



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.19812 of 2021 and

CRL.M.P.(MD)No.11146 of 2021

WEB COPY

S.Thangaraj

... Petitioner / Accused No.1

Vs.

1. State rep. By,
The Inspector of Police,
Sempatty police station,
Dindigul.
(Crime No.475 of 2010)

... Respondent No.1/Complainant

2. Selvaraj

... Respondent No.2/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the impugned First Information Report in Crime No.475 of 2010 on the file of the first respondent dated 31.12.2010 and quash the same.

For Petitioner : Mr.A.Chandrakumar

For Respondents : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

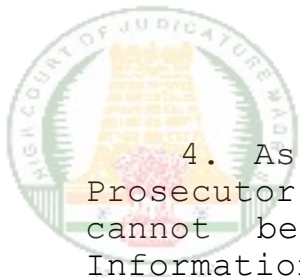
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O R D E R

Heard the learned counsel on either side.

2. This criminal original petition has been filed to quash the impugned First Information Report.

3. On 30.12.2010 at about 10.00 p.m., the State Transport bus bearing registration No.TN 57-N-1531 was plying from Palani to Vathalagundu. At around 11.00 p.m., when the bus was crossing Sempatty, a thirty years old individual blocked the bus with a stone in his hand. When the driver applied sudden break, he threw a stone on the bus. The windshield of the bus broke and the driver also suffered minor head injury. According to the victim, the accused shouted slogans in praise of John Pandian. At that time, somebody came in a two wheeler and said, "come Thangaraj; since the job is over, get on/hop on". They also called one Raja similarly. Based on this information, one Thangaraj and Raja and few others are shown as accused. According to the petitioner, he was not present in the occurrence.



4. As rightly pointed out by the learned Additional Public Prosecutor appearing for the first respondent, on these grounds, it cannot be open to this Court to quash the impugned First Information Report. He drew my attention to the recent decision reported in **AIR 2021 SC 1918 (M/s.Neeharika, Infrastructure Pvt. Ltd., Vs. The State Of Maharashtra and Another)**. In the said case, the following directions have been issued:-

"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."

5. As rightly submitted by the learned Additional Public Prosecutor, while exercising jurisdiction under Section 482 of Cr.P.C., this Court cannot go into the genuineness and reliability of the statements set out in the impugned First Information Report. However, there is considerable merit in the contention of the petitioner's counsel that a case of this nature cannot be kept pending for full eleven years. The occurrence had taken place at around mid night. The petitioner was not identified. There is very little legally acceptable material against the petitioner with the crime. Since the challenge is to the impugned First Information Report, I refrain from considering the contentions beyond this.

6. The first respondent is directed to file final report within two months from the date of receipt of a copy of this order. If within two months final report is not filed, it will be deemed that the case has been closed as "action dropped".

7. This criminal original petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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,
Sempatty police station, Dindigul.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Crl.O.P.(MD)No.19812 of 2021
14.12.2021

USK (28.12.2021) 5P 3C

<https://hcservices.ecourts.gov.in/hcservices/>