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CrI.O.P.No.16672 of 2019

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 24.11.2022

CORAM:

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.16672 of 2019

and

CrI.M.P.No.8386 of 2019

N.Preethi

..Petitioner

Vs.

1.The Inspector of Police,  
Kotagiri Police Station,  
Nilgiris District.  
(Crime No.158 of 2019)

2.N.R.Harish

..Respondents

**PRAYER:** Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records of Crime No.35 of 2019 on the file of the Kotagiri Police Station and quash the same.

For Petitioner : Ms.S.Varsha

For R1 : Mr.N.S.Suganthan  
Government Advocate (CrI.Side)

For R2 : No appearance



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## **ORDER**

This Criminal Original Petition is filed to quash the First Information Report in Crime No.35 of 2019 on the file of the 1<sup>st</sup> respondent police.

2. The *de facto* complainant is the husband of the petitioner herein. Their matrimonial relationship has estranged, which has led to lodging criminal complaint against each other and also suit, which is pending before the learned District Munsif, Kothagiri, initiated by the *de facto* complainant.

3. The learned counsel for the petitioner/accused contended that the very averment found in the plaint instituted by the *de facto* complainant is repeated in the criminal complaint and a matrimonial dispute has been given a criminal colour to counter blast the earlier complaint, given by the petitioner against one Suresh, who is none other than the Manager of the *de facto* complainant's Resort. Hence seek for interference and exercise of the inherent power of this Court under Section 482 of Cr.P.C..



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4. The sum and substance of the arguments placed by the learned counsel for the petitioner is that the *de facto* complainant and petitioner got married 25 years ago and they were carrying on business in Kotagiri in the name and style of M/s.A.S.Garden Resort. Due to misunderstanding between them, the petitioner has started living in one of the rooms of that Resort. While so, the Manager of the Resort at the instigation of the *de facto* complainant/her husband abused her in the view of public in filthy language and harassed her. Hence, she was forced to give complaint to the All Women Police Station, Coonur on 05.09.2018 against Suresh/the Manager of the Resort for the offences under Sections 294(b) I.P.C., r/w. Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002.

5. To counter blast this complaint, her husband has given a false complaint, which is impugned in this petition, dated 21.02.2019 registered in Crime No.35 of 2019 by the Kothagiri Police Station, which is a fictitious complaint with figment of imagination as if the petitioner herein on 21.02.2019 at about 9.00 p.m., picked quarrel with the staff in the Resort and damaged the CCTV camera, glass tumblers and laptop all worth a sum of Rs.30,000/-. When



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that was informed by the Manager/Suresh through the *de facto* complainant over phone, he rushed to the Resort. On seeing her husband she abused him with vulgar words and threatened with dire consequence. This complaint has been taken up for investigation by the 1<sup>st</sup> respondent police for the alleged offences under Sections 294(b), 506(1) I.P.C., r/w. Section 3 of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992.

6. Drawing attention of this Court to the averment in the plaint in O.S.No.40 of 2018 filed by the *de facto* complainant. The learned counsel for the petitioner contends that this averment in the plaint would clearly show that it is a civil dispute and matrimonial discord between the husband and wife, which is now been given criminal colour with malicious prosecution.

7. In the plaint O.S.No.40 of 2018, it is averred that on 12.10.2018, the petitioner herein who is the defendant in the said suit indulged in act of violence and caused damaged to the property of the Resort and regarding which, he has preferred a complaint and police has registered the same in Community Service Register and issued a copy. The prayer in the said suit is to restrain the



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defendant/petitioner herein, her men, agents, relatives in any manner from interfering with the peaceful possession and enjoyment of the plaintiff over the plaint mentioned. property.

8. Per contra, the learned Government Advocate (CrI.Side) for the State submitted that the complaint of damaging the property and abuse coupled with threat to life has taken for investigation by the respondent police and before they proceed, the petitioner/accused has approached this Court and got interim injunction and it has prevented the police not to proceed further.

9. As far as the civil case is concerned, the learned Government Advocate (CrI.Side) submitted that the parties are at liberty to work out their remedy regarding the title, possession and enjoyment. The pendency of this suit has no bearing in the criminal complaint. The complaint *prima facie* indicates that in the public place i.e., in the Resort the petitioner herein has created ruckus, had used filthy language and also damaged the property. These are matters for investigation.

10. This Court heard the submissions made by the learned counsel for



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the petitioner and the learned Government Advocate (CrI.Side). The connected records perused.

**11.** No doubt, the petitioner herein has given a complaint on 05.09.2018 against the Manager of the Resort and the same has been registered by the respondent police in Crime No.4 of 2018, this does not mean that the impugned complaint dated 21.02.2019 is imaginary and concocted complaint to counter blast her complaint. Apparently, the petitioner herein and the 2<sup>nd</sup> respondent, who are the wife and husband married since 25 years are at loggerhead H.M.O.P.No.26 of 2018 the petition for divorce is pending on the file of the Sub Court, Coonur, the petitioner herein has sought for maintenance before the learned Judicial Magistrate, Kothagiri and the same is also pending.

**12.** The divorce petition and the maintenance petition are prior to the present complaint given on 21.02.2019. It is specifically stated that the petitioner herein who is staying in one of the rooms in the Resort has picked quarrel with the staff as well as damaged the property. The petitioner does not deny her stay in the Resort, but only denies the offence alleged against her. This fact is to be investigated by the police and the Court cannot infer anything in favour or adverse



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of the complainant, prematurely to quash the complaint. Pendency of the civil suit and earlier police complaint are is not a reason or ground to quash the subsequent complaint as malicious prosecution. Hence the facts of this case, *prima facie* indicates that the cognizable offence has been alleged against the petitioner herein and it is a matter for probe.

**13.** Hence this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petition is dismissed.

24.11.2022

Index :Yes/No.  
Speaking order/Non-speaking order

rpl

To,

1. The Inspector of Police,  
Kotagiri Police Station,  
Nilgiris District.

2.The Public Prosecutor,  
High Court, Madras.



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**Dr.G.JAYACHANDRAN,J.**

rpl

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