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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K. ILANTHIRAIYAN**

Crl.O.P.(MD) No.3415 of 2022
and Crl.M.P(MD) No.2529 of 2022

M.Sri Nithya

...Petitioner/Accused No.1

Vs.

1. State through

The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
(Crime No.25/2022)

... 1st Respondent / Complainant

2. Uthayakumar

... 2nd Respondents / Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records relating to the FIR in Crime No.25 of 2022 dated 23.01.2022 on the file of 1st respondent police quash the same against the petitioner allow.

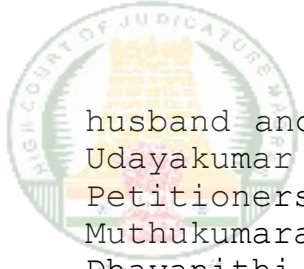
For Petitioner : M/s. Srinithya (party in person)

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

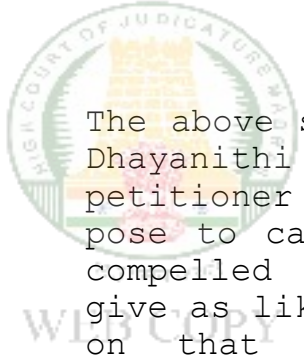
ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.25 of 2022 on the file of the first respondent police.

2. The Case of the prosecution is that the petitioner and Accused No.2 namely Muthukumaran are the resident of the above said address and the petitioner and Accused No.2 Namely Muthukumaran are husband and wife. The petitioner and Accused No.2 namely Muthukumaran are physically handicapped persons and they are having certificate for the same. The Petitioner's husband is working as Panchayat Secretary in union office at Kodanginayakanpatti and the Petitioner is a practicing advocate at Nilakottai Court, Dindigul District. Now the 1st petitioner is studying 2nd year Master of Law (International Law) in Government Law College, Madurai. On 07.01.2022 at about 7.46 P.M, the Sub Inspector of Police Dhayanithi who is working in the 1st respondent police has called the petitioner husband through his Mobile Phone and he threatened the petitioner



husband and his wife/1st petitioner that he is close relative to one Udayakumar and the said Udayakumar has given a complaint against the Petitioners. Hence the Petitioner and Accused No.2 namely Muthukumaran were directed by the said Sub Inspector of Police Dhayanithi to appear before him immediately for whom the petitioner husband replied that both petitioner and Accused No.2 namely Muthukumaran physically handicapped and the petitioner being a lady advocate, it is not feasible to come to police station in the night itself as directed by Sub Inspector of Police Dhayanithi on 08.01.2022. It is submitted that on 08.01.2022 at about 11.14 A.M. again the said Dhayanithi has called the petitioner through mobile phone and asked the petitioner's husband to come to 1st respondent police with his wife. As per the direction of the said Dhayanithi the petitioner and Accused No.2 namely Muthukumaran have appeared before the 1st respondent police at about 11.52 A.M. the Petitioner and Accused No.2 namely Muthukumaran requested to show the copy of the complaint petition and the C.S.R. made for the petition and the same was denied by the Sub Inspector of Police Dhayanithi. Thereafter the said Sub Inspector of Police Dhayanithi has not properly enquired and he simply threatened the Petitioner and Accused No.2 namely Muthukumaran that he has several powers to lay a false case against the Petitioner and Accused No.2 namely Muthukumaran and also he threatened that said Udayakumar who belonging to scheduled caste and if the petitioner and Accused No.2 namely Muthukumaran have not agreed to settle the issue as he desired, the said Dhayanithi will lay a false case under S.C./S.T. Act, and exorbitant interest act and other penal offence. The Petitioner and Accused No.2 namely Muthukumaran have explained their true facts. But they have acted as high handed manner and also the said Dhayanithi has threatened the 1st petitioner that he is ready to foist several cases and then he will sent copies to the Bar Council, it will affect petitioner's profession and carrier. The said Dhayanithi sub Inspector of Police has insisted the petitioner and Accused No.2 namely Muthukumaran to cancel the mortgage deed after getting the amount of Rs.4,00,000/- from the said Udayakumar or otherwise he will foist false case against the petitioner and Accused No.2 namely Muthukumaran. The Petitioner and Accused No.2 namely Muthukumaran have explained and informed to the said Dhayanithi Sub Inspector of Police that on 17.10.2017 the said Udayakumar had borrowed a sum of Rs.4,00,000/- from the Petitioner and also on the same day itself the said Udayakumar has executed a mortgage deed in favour of the Petitioner registered with the office of the Sub Registrar, Nilakottai in Document No.2781/2017 and thereafter the said Udayakumar has not paid any interest or principle amount to the petitioner. Hence the petitioner has sent notice to the said Udayakumar on 13.07.2021 through the registered post along with acknowledgement due by requesting the said Udayakumar to repay the principle amount along with interest within 15 days and after receiving the said notice, the said Udayakumar has not come forward to repay the mortgage amount along with interest.



The above said true information has not been considered by the said Dhayanithi Sub Inspector of Police and he simply directed the petitioner and Accused No.2 namely Muthukumaran in an intimidating pose to cancel the mortgage deed immediately on 12.01.2022 and he compelled the petitioner and Accused No.2 namely Muthukumaran to give as like that statement and he compelled the petitioners to sign on that statement. The Petitioner and Accused No.2 namely Muthukumaran have no other option except to sign in the statement on compulsion of the said Dhayanithi Sub Inspector of Police, his body movements in an intimidating pose are being recorded on Police Station C.C.T.V. Camera. Thereafter the petitioner and Accused No.2 namely Muthukumaran came to know that the said Dhayanithi Sub Inspector of Police has issued C.S.R. Petition No.14/2022 dated 08.01.2022 to the said Udhayakumar for the complaint dated 08.01.2022 in which occurrence date and time mentioned as 08.01.2022 at about 8.00A.M. Madurai to Nilakottai Road. In the above said previous complaint of the said Udhayakumar that the said Udhayakumar has repaid the entire amount which was borrowed from the petitioner and on 08.01.2022 the said Udhayakumar has requested the petitioner's husband to return the pronotes, at that time the petitioner husband has abused the said Udhayakumar with filthy language. Hence the present case came to be registered.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and she has not committed any offence as alleged by the prosecution.

4. The learned Additional Public Prosecutor would submit that the investigation is completed and the respondent police are about to file the final report before the concerned court.

5. Heard both sides and perused the materials available on record.

6. It is seen from the First Information Report that there are specific allegation as against the petitioner, which has to be investigated. Further the FIR is not an encyclopedia and it need not contain all facts. Further, it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.255 of 2019** dated **12.02.2019 - Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.**, wherein it is held as follows:-

"4. The only point that arises for our consideration in this case is whether the High



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Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on



the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

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8. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of twelve weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court

Cr1.O.P.(MD) No.3415 of 2022
11.04.2022

SB(CO)
TR(25.04.2022) 5P 3C