

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NOS.9177 & 8442 OF 2022

AND

CRL.MP.NOS.5321, 5322, 4927 & 4928 OF 2022

1. T.D.Birabavathi
2. T.D.Thathaji
3. T.D.Soniya
4. T.D.Banu

... Petitioners/A5 to A8
in both Crl.OPs

-Vs-

1. The State rep.by
Inspector of Police
District Crime Branch
Thiruvallur District.

... Respondent/Complainant in both Crl.OPs

2. Gnanasekaran

... Respondent/Defacto Complainant
in Crl.OP.No.9177 of 2021

2. G.Vairan

... Respondent/Defacto Complainant
in Crl.OP.No.8442 of 2022

Common Prayer: Criminal Original petitions filed under Section 482 of the Code of Criminal Procedure to call for the records relating to C.C.No.80 of 2018 and C.C.No.61 of 2018 pending on the file of the learned Judicial Magistrate, Thiruthani and quash the same in so far as the petitioners are concern.

For Petitioners : Mr.A.Saravanan
in both Crl.OPs

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor
for R1
in both Crl.OPs.

COMMON ORDER

These Criminal Original Petitions have been filed to call for the records relating to C.C.Nos.80 of 2018 and 61 of 2018 pending on the file of the Judicial Magistrate, Thiruthani and quash the same.

2. The case of the prosecution is that A1 in this case, one T.D.Naidu was the Founder and Managing Trustee of the DD Medical and Educational Trust and without obtaining proper permission from the Government, he had started a medical college and collected huge amount of fees from various students and cheated the students. The petitioners herein are his wife and children who have shared the common intention and they have also threatened the students.

3. The learned counsel for the petitioners submitted that the petitioners are arrayed as A5 to A8 and they are facing trial for the offences under Sections 420, 506(1) of IPC, r/w Sections 34 and 114 of IPC in C.C.No.80 of 2018 and C.C.No.61 of 2018 respectively on the file of the learned Judicial Magistrate, Thiruthani. He further submitted that the first petitioner(A5) is the wife of the Managing Trustee (A1) and the alleged occurrence had taken place during the year 2011 and 2012, at that time, the petitioners 2 (A6) and 3 (A7) were minors and they were unnecessarily implicated in this case and the petitioners who happen to be the members of the Trust, have not signed any document or made any representation to the students or they have taken charge or colluded with A1 in the offence. He further submitted that the entire materials collected by the prosecution do not show any involvement of the petitioners in the alleged transaction or admission of the students for the year 2011-2012 and the final report is nothing but an abuse of process of law.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that the petitioners are the family members and members of one T.D.Naidu Trust and they have joined along with the Managing Trustee (A1) and had cheated several students and also spoiled their future. He further submitted that they have also actively aided and abetted the main accused in this case. There are materials against A1 and fairly submitted that there are no materials against the petitioners (A5 to A8).

5. No doubt when the final report is filed, the Court will not normally exercise its power under Section 482 of Cr.P.C by appreciating the probative value of the statements or evidence collected by the prosecution and at the same time when the

entire Final Report is taken on its face value do not constitute any offence against the petitioners, continuing the prosecution against the petitioners is nothing but waste of time and a futile exercise. In 1992 SUPP (1) SUPREME COURT CASES - 335 STATE OF HARYANA AND OTHERS Vs. BHAJAN LAL AND OTHERS, the Hon'ble Apex Court has set out the following guidelines for quashing the complaint.

(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 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."

6. Considering the above submissions and all the materials available on record, except stating that these petitioners are members of the Trust, no other material is available on record attributing any contact of the petitioners or attribute any involvement of the petitioners in running the medical college. Such view of the matter, merely because they are family members of A1, they cannot be forced to undergo the ordeal of trial. The pendency of the proceedings against the petitioners is clearly an abuse of process of Court and it requires interference of this Court under Section 482 of Cr.P.C.

7. Accordingly the proceedings in C.C.No.80 of 2018 and C.C.No.61 of 2018 pending on the file of the learned Judicial Magistrate, Thiruthani is hereby quashed in so far as the petitioners (A5 to A8) are concerned and Criminal Original Petitions are allowed. The Trial Court shall proceed as against the remaining accused as per the law as expeditiously as possible. Consequently the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Judicial Magistrate, Tiruttani.
2. -do- through The Chief Judicial Magistrate,
Tiruttani.
3. The Inspector of Police,
District Crime Branch,
Thiruvallur District.
4. The Public Prosecutor,
High Court, Madras.

+4ccs to Mr.A.Saravanan, Advocate, S.R.Nos.40393, 40394

Crl.O.P.Nos.9177 & 8442 of 2022
and Crl.MP.Nos.5321, 5322, 4927 & 4928 of 2022

SV(CO)
RLP(22/07/2022)