



Crl.OP.Nos.4028 & 4841 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.11.2022
Pronounced on	07.12.2022

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

CRL.O.P.NOS.4028 AND 4841 OF 2021

AND

CRL.MP.NOS. 2471, 2473, 3082 AND 3085 OF 2021

Surender Kumar Chandak ... Petitioner/ Accused-2
in Crl.OP.No.4028/2021

Radesh Shyam Chandak ... Petitioner/Accused-1
in Crl.OP.No.4841/2021

Vs.

1.State by

The Inspector of Police, L& O,
C-3 Seven Wells Police Station,
Chennai (Crime No.845/2017)

... 1st Respondent /
in both cases

2.Nanda Kishore Chandak

... 2nd Respondent /
de facto complainant
in both cases

PRAYER IN CRL.OP.NO.4028 OF 2021:- This Criminal Original Petition
filed under Section 482 of Cr.P.C., praying to call for the records pending in



Crl.OP.Nos.4028 & 4841 of 2021

SC.No.64 of 2021 on the file of the Principal Sessions Court, Chennai, in Crime No.845/2017 on the file of the respondent police and quash the same.

PRAYER IN CRL.OP.NO.4841 OF 2021:- This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the final report in SC.No.64 of 2021 now pending trial on the file of the Hon'ble XXI Additional Sessions Court, Chennai.

For Petitioner in Crl.O.P.No.4028 of 2021 :	Mr.R.Gopinath
For Petitioner in Crl.O.P.No.4841 of 2021 :	Mr.G.Mohana Krishnan
For Respondent-1 (In both Crl.O.Ps') :	Mr. A.Damodaran Additional Public Prosecutor
For Respondent-2 (In both Crl.O.Ps') :	No appearance

COMMON ORDER

The Criminal Original Petition in Crl.O.P.No.4028 of 2021 has been preferred to call for the records pending in SC.No.64 of 2021 on the file of the Principal Sessions Court, Chennai, in Crime No.845 of 2017 on the file of the first respondent police and quash the same.



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2. The Criminal Original Petition in Crl.O.P.No.4841 of 2021 has been preferred to call for the records and quash the final report in SC.No.64 of 2021 now pending trial on the file of the Hon'ble XXI Additional Sessions Court, Chennai.

3. The petitioners are the accused 2 and 1 in Crime No.845 of 2017 on the file of the first respondent Police. The first accused namely Radesh Shyam Chandak is the paternal uncle of the second respondent / *de-facto* complainant. The second accused namely Surender Kumar Chandak is the brother of the *de-facto* complainant. Pursuant to Crime No.845 of 2017, a case in SC.No.64 of 2021 is pending on the file of the learned Principal Sessions Judge, Chennai.

4. On perusal of the FIR, it is seen that a case has been originally registered for the offences under Sections 454, 506(i) read with 120(b) and 307 IPC and later, the Penal Provisions have been altered from Sections 454, 506(i) @ 120(b) and 307 IPC to Sections 120(b) read with 302, 385 and 506(ii) IPC.



5. The case of the prosecution is that on 22.07.2017 at about 07.00 am, some unknown, but identifiable persons, came to the house of the *de-facto* complainant and asked him to open the door; the *de-facto* complainant opened the inner door and enquired them across the closed outer gate what they wanted; they threatened him by demanding money; when the *de-facto* complainant told them that he would call the police, they went away. The *de-facto* complainant has doubts on his own brother / second accused and his paternal uncle / first accused; he has given his statement, wherein he has stated about the earlier occasions when the petitioners exhibited hostility to him and that the second accused was demanding properties from the *de-facto* complainant by joining hands with the first accused.

6. Heard the submissions made by the learned counsel on either side and perused the materials available on record.

7. The learned counsel for the petitioner/first accused submitted that the materials available on record does not disclose anything incriminating the second accused except the confession said to have been given by the first



accused; despite there is no murder, the charge sheet has been filed for the offences under Sections 120(b) r/w 302, 385 and 506(ii) IPC; except a suspicion developed by the *de-facto* complainant against the first and second accused, no other materials available on record to implicate them in the case. The case which has been registered for criminal intimidation has been altered into conspiracy for murder, without any basis; the learned Magistrate without applying his mind had taken cognizance for the said offence and issued summon.

7.1. Even according to the First Information Report, the *de-facto* complainant has stated that some unknown persons came to his house, stood behind the gate and asked him to open the door; however, the *de-facto* complainant exchanged communications with the said persons by not opening the main gate, but opened the inner door and asked them what they wanted; when they demanded money he warned them that he would call the police and thereafter, they left the place; with these limited allegations, the Police cannot implicate the accused 1 and 2 unnecessarily, on a mere suspicion developed by the second respondent / *de-facto* complainant.



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7.2. The second defendant /*de-facto* complainant did not have any injuries on his body; in such a case, the offence under Section 307 IPC will not be made out; the *de-facto* complainant has given a malicious statement against the petitioners only with an intention to harass them and to settle his vengeance, the petitioners / accused 1 and 2 have been falsely implicated in this case.

7.3. Excepting LW.1 and LW.2, no other witnesses have spoken anything about the occurrence; without any materials, if the accused 1 and 2 are subjected to trial, that would defeat the interest of justice and no useful purpose will be served and hence, the proceedings against the accused 1 and 2 should be quashed.

7.4. The learned counsel for the petitioner / first accused relied on a judgment of the Hon'ble Supreme Court in ***SAHADEVAN AND ANOTHER AND STATE OF TAMIL NADU [2012 (6) SUPREME COURT CASES 403]*** in support his contention that extra judicial confession is a weak piece of



evidence and conviction of an accused on the basis of the confession of the co-accused is not possible. He further submitted that while framing charges, the Court has to consider as to whether the materials available on record are sufficient enough to convict the accused and without such connected materials, no charges can be framed against the accused.

8. Per Contra, the learned Additional Public Prosecutor for the first respondent police filed his counter affidavit wherein he has stated that LW.1 who is the *de-facto* complainant has spoken about the alleged threats and torture given to him by the first and second accused; he has also stated that he was receiving threatening calls from a particular phone number and in this regard he had given a complaint and the same has been given into C.S.R.No.235/C3-2016 dated 03.05.2016. Again on 17.02.2017, two unknown persons came to the *de-facto* complainant's shop and assaulted him with regard to the complaint which has been assigned C.S.R.No.131/C1/2017; LW.1 has also stated about the motive for the occurrence and that his brother had started to harass him by taking support from the first accused, who is his paternal uncle. Further, the first accused,



who has given a confession statement has stated about the involvement of the second accused and how they hatched a plan to murder the second respondent; since the offence of criminal conspiracy is a separate and distinct offence, the second respondent / *de-facto* complainant, charge sheet has been filed for the offence under Section 120 (b) r/w 302 IPC; the third accused is a history-sheet rowdy, who has involved in similar such offences and some of the witnesses have stated about the same. Since there are sufficient materials available on record to frame charges and conduct trial, this Criminal Original Petition should be dismissed.

9. The second respondent / *de-facto* complainant, who is the brother of the second accused has given the complaint by stating about the occurrence that had happened on 22.07.2017. According to his complaint, when he was inside his house by locking the door, four unknown persons came and tapped the gate; the second respondent came to open the door in front of the gate and from there he asked them through the closed gate, what they wanted. They threatened him by demanding money and to open the door. The second respondent / *de-facto* complainant told them that he would



call the police and took his phone; on seeing this, the persons went away from the place.

9.1. *The de-facto* complainant has further stated that the second accused had joined with his paternal uncle who is the first accused and was causing frequent problems. The statement of LW.1 would reveal that his father was also murdered by one of his paternal uncle's son due to property dispute and he was convicted. In view of the same, the family properties were not yet partitioned. So there are grounds to believe that the second accused who is the brother of the *de-facto* complainant has joined with the first accused and engaged persons who came and tapped the door of the second respondent on 22.07.2017 to cause troubles. They were not known to the second respondent and he had no business transactions with them and hence there can not be any reason for the accused to come to the house of the *de-facto* complainant except to threaten him; the statement of the Watchman of the flat and the other flat owners would also show that the persons had enquired about the *de-facto* complainant's house and then came there.

10. In the complaint itself the *de-facto* complainant has further stated



that he had been continuously threatened by some unknown persons who also demanded money. He had also given a complaint in this regard. Two months before he was even assaulted at his shop at No.8/15, Audiappan Naicken Street, Chennai. In the First Information Report, the second respondent has stated about some previous occurrences which posed threat to his life and for which he has been seeking police action. He had given two complaints and the same were pending for enquiry. Only in these circumstances, the occurrence had taken place.

11.The statement of LW.1 is not an one line statement where he said that he had suspicion over the accused 1 and 2 who are his brother and his paternal uncle. He had described the background of his suspicion and told about the reasons why the petitioners had developed motive against him. The 1st respondent police had done an exhaustive investigation and filed the charge sheet after coming to the conclusion that there is some concrete basis for the doubt of the second respondent against the accused 1 and 2. As against the first accused, who is the paternal uncle of the *de-facto* complainant is concerned, the *de-facto* complainant has stated that he was



working with him during his initial days at Chennai and thereafter, he started his own business and became independent. This was disliked by the first accused and he threatened the *de-facto* complainant, while he was purchasing goods for his business from a shop at T.Nagar, Chennai.

12. The previous occurrence during which the second respondent was threatened and assaulted, cannot be ignored by the Investigating Agency while dealing with the present case. Since the *de-facto* complainant was threatened through unknown calls and unknown persons, the natural line of investigation could be that those persons should be the hooligans of someone who has same motive against the *de-facto* complainant. During investigation, the earlier occurrence and the motive for such occurrence has been revealed.

13. It is seen from the records that the first respondent has filed the charge sheet for the offence under sections 120(b) r/w 302 IPC, in accordance with materials which were available and collected during the course of investigation.

14. It is not a case of prosecution that someone had been murdered.



The case of the prosecution is that a conspiracy has been hatched by the first and second accused in order to murder the second respondent. Since the conspiracy had taken place to commit the offence of murder, the charge sheet has been filed for the offences under Section 120 (b) r/w 302 IPC. So, one cannot get misled with submission that without murder, no charge can be framed for the offence of conspiracy for murder. Since the offence of criminal conspiracy is also a separate and distinct offence, the charge sheet has been filed by mentioning the corresponding Penal Provisions for the said conspiracy, namely murder.

15. The learned counsel for the second accused submitted that the second accused has been implicated in this case only on the basis of the confession given by the co-accused namely the first accused and hence, there is no basis to frame charges against the second accused.

16. Apart from the confession of the first accused, there are statements of LW.1 which speaks a lot about the previous occurrence and the motive. The offence of conspiracy can be proved only through the act, conduct of the persons involved in the occurrence and other circumstances. It is pertinent to



mention that while framing charges, the Court has to see whether the evidence available if not rebutted or challenged are sufficient enough to convict the accused for the charges levelled against them. Since the materials available now and the statements of the witnesses along with other circumstances, if not challenged or rebutted, they are sufficient enough to convict the accused for the offence of conspiracy of murder.

17. Under such circumstances, it cannot be claimed that there is no materials available on record to frame the charges against the first and second accused. In order to invoke the powers of this Court under Section 482 Cr.P.C to quash the proceedings, it should be shown that the charge sheet has been filed with bald materials. And the case of the prosecution is a story of imagination without any probabilities and supporting statements. When the immaterial could substantiate a suitable case for the prosecution, the interest of justice would only demand to subject the accused for trial. So it is not a fit case to invoke the powers of this Court to quash the proceedings under Section 482 Cr.P.C.



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R.N.MANJULA, J.

jrs

In fine, both the Criminal Original Petitions are **dismissed**.

Consequently, connected miscellaneous petitions are dismissed.

07.12.2022

Index : Yes/No
Internet : Yes/No
Speaking/ Non Speaking
Jrs

To

- 1.The Principal Sessions Judge
Principal Sessions Court
Chennai.
- 2.The XXI Additional Sessions Judge
XXI Additional Sessions Court
Chennai.
- 3.The Public Prosecutor
High Court of Madras.

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