



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.11.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.18079 of 2021

and

Crl.M.P.(MD)No.9896 of 2021

1.Ilayaraja
2.Kunjaram
3.Malarvizhi

... Petitioners/Accused Nos.1 to 3

vs.

1. The Inspector of Police,
All Women Police Station,
Sivagangai,
Sivagangai District.
(Crime No.22 / 2021)

... 1st Respondent/Complainant

2.Santhipriya

... 2nd Respondent/defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the FIR in Crime No.22 of 2021 on the file of the first respondent and quash the same insofar as the petitioners are concerned.

For Petitioners
For R1

: Mr.V.Kannan
: Mr.T.Senthil Kumar
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed for quashing the FIR in Crime No.22 of 2021 registered on the file of the first respondent for the offences under Sections 498-A, 323, 294(b) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

2. The second respondent is the defacto complainant. The petitioner's counsel reiterated all the contentions set out in the memorandum of grounds.

3. The learned Additional Public Prosecutor appearing for the first respondent drew my attention to the recent decision of the Hon'ble Supreme Court reported in **AIR 2021 SC 1918 (M/s.Neeharika, Infrastructure Pvt. Ltd., vs The State Of Maharashtra and Another)**, the following directions have been issued.

<https://hcmca.gov.in/services/>



"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;
- iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;
- vi) Criminal proceedings ought not to be scuttled at the initial stage;
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;
- viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;
- ix) The functions of the judiciary and the police are complementary, not overlapping;



x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

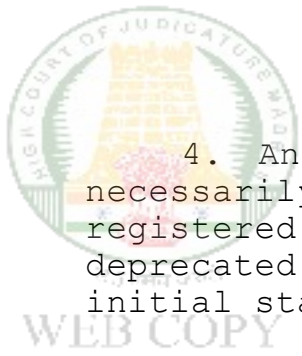
xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;



xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."



4. Any consideration of the petitioner's contentions would necessarily involve embarking on a factual enquiry. FIR itself was registered only on 07.09.2021. The Hon'ble Apex Court has deprecated the practice of scuttling the investigation at the initial stage.

5. Leaving open the petitioner's defences and contentions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (C.O)

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/ /2021

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,
All Women Police Station,
Sivagangai,
Sivagangai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.18079 of 2021

19.11.2021

USK (15.12.2021) 5P 3C