



CRL.O.P (MD) No.10926 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.10926 of 2022

and

CrI.M.P(MD)Nos.6895 and 6899 of 2022

- 1.Gopalan A P.Gopalakrishnan
- 2.S.Santhakumar
- 3.T.Kannan
- 4.M.Nikesh
- 5.P.Balakrishnan
- 6.S.Iyyappan
- 7.T.Paulmani
- 8.C.Prabhu @ Thanga Suresh
- 9.V.Sundar
- 10.K.Pranesh
- 11.M.Nishanth
- 12.M.Sudan
- 13.S.Sivakumar
- 14.E.Dinesh
- 15.E.Deepak
- 16.R.Kasi @ Kasi Nadar
- 17.G.Sudhakar
- 18.S.Kumar @ Krishnakumar
- 19.V.Prabakar @ Prabakaran
- 20.T.Tamilarasan @ Tamil Selvan
- 21.R.Shri Padmanabhan
- 22.V.Somasundaram
- 23.T.Divya Prabakaran @ Divya Prabeen
- 24.K.Kannan
- 25.C.Silambarasan
- 26.S.Kasi @ Saiju
- 27.S.Murugesan
- 28.R.Rajesh
- 29.C.Subin



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30.M.Jegan
31.C.Sundaram
32.A.Murugesan
33.W.Jeyaseelan
34.R.Balakrishnan
35.S.Anandh Raj

... Petitioners/Accused Nos.1 to 15,
18 to 22, 24 to 28 and 31 to 40

Vs.

1.The Superintendent of Police,
Kanyakumari District at Nagercoil.

2.The Inspector of Police,
Eraniel Police Station,
Kanyakumari District.
(Crime No.863 of 2015)

... 1st & 2nd Respondent/Complainant

3.Nicolas

...3rd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., praying to call for the records from the Judicial Magistrate, Eraniel, Kanyakumari District in PRC.No.26 of 2020 and quash the same as it has no prima facie case against the petitioner.

For Petitioners : Mr.H.Velavadhas

For R1 - R2 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceedings in PRC.No.26 of 2020 on the file of the learned Judicial Magistrate, Eraniel, Kanyakumari District.



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2.The learned counsel for the petitioners submitted that for the very same alleged occurrence, the respondent police registered three F.I.R. in Crime Nos. 863 of 2015, 864 of 2015 and 865 of 2015 and this impugned P.R.C.No26 of 2020 is pertaining to the Crime No.863 of 2015. He further submitted that the District Collector, Kanyakumari at Nagercoil, by its proceedings in E1/3501/2015, dated 01.09.2015, at paragraph No.10 stated that it is barred to use the name of the hamlet as 'Nulivilai'. In spite of the order of the District Collector, the problem started between the parties and no one injured in this case. Therefore, he prays for quashing the proceedings.

3.The learned Additional Public Prosecutor appearing for the respondent police submitted that the case has been registered in Crime No.863 of 2015 for the offence under Sections 147, 148, 294(b), 448, 506(ii) of IPC and 3(1) of TNPPDL Act. After investigation, the respondent police has filed a charge sheet against the petitioners and others for the offence punishable under Sections 147, 148, 294(b), 506(ii) IPC and 3(1) of TNPPDL Act r/w 149 IPC. On 13.12.2015 at about 9.15 p.m. the accused persons damaged the defacto complainant's complex and also damaged the name board of 'Pulavendran Complex Nulivilai' and abused the defacto complainant's family by using filthy language. The damaged properties are worth about Rs.2 lakhs and also



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produced a photocopy of the same. Now the learned counsel for the petitioners has disputed that photographs. He further submitted that the case is at PRC stage and trial has also been conducted. Hence, he pleaded for dismissing the said petition.

4. I have considered the submission of the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent police.

5. A perusal of records would disclose that all these petitioners and others are accused in Crime No.863 of 2015, for the offence under Sections 147, 148, 294(b), 448 and 506(ii) of IPC and 3(1) of TNPPDL Act of Eraniel Police Station. After investigation, the respondent police filed a final report and prosecuted the petitioners and others for the offence under Sections 147, 148, 294(b), 506(ii) IPC and 3(1) of TNPPDL Act r/w 149 IPC. Perusal of F.I.R and statement of witnesses would disclose that the offences triable offences. Further, the photographs of damaged properties shown by the prosecution has to be considered. So, whether the petitioners/accused are involved in damaging the property worth about Rs.2 lakhs, has to be decided only during trial. Therefore, it is inappropriate to quash the criminal proceedings against the petitioners, since this Court finds no merit in this case.



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6.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.



(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.



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7. Further, the Hon'ble Supreme Court in the case of **R.P.Kapur v. State of Punjab (AIR 1960 SC 866)** and subsequent cases, has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do no prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

8. The Investigating Agency should have the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. It is not



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appropriate to quash the complaint, since this Court finds no merit in this case.

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9.In the light of the above factual and legal positions, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petitions are closed.

27.06.2022

Internet: Yes./No

Index: Yes/no

vsd

To

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Eraniel,
Kanyakumari District.
- 2.The Superintendent of Police,
Kanyakumari District at Nagercoil.
- 3.The Inspector of Police,
Eraniel Police Station,
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(Crime No.863 of 2015)
- 4.Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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