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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

CRL.O.P.NO.27197 OF 2016

AND

CRL.M.P.NO.13771 OF 2016

- 1.P.R.Vairamani
- 2.Umamaheswari
- 3.Padmavathy
- 4.Priya
- 5.Arun

... Petitioners/Accused Nos.1,2,4 to 6

Vs.

1. State rep.by
Inspector of Police,
R9, Valasaravakkam Police Station,
Valasaravakkam,
Chennai - 600 087.

... 1st Respondent/Complainant

- 2.P.R.Janaki Raman

...2nd Respondent/Defacto Complainant

PRAYER:

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the FIR in Crime No.86 of 2016 on the file of the 1st respondent and quash the same.

For Petitioners : Mr.S.Kumara Devan
For Respondent No.1 : Mr.R.Murthi
Government Advocate (Crl.Side)
For Respondent No.2 : No appearance

ORDER

This Criminal Original Petition has been filed to call for the records relating to the FIR in Crime No.86 of 2016, on the file of the first respondent and quash the same.



2. The second respondent/defacto complainant gave a complaint against the petitioners and one Senthilkumar for the alleged offence of theft in a building under Section 380 IPC. On the basis of the complaint, FIR in crime No.86 of 2016, for the offences under Section 380 IPC was registered on 03.02.2016. The allegations made in the complaint are that the second respondent/defacto complainant is running a private travel service. In connection with his business, he has to travel abroad frequently. He entrusted the administration of his business to the accused P.R.Vairamani. One Umamaheswari, second accused was working in his travels. P.R.Vairamani was permitted to stay at his home. In 2014, he had been to abroad and after coming home, he found 136 sovereigns of gold jewels were are stolen along with the TV, Laptop, Samsung Camera, the documents of two wheeler, original documents of his property, electronic goods, pooja articles and costly household articles. The details of the gold jewels are as follows: Bracelet 5 Nos.-29.5 sovereigns, Rings 7 Nos.-10 sovereigns, Chain 12 Nos.- 68.25 sovereigns, Bangles 8 Nos-11.5 sovereigns, Necklace 3 Nos.-12 sovereigns, Dollar 3 Nos-1.25 sovereigns, ear rings 3.50 sovereigns. Not only that, the original passport, cash, documents relating to the travels, cheques signed by the second respondent/defacto complainant, important files from the computer had also been stolen. He came to know that taking advantage of his absence, the accused conspired together and committed theft, therefore, this complaint.

3. The petitioners have filed this quash application challenging the registration of the FIR.

4. The learned counsel for the petitioners submitted that except the allegations made in the complaint, there is no other substantial evidence available to corroborate the allegations against the petitioners so far. It is also submitted that the accused Priya and Arun are minors at the time of the alleged offences and prayed for quashing the proceedings against the petitioners.

5. The learned Government Advocate submits that since investigation was stayed at the time of admission of this Criminal Original Petition, there is no progress in the investigation, therefore, he is not able to file status report as directed by this Court on 22.02.2022.

6. Considered the rival submissions and perused all the records.

7. In the course of arguments, it is submitted by the learned counsel for the petitioners that the first accused P.R.Vairamani is the brother of the second respondent/defacto



complainant. The legal position with regard to quashing of FIR is very well settled in the case of State of Haryana and others Vs. Bhajan lal and others reported in 1992 Supp(1) SCC 335. The relevant portion of the judgment is extracted hereunder:

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102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR



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do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.

Quashing of FIR can be done only if no case is made out, then only FIR can be quashed. In the case before hand, there are specific allegations made against the accused that they connived and conspired together and committed theft of articles. Only if proper investigation is conducted, the truth or falsity of the allegations made in the FIR will come to light. As of



now, the allegations made in the FIR are sufficient to proceed with further investigation in this case.

8. The learned counsel for the petitioners submitted that the accused Priya and Arun who are the 4th and 5th petitioners herein are minors at the time of the alleged occurrence. No evidence is produced to show the age of the petitioners 4 and 5. If they are minors as claimed by the learned counsel for the petitioners, the respondent police is directed to take utmost care and caution during investigation, including the possibility of false implication of petitioners 4 and 5 and follow the procedures under the Juvenile Justice (Care and Protection of Children) Act, 2015.

9. In this view of the matter, the Criminal Original Petition is dismissed. The respondent police is directed to expedite the investigation in this case and file a final report 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 VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
R9, Valasaravakkam Police Station,
Valasaravakkam,
Chennai - 600 087.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Kumara Devan, Advocate, S.R.No.14010

Cr1.O.P.No.27197 of 2016

MT (CO)
PM/06/04/2022