

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.09.2020
PRONOUNCED ON : 18.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.12504 of 2014
and
M.P.No.1 of 2014

1.Ravichandran
2.Sivakumar
3.Venkatesan
4.Siva
5.Seenu
6.Manikandan
7.Sathiyakeerthi
8.Senthil

... Petitioners / A1 to A8

Vs.

1.State

Rep.by Inspector of Police,
Ulundurpet Taluk Police Station,
Ulundurpet,
Cr.No.280 of 2011

... 1st Respondent /
Complainant

2.Jeennath Begum

... 2nd Respondent /
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the charge sheet in C.C.No.97 of 2012, on the file of Judicial Magistrate No.1, Ulundurpet and quash the same.

For Petitioners : Mr.V.Thillai Kumar

For Respondent-1 : Mr.K.Prabakar
Additional Public Prosecutor

For Respondent-2 : Mr.P.Sathish Kumar
Legal Aid Counsel

O R D E R

This Criminal Original Petition has been filed praying to quash the proceedings in C.C.No.97 of 2012, on the file of Judicial Magistrate No.1, Ulundurpet.

2. The case of the prosecution, in nutshell, is as follows:-

(i) The 2nd respondent / defacto complainant is running a Medical Shop under the name and style of 'Femina Medicals', in Ulundurpet Main Road. The shop belongs to one Namachivaya Padayachi and the petitioner has been paying monthly rent regularly, for the past 10 years. After the demise of said Namachivaya Padayachi, the rent has been paid continuously to his son Ravichandran, who is a practicing Advocate, through one Arali Siva. After some time, the said Ravichandran asked the 2nd respondent to vacate the premises within ten days, despite the request of three months's time made by the defacto complainant.

(ii) While so, on 05.06.2011, at about 22.00 hrs, the said Ravi along with one Sivakumar, Arali Siva, Sathiyakeerthi, Venkatesan, Seenu, Senthil and Manikandan had illegally entered into the shop of the 2nd respondent, attacked her, damaged the shop materials worth about to Rs.5,00,000/-, threatened with dire consequences, pressurizing her to vacate the shop immediately and also took a sum of Rs.80,000/- cash from the shop. On seeing the police, the above persons ran away from the scene of occurrence. Hence, the complaint.

3. The learned counsel appearing for the Petitioners / A1 to A8 submitted that though the alleged occurrence took place on 05.06.2011 at about 22.00 hrs, the complaint was preferred only on 06.06.2011 at about 3.00 a.m. The Police Station is situated just 200 meters from the place of occurrence. Further, the respondent Police examined nearly 16 witnesses and except P.W.1/ Complainant; P.W.2/ husband of the defacto complainant and P.W.3 / employee of the shop, others are hearsay witnesses. No other material witnesses have been examined. Initially, the complainant stated that Rs. 50,000/- kept in the 'Kalla Petti' was taken away by one Srinivasan and Periyar Shiva, who are arrayed as A5 and A2 respectively, but in her 161 statement, the Complainant claimed that Rs.50,000/- was snatched from her hand by A5 and Rs.30,000/- was taken from the Cash Bax (Kalla Petti), by A7.

4. Adding further it is submitted by the counsel for the petitioners that the 1st petitioner is the landlord and the 2nd respondent is the tenant and there is a dispute between them. The medical evidence has not corroborated the alleged attack on the defacto complainant and witnesses. In order to make out a case for the offence under Section 379 IPC., there is no iota of evidence to hook the petitioners, which they are charged. The prosecution had not recovered any amount from any of the accused. Further, the alleged occurrence took place in the midst of a busy Bazaar, which is near a busy bus stand and it is unbelievable that everybody closed the shop around 21.30 hours and that nobody had neither witnessed the incident nor informed the same to the police.

5. It is his further contention that the husband of the 2nd respondent had filed a civil suit with regard to this dispute and hence, the petitioners have been falsely implicated in this case. The Accident Register of Ulundurpet Hospital shows that there is no external injuries and on the request of the defacto complainant, she was referred to Villupuram Government Hospital. The Complaint is said have been received from, Villupuram Government Hospital, when 2nd respondent was inpatient. No materials produced to substantiate the same. No records produced to show that LW.3 sustained any injury, and admitted in Ulundurpet Government Hospital. Hence, the voracity of the complaint becomes doubtful and questionable. Since the first petitioner is an practicing advocate and his wife is the Judicial Officer and taking advantage of their vulnerable position, a false complaint is made. Hence , the learned Counsel for the petitioners prayed for quashing of the charge sheet. The learned counsel, in support of his contention, relied on the Judgment of the Hon'ble Apex in Prabatbhai Aahir @ Parbatbhai Bhimsinhbhai Karmur and Ors. Vs. State of Gujarat and Another reported in (2017 (9) SCC 641) and an yet another Judgment of the Hon'ble Supreme Court in Anand Kumar Mohatta Vs. State (NCT of Delhi) reported in (2019 (11) SCC 706).

6. The Learned Additional public Prosecutor appearing for the 1st respondent State would submit that on receipt of complaint, a case in Crime No.280 of 2011 was registered on the file of the 1st respondent Police. After investigation and examination of witnesses, charge sheet has been filed before the learned Judicial Magistrate No.1, Ulundurpet , which was taken on file as C.C.No.97 of 2012 and the case is pending for framing of charges. Hence, the learned Additional Public Prosecutor prays for dismissal of the quash petition.

7. This Court, vide order dated 03.08.2020, appoints Mr.P. Sathish Kumar, as the Legal Aid Counsel for the 2nd respondent - defacto commencement. He would submit that the defacto complainant is a lady, was assaulted in public place by the petitioners, thereafter, she was rushed to the Government Hospital, Ulundurpet along with Gunasekaran, after initial treatment, she was referred to General Hospital , Villupuram. The first petitioner, who is an Advocate, had brought the other accused, ordered them to assault the defacto complainant and others of Femina Medicals, since there was some tenancy dispute between them. Further, the first petitioner's wife is a Judicial Officer, embolden by it, he had indulged in such high-handedness. In this case, the respondent Police had completed the investigation and filed charge sheet. The Lower Court, on perusal of charge sheet and materials produced, taken cognizance of the offence and issued summons in C.C.No.97 of 2012. The petitioners, without facing trial, by filing the above petition had submitted that the case is without any progress for nearly 9 years. The Points raised by the petitioners are disputed facts, which ought to have been decided at the stage of trial.

8. I have heard the learned counsels appearing on either side and perused the materials available on record.

9. On perusal of the complaint it is seen that the 2nd respondent / defacto complainant is running a Medical Shop under the name and style of 'Femina Medicals', in Ulundurpet Main Road. On 05.06.2011, at about 22.00 hrs, the petitioners illegally entered into the medical shop of the 2nd respondent, attacked her, ransacked the shop, created loss worth about to Rs.5,00,000/-, threatened with dire consequences, pressurizing her to vacate the shop immediately and also took a sum of Rs.80,000/- cash from the shop. It is seen that there are serious allegations levelled against the petitioners / A1 to A8.

10. In such view of the matter, having regard to the nature of allegations made in the FIR, the investigation completed confirms the same and charge sheet has been filed, this Court cannot invoke the inherent powers under Section 482 of Cr.P.C., to quash the proceedings.

11. In the result, this Criminal Original Petition stands dismissed. Since the proceedings in C.C.No.97 of 2012, on the file of the Judicial Magistrate No.1, Ulundurpet, is pending

for the past nine years, without progress, the trial Court to give priority and dispose the same, without any further delay, preferably, within six months, from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petition is also dismissed.

12. At this juncture, the services rendered by the Legal Aid Counsel Mr.P.Sathish Kumar is recorded with appreciation.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

MPK

To

- 1.The Judicial Magistrate No.1,
Ulundurpet.
- 2.The chief Judicial Magistrate,Villupuram, (For Information)
- 3.The Inspector of Police,
Ulundurpet Taluk Police Station,
Ulundurpet,
- 4.The Public Prosecutor,
High Court, Madras.

PRE-DELIVERY ORDER IN
Crl.O.P.No.12504 of 2014

GP(CO)
RG.16.04.2021