extraordinary power under Article 226 or the inherent powers under Section 482 of Cr.P.C can be exercised by the Higher Court 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:

(a) 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;



(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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 a specific provision in the Code or the concerned Act, State Of Haryana And Ors vs Ch. Bhajan Lal And Ors on 21 November, 1990 Indian Kanoon - <http://indiankanoon.org/doc/1033637/> 5 providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide 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."

6. Now applying the contention earmarked by the Hon'ble Apex Court to the case in our hand, the averments made in the First Information Report clearly disclose the fact that the petitioners have committed the cognizable offence and it cannot be said that the allegation levelled against the petitioners is inherent and improbable. Since the averments made in the First Information Report reveal the fact that the petitioners have also approached the defacto complainant for purchase of paddy, the involvement has to be verified only at the time of trial or investigation. In the said circumstances, the petitioners prayer to quash the First Information



Report, cannot be entertained.

7. In the light of the above observations, this Criminal Original Petition is dismissed.

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Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
District Crime Branch,
Tirunelveli District.(Cr.No.34/19)
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AP (29.07.2020) 4P-3C