

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CRL.O.P.NO.25715 OF 2018

AND

CRL.M.P.NO.14701 OF 2018

M.Gayathri

...Petitioner / Accused

Versus

1.The State rep.by
Inspector of Police,
S-9, Palvanthangal Police Station,
Chennai 600 114.
(Cr.No.215 of 2018)

...1st Respondent / Complainant

2.Kesava Jayanthi

...2nd Respondent / Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in Charge Sheet filed in C.C.No.374 of 2018 on the file of the learned Judicial Magistrate, Alandur and quash the same.

For Petitioners : Mr.Mr.Vijayakumar

For RR1 : Mr.C.E.Pratap
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to call for records in Charge Sheet filed in C.C.No.374 of 2018 on the file of the learned Judicial Magistrate, Alandur and quash the same.

2. Facts leading to the present round of litigation is that the petitioner's mother in law was owning a residential house in her name and executed a Settlement in favour of the petitioner's husband during the year 2008 and he is in possession of the said property, due to which, there was a Civil Dispute in O.S.No.805 of 2010 before the learned District Munsif Court, Alandur, pending between the petitioner's husband against his family members and an order of interim injunction was granted in favour of the petitioner's husband in I.A.No.1600 of 2010. On several occasions, there was a frequent quarrel between the two family

with regard to the property in dispute and a police complaint had been lodged by the petitioner, however, the respondent Police amicably settled the matter and closed the complaint. During the year 2014, a criminal case was registered on the basis of the petitioner's complaint against the family members of the petitioner's husband for the offences of brutal attack on the petitioner, who sustained severe head injuries in that incident. While being so, again on 30.04.2018, the 2nd respondent thrown her chapel against petitioner's customer, as she is running a cool drink shop. When the same was questioned, the petitioner was suddenly attacked by the 2nd respondent by spreading chilli powder on her face, due to which, the petitioner has preferred complaint against the 2nd respondent on 30.04.2018, before the law enforcing agency. Later, the 2nd respondent also preferred complaint in Cr.No.215 of 2018, on 14.05.2018. Challenging the complaint preferred by the 2nd respondent, the petitioner is before this Court.

3. The learned counsel appearing for the petitioner submitted that on the date of incident, the 2nd respondent also preferred a false complaint to the 1st respondent through phone call. The 1st respondent Police without enquiring the petitioner's complaint, has registered the complaint preferred by the 2nd respondent and therefore apprehending arrest, the petitioner had filed Crl.O.P.No.12955 of 2018 before this Court for anticipatory bail and the same was closed on 03.05.2018, as the enquiry was pending. The petitioner was summoned on several occasions for enquiry. Since there is legal complication to proceed against the petitioner on the basis of the false complaint of the 2nd respondent, the 1st respondent obtained false complaint dated 14.05.2018, with connivance of the 2nd respondent, as if there was an incident on 13.05.2018, by alleging that the petitioner had abused and attacked the 2nd respondent. Further in the complaint no allegations have been framed against the petitioner with regard to harassment and criminal intimidation and thereby, the petitioner was falsely implicated for the offences under Section 294(b), 341, 323 and 506(i) IPC. Further the learned counsel submitted that for implicating the petitioners under Section 323 IPC, there must be a Wound Certificate and AR copy of the Doctor and the said Doctor should also be cited as witness, however in the final report, no such AR report and Doctor's witness were marked and therefore, the allegations levelled against the petitioner are not true and she has been falsely implicated in this case. Hence prays for quashment of the impugned private complaint against the petitioners herein.

4. The learned counsel appearing for the respondent submitted that though no allegations have been made against the petitioner in the FIR, the grounds raised by the counsel for the

petitioner are all factual in nature and it requires appreciation of evidence and this Court cannot decide the same in exercise of its jurisdiction under Section 482 of Criminal Procedure Code. It is left open to the petitioner to raise all the grounds before the Court and the same shall be considered on its own merits and in accordance with law.

5. Though notice was served on the 2nd respondent, there is no representation on behalf of them. This Court, considering the pendency of this petition, is inclined to dispose of the matter based on the available records.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. The fact is not in dispute that admittedly there was a frequent quarrel between the petitioner's husband elder brother family and the petitioner family. On an earlier occasion, due to the wordy quarrel, the parties had sustained injuries and police complaints have also been lodged by both parties, wherein investigation is pending. While being so, once again, the present complaint has been lodged by the 2nd respondent against the petitioner by alleging that the petitioner has stopped current supply to the house of the 2nd respondent and when it was questioned, the 2nd respondent is alleged to have been abused and attacked by the petitioner. Though such being the claim of the 2nd respondent, it is alleged by the petitioner that no such occurrence had taken place on 14.05.2018, as alleged by the 2nd respondent and learned counsel for the petitioner claimed that the 2nd respondent in order to harass the petitioner due to the property dispute, has deliberately lodged false complaint against the petitioner. As per the Charge Sheet, the petitioner was implicated for the offence under Section 323 IPC. Neither there is any material to show that the petitioner was available at the scene of occurrence and attacked the 2nd respondent nor any AR copy has been produced by the prosecution to show that the defacto complainant had sustained injuries. In the absence of the AR copy along with the final report and the Doctor, who treated the 2nd respondent having not been shown as witness, the offence under Section 323 IPC is bereft of any materials. Further with regard to criminal intimidation under Section 506 (i) IPC also, there is no ingredients to establish such an allegation against the petitioner.

8. Further, in order to substantiate the above said offence against the petitioner, the law enforcing agency had examined series of witnesses, wherein the 2nd respondent is an interested witness and other witnesses are only hear-say witnesses, who after hearing information from the interested witness / 2nd respondent, had made statement before the respondent Police and

no independent witnesses have been examined in the case. Further it is alleged by the 2nd respondent in the complaint that the petitioner had attacked the 2nd respondent in the same place, where she got injury on account of earlier incident and she did not talk about any injury sustained on the alleged date of occurrence i.e., on 14.05.2018. Mere allegations without any other material to substantiate the same cannot be taken as a valid complaint and therefore, the complaint deserves to be quashed

9. In view of the ratio laid down in Bhajan Lal's case (cited supra), this Court has no hesitation to quash the complaint as no offence has been made out against the petitioner herein.

10. For the reasons aforesaid, this Criminal Original Petition is allowed and C.C.No.374 of 2018 on the file of the learned Judicial Magistrate, Alandur is quashed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate,
Alandur.
- 2.The Inspector of Police,
S-9, Palvanthangal Police Station,
Chennai - 600 114.

+1cc to M/s.R.R.Mohanaraja, Advocate SR.No.54013

CRL.O.P.No.25715 of 2018

SRA(CO)
RVM(10/01/2022)