

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.12.2020

Pronounced on : 08.01.2021

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.28957 of 2019
and Crl.M.P.No.15493 of 2019

1. M.Velu @ Thirunavukkarasu (A1)
2. B.Prabhakaran (A2) .. Petitioners

Versus

1. State rep. By
The Inspector of Police,
B-5, Manavala Nagar Police Station,
Thiruvallur District.
2. K.Dinesh Kumar .. Respondents

Prayer: Petition filed under Section 482 Cr.P.C., to call for the records in Cr.No.61 of 2019 dated 06.02.2019 on the file of the Inspector of Police, Manavalan Nagar Police Station, Thiruvallur District and quash the same as illegal.

For Petitioners : Mr.R.Sankarasubbu
for Mr.S.Rajanikanth

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

ORDER

This Criminal Original Petition has been filed praying to quash the FIR, which was registered in Cr.No.61 of 2019 dated 06.02.2019, on the file of the 1st respondent police, as illegal

2. Heard Mr.R.Sankarasubbu, learned counsel appearing for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the 1st respondent police and perused the materials available on record.

3. First of all, on going through the order dated 07.02.2019, passed by the learned Judicial Magistrate No.II, Thiruvallur, it seems that though the FIR has been registered for the offence under Sections 249(b), 341, 384 and 506 (ii) of IPC, the petitioners were remanded to the judicial custody only for the offence under Sections 249 (b) and 341 of IPC.

4. Secondly, in respect to the averments found in the petition, the learned counsel appearing for the petitioners would contend that the petitioners are college students, studying Law. The 2nd respondent/defacto complainant is running an illegal wine shop bar at Manavalan Nagar. He acts like a gangster and he always roam with rowdies and use them as his bodyguards. When the said act was questioned by the petitioners, with the support of police officials, the 2nd respondent threatened the petitioners, resultantly, a case has been registered against the petitioners. He would further contend that on the date of occurrence, the 2nd petitioner was stayed in a hotel situated at Thoothukudi, further the 1st petitioner was in his house. More than that, the complaint pertaining to this petition has been lodged by the 2nd respondent with a delay of three hours, which all shows that the present case has been registered with motivation.

5. The learned counsel appearing for the petitioners would further contend that during the time, when the petitioners were produced before the Magistrate, the learned Magistrate has refused to remand the petitioners, by saying that the documents produced by the 1st respondent did not establish a

prima facie case as against the petitioners. According to the learned counsel, the present FIR has been registered against the petitioners with an ill motive.

6. Per contra, the learned Additional Public Prosecutor appearing for the 1st respondent police would contend that the submission made by the learned counsel appearing for the petitioners, are all related to the factual aspects, so the same have to be checked only during the time of investigation or during the time of trial. He would further submit that in the absence of any investigation, this Court cannot conclude this petition, that a false case has been registered against the petitioners.

7. On considering the rival submissions made by the learned counsel appearing on either side, it is a settled position that if the averments found in the FIR constituted a prima facie case for cognizable offence, the same cannot be quashed relying upon flimsy reasons. In this regard, our Hon'ble Apex Court in ***SAU. KAMAL SHIVAJI POKARNEKAR vs. THE STATE***

OF MAHARASHTRA & ORS. in ***Criminal Appeal No. 255 of 2019***, 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.”

8. Applying the said ratio laid down by our Hon'ble Apex Court to the case in hand, the 2nd respondent/defacto complainant while at the time of lodging the complaint before the 1st respondent, has made allegations against the petitioners as during the time of occurrence, both the petitioners have waylaid and threatened him for giving mamool. Further, they have

made life threat to the 2nd respondent. So it is made clear that the said averments found in the FIR clearly constituted a prima facie case, for the cognizable offence. Even assuming that the petitioners were staying in Thoothukudi, the said defence cannot be taken into account for deciding this petition. The question of alibi has to be decided only during the time of trial, particularly, after examining the witnesses and after marking the documents, which are all relied on by the petitioners/accused.

9. Further, at this juncture, it is relevant to refer to the judgment in ***Rajeev Kourav Vs. Baisahab***, reported in 2020 (2) SCC (Cri.) 51, wherein our Hon'ble Apex Court, has observed as follows:

“6. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid

down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.”

10. Therefore, it is a settled law that defence at the earlier stage cannot be looked into for quashing the FIR. Hence, in all, the petition filed by the petitioners is devoid of merits. Accordingly, the Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

08.01.2021

Index: Yes/No
Internet: Yes
Speaking/Non-speaking order
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R.PONGIAPPAN, J.

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To

1. The Inspector of Police,
B-5, Manavala Nagar Police Station,
Thiruvallur District.

2. The Public Prosecutor,
High Court, Madras.



Pre-delivery order in
Crl.O.P.No.28957 of 2019
and Crl.M.P.No.15493 of 2019

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