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CRL.O.P.No.22419 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2022

CORAM:

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

Crl.O.P.No.22419 of 2019
and
Crl.MP.Nos.11661& 11659 of 2019

1.R.Shanti Bhai

2.R.Karthik

.. Petitioners/Accused-2 & 3

Versus

1.State rep. by

The Inspector of Police,
D1 Triplicane Police Station,
Chennai.

(Cr.No.1582/2012)

... 1st respondent/ complainant

2.Aysia Fathima @ Thilagavathy

... 2nd Respondent/
defacto complainant.

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the First Information Report in Crime No.1582 of 2012 on the file of the 1st respondent in respect of the petitioners herein.

For Petitioners : Mr.Mohamed Kassim A.J for
M/S.G.Sumathi
For Respondent-1: Mr.A.Gopinath
Government Advocate (crl.side)
For Respondent-2: No appearance



ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.1582 of 2012 pending on the file of the first respondent police.

2.The petitioners are arrayed as A1 and A2in Crime No.1582 of 2012 for the offences under Sections 147, 448, 323, 506(ii) r/w 379 IPC.

3.The case of the prosecution is that on the night of 26.11.2012 some 20 male members and 5 female members trespassed into the house of the *defacto* complainant and assaulted her; they also threatened her with dire consequences. The *defacto* complainant's brother and her father had also sustained injuries and they were taking treatment at a government hospital. The jewels kept in the house of the *defacto* complainant was also found to be missing. So the *defacto* complainant registered the complaint.

4.The learned counsel for the petitioners submitted that the very same petitioners along with other accused had filed a petition in Crl.OP.No.911 OF 2013 before this Court by seeking the very same prayer; but the said petition was closed on the representation made by the prosecution that investigation has been completed and the charge sheet has already been filed before the learned Chief Metropolitan Magistrate, Egmore, Chennai.

5.When the matter is taken up today and clarified it is once again filed



by the prosecution that the charge sheet has been filed but it has not been taken on file. It is difficult to believe the charge sheet which was filed in the year 2017, has not yet been taken on file. Either the representation made by the prosecution during the earlier proceedings in Crl.OP.No.911/2013 is not correct or the representation which is being now made is incorrect. It is unrealistic that the charge sheet which has been filed in the year 2017 has not yet been numbered. Supposing if the charge sheet has been returned for seeking certain clarification, it is the duty of the first respondent police to comply the same and see that it has already been duly filed.

6.The learned counsel for the petitioners submitted that the petitioner are the landlord of the *defacto* complainant and they have already filed a petition for eviction in RCOP.No.942 of 2013 before the XVI of Small Causes Court, Chennai, on the ground of willful default in paying the rent. On 10.06.2014 a conditional order has been passed to deposit the rent on or before 09.10.2014; since the *defacto* complainant did not pay the rent, the eviction order has also been passed on 10.10.2014.

7.It is learnt that the *defacto* complainant has vacated the premises subsequently and this case has been unnecessarily pending. The *defacto*



complainant who has given the complaint has vacated the premises in view of the order of eviction passed against her. The petitioners are none other than the landlord of the *defacto* complainant and the records would show that the origin of the complaint is due to the dispute between the landlord and tenant in paying the rent without any default. Since the records on the face of it shows the lethargic manner in which the investigation is being taken up and that would only improbably the case.

8. In view of the above stated reasons, I feel it is an appropriate case where this Court should invoke its powers under Section 482 Cr.P.C., to quash the proceedings against these petitioners by following the guidelines laid down by the Hon'ble Supreme Court in the case of ***STATE OF HARYANA VS. BHAJANLAL [1992 SUPP (1) SCC 335]***.

9. In ***STATE OF HARYANA VS. BHAJANLAL [1992 SUPP (1) SCC 335]***, it is held as under:

"The following categories can be stated by way of illustration wherein the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure can be exercised by the High Court 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,



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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 F.I.R., 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.



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(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."

10. The principles laid down in the said case is squarely applicable to the present case. When there is no reliable or probable material available against the petitioner, the ends of justice can be served only by quashing the proceedings.

In the result, the Criminal Original Petition is **allowed**. The proceedings against the accused 2 & 3 in FIR in Crime No.1582 of 2012 on the file of the first respondent police is quashed. Consequently, connected miscellaneous petitions are closed.

13.12.2022

Index: Yes/No
jrs



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WEB COPY To:

- 1.The Inspector of Police,
D1 Triplicane Police Station,
Chennai.
- 2.The Public Prosecutor,
High Court, Madras.



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R.N.MANJULA, J.,

jrs

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