



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.03.2022

CORAM

THE HONOURABLE THIRU JUSTICE G.CHANDRASEKHARAN

Cr1.O.P.No.17018 of 2015
and M.P.Nos.1 and 2 of 2015

1.P.V.Arumugam
2.Kumar @ Ravikumar

...Petitioners/Accused No.1& 2

vs

1. State rep by
Sub-Inspector of Police,
H1 Old Washermenpet Police,
Chennai - 21
Crime No.657 of 2013

2. Sukumar

...Respondents/Complainant/
Defacto Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C to call for the records in C.C.No.548 of 2015 on the file of XV Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.T.P.Sekar

For 1st respondent : Mr.R.Murthi
Government Advocate (Cr1.Side)

O R D E R

This Criminal Original Petition is filed to call for the records pertaining to C.C.No.548 of 2015 on the file of XV Metropolitan Magistrate, George Town, Chennai and quash the same.

2. The second respondent/defacto complainant gave a complaint to the first respondent on 24.06.2013 alleging that the property consisting of house and shop in Door No.9/10, Manikandan Third lane, Old Washermenpet, Chennai-21, measuring 1624 sq.ft belongs to his ancestors. The accused/1st petitioner was the tenant in the property and without the permission of the second respondent, the first petitioner removed the iron sheets put up on the roof of the house. After knowing this, when the second respondent enquired about the removal of roof sheets, the accused scolded in filthy language and criminally intimidated with the help of 25 unidentified persons. The brother-in-law of



the first petitioner scolded in filthy language and tried to attack the defacto complainant with wooden log and the 1st petitioner hit the defacto complainant with his hands. Therefore, the present complaint was filed.

WEB COPY

3. After investigation was over, the first respondent filed final report against the petitioners/accused for the offence punishable under Sections 341, 323, 427, 294(b) and 506(i) IPC . Challenging the final report, the present petition is filed for quashing the same.

4. Learned counsel for the petitioners submits that the first petitioner is the owner of the property as per the order of this Court passed in O.P.No.536 of 2009. The petitioners have also given counter complaint in CSR No.192/H1PS/2013 and this Court by order dated 31.07.2013 in CrI.O.P.No.19631 of 2013 directed the respondent police to conduct enquiry on the said complaint and proceed further in accordance with law as early as possible, preferably within a period of two months from the date of receipt of a copy of the order. It is further submitted by the learned counsel for the petitioners that till now, the first respondent has not conducted any enquiry in CSR No.192/H1PS/2013.

5. On perusal of the materials produced before this Court and having considered the submissions made by the learned counsel for the petitioners, it appears that there is a complaint made by the second respondent alleging damages caused to the property in question, and therefore, this case came to be registered. The first respondent police, after investigation, found that there are materials to proceed further with the investigation and filed final report.

6. As of now, on the allegations made in the complaint, it appears that there are materials to proceed further in the case. With regard to quashing of proceedings, it is settled principle that the materials produced by the prosecution should be taken as true and even thereafter, if there is no case made out, the proceedings can be quashed. It is pertinent to refer the judgment reported in 2022 Live Law (SC) 110 (Veena Mittal vs State of Uttar Pradesh & Ors), wherein, the relevant portion is extracted hereunder:

" 6..... It is well-settled that at the stage when the High Court considers a petition for quashing criminal proceedings under Section 482 of the CrPC, the allegations in the FIR must be read as they stand and it is only if on the face of the allegations that no offence, as alleged, has been made out, that the Court may be justified in exercising its jurisdiction to quash....."

In the case of Umesh Kumar vs State of Andhra Pradesh and another reported in (2013) 10 SCC 591, the Hon'ble Supreme Court in paragraphs No.20 to 26, has held as follows:-



WEB COPY

20. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial. (Vide: *Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors.*, AIR 1998 SC 128; *Ashok Chaturvedi & Ors. v. Shitulh Chanchani & Anr.* AIR 1998 SC 2796; *G. Sagar Suri & Anr. v. State of U.P. & Ors.*, AIR 2000 SC 754; and *Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors.*, (2011) 12 SCC 437)

21. In *Rajiv Thapar v Madan Lal Kapoor*, 2013 (3) SCC 330, this Court while dealing with the issue held as follows:



WEB COPY

"30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

30.1. Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

30.2. Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

30.3. Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

22. In *State of Bihar v. P.P. Sharma & Anr.*, AIR 1991 SC 1260, this Court dealt with an issue of whether an application under Section 482 Cr.P.C. for quashing the charge sheet should be entertained before cognizance is taken by a criminal court and held as under:-

"68... Quashing the charge-sheet even before cognizance is taken by a Criminal Court amounts to killing a still born child. Till the criminal Court takes cognizance of the offence



WEB COPY

there is no criminal proceedings pending. I am not allowing the appeals on the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial... It is not to suggest that under no circumstances a writ petition should be entertained.... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the chargesheets and the First Information Report." (Emphasis added)

23. The issue of malafides looses its significance if there is a substance in the allegation made in complaint moved with malice. In Sheo Nandan Paswan v. State of Bihar & Ors., AIR 1987 SC 877, this Court held as under:

"16. ...It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or complainant."

24. In Parkash Singh Badal v. State of Punjab & Ors., AIR 2007 SC 1274, this Court held as under:

"74. The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained."

25. In State of A.P. v. Goloconda Linga Swamy & Anr., AIR 2004 SC 3967, this Court held as under:



WEB COPY

"8.... It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of malafides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding." (See also: K. Karunakaran v. State of Kerala, (2007) 1 SCC 59).

26. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal."

That is not the case here. There are materials available for proceeding further in this case against the petitioners.

7. So far as the contention of the learned counsel for the petitioners that there is no further action taken on the basis of the complaint is concerned, it is open to the petitioners to pursue the avenue open to them either under Section 154(3) or 156(3) of Code of Criminal Procedure.

8. There is no merit in the petition. Accordingly, the Criminal Original Petition is dismissed. The trial court is directed to dispose of the case in C.C No.548 of 2015 as early as possible preferably within a period of three months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

sr

To

1.The XV Metropolitan Magistrate,
George Town,
Chennai.



2.-do- through The Chief Metropolitan Magistrate,
Egmore, Chennai-8.

3.The Sub-Inspector of Police,
H1 Old Washermenpet Police,
Chennai - 21
Crime No.657 of 2013

4.The Public Prosecutor,
High Court, Madras

+1cc to Mr.T.P.Sekar, Advocate SR. No.16183

Cr1.O.P.No.17018 of 2015

PMK (CO)
PR (28/03/2022)