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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.12.2021

Delivered on : 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.5875 of 2019

and

Crl.M.P. (MD)No.3786 of 2019

1.Sagunthala

2.Subramani

3.Prema

4.Suresh

5.Suseeladevi

... Petitioners/
Accused

vs.

1.The Sub-Inspector of Police,
Uppiliyapuram Police Station,
Tiruchirappalli District.
(Crime No.231 of 2018)

... Respondent/
Complainant

2.Thiyagarajan

... Respondent/
Defacto Complainant

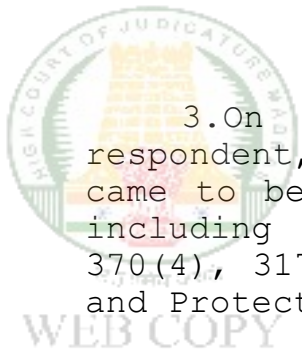
PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the case in Crime No.231 of 2018 on the file of the 1st respondent, the Sub-Inspector of Police, Uppiliyapuram Police Station, Tiruchirappalli District and quash the same and all further proceedings.

For Petitioners : Mr.D.Shanmugaraja Sethupathi
For Respondents : Mr.R.Sivakumar
Government Advocate(Crl. side) for R1
No appearance for R2

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in Crime No.231 of 2018 pending on the file of the first respondent and quash the same.

2.The petitioners are the accused 1 to 5 in Crime No.231 of 2018 on the file of the Uppiliyapuram Police Station, Tiruchirappalli District.



3.On the basis of the complaint lodged by the second respondent, who is the Nodal Organizer of Child Line (1098), FIR came to be registered in Crime No.231 of 2018 against six persons including the petitioners for the alleged offences under Sections 370(4), 317 IPC and Sections 80 and 81 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

4.Admittedly, the first petitioner is the wife of the second petitioner, the third petitioner is the wife of the fourth petitioner and the fifth petitioner and the sixth accused are the Village Health Assistants.

5.The case of the prosecution is that the second respondent has received a phone call to the child line number and on the basis of the information, he came to know that the third accused gave birth to a female child in Primary Health Centre, Uppiliyapuram, on 17.09.2018 and subsequently at the instance and connivance of the fifth and the sixth accused, the new born child was sold to the accused 1 and 2 on 08.10.2018 by the accused 3 and 4 and that therefore, he lodged a complaint seeking legal action against six persons and also to recover the child and to produce the child before the Child Welfare Committee.

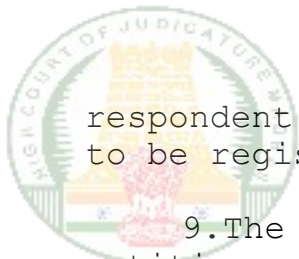
6.The petitioners, in the criminal original petition, have taken a stand that the third petitioner had married the fourth petitioner and had two children and she gave birth to a third female child on 17.09.2018 and that since the petitioners 3 and 4 are agricultural coolies, they find it difficult in growing up three children out of their scanty income.

7.It is the further case of the petitioners that the petitioners 1 and 2 are husband and wife and have no child, that they approached the petitioners 3 and 4 proposing to adopt their third female child, that the petitioners 1 and 2 have assured the petitioners 3 and 4 to provide good education and very well brought up livelihood to the child and that the petitioners 3 and 4 had enquired the background of the petitioners 1 and 2 and after coming to know that the said couple had no child for the past 11 years, have agreed to give their child in adoption.

8.The petitioners' further case is that the adoption ceremony was conducted on 08.10.2018 in the presence of relatives and friends of both the parties as per the Hindu Custom and Practise and they have also entered into an adoption deed in the presence of witnesses and the same was attested by the Notary Public, that in the pursuance of the adoption ceremony, the petitioners 3 and 4 have handed over the child to the petitioners 1 and 2 and the petitioners 1 and 2 have also accepted the adoption and took the child to their home and that ever since the date of adoption, the petitioners 1 and 2 have been maintaining the child with care and protection.

<https://hcservices.ecourts.gov.in/hcservices/>

According to the petitioners to their shock and surprise, the second



respondent has lodged a false complaint and on that basis, FIR came to be registered against them.

9.The learned counsel for the petitioners would submit that the petitioners 3 and 4 have given adoption under the provisions of Hindu Adoption and Maintenance Act, 1956, that they have not sold their female child to the petitioners 1 and 2 as alleged by the prosecution, that as per Section 56(3) of the Juvenile Justice (Care and Protection of Children) Act, the provisions of the said Act would not be applicable to the adoption given and taken under the provisions of Hindu Adoption and Maintenance Act, 1956 and that therefore, the very registration of the FIR is illegal and hence, the same is liable to be quashed.

10.The learned counsel for the petitioners, in the memorandum of grounds, has mentioned the judgment of the Hon'ble Supreme Court in the case of ***State of Haryana and others vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426***. The judgment relied by the learned counsel for the petitioners is a known text book for the subject, Powers of the High Courts under Section 482 Cr.P.C., authored by Hon'ble Justice.S.Rathinavel Pandian, for the Division Bench of the Hon'ble Apex Court, wherein, the Hon'ble Supreme Court enumerates 7 categories of cases, where the power can be exercised under Section 482 Cr.P.C. and the same are extracted hereunder:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised 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, 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;

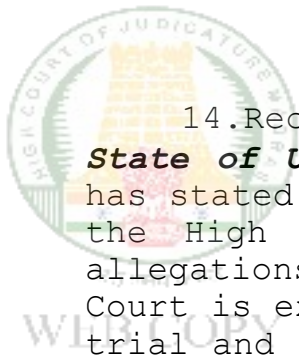
(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious 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."

11.The Hon'ble Supreme Court in ***Dr.Dhruvaram Murlidhar Sonar vs. The State of Maharashtra and others*** reported in **2019 (2018) SCC 191** has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

12.The Hon'ble Supreme Court, in various decisions has repeatedly held that the decision that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C.

13.It is pertinent to mention that if the petition under Section 482 Cr.P.C. was filed at the stage of FIR, the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered.



14.Recently, the Hon'ble Supreme Court in **Kaptan Singh vs. The State of Uttar Pradesh and others** reported in **2021(3)Crimes247(SC)** has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* material, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on.

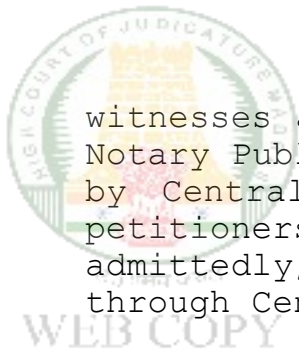
15.In the case on hand, admittedly, the defacto complainant is a third party, totally a stranger to the petitioners. As rightly contended by the learned Government Advocate (Criminal side), only on the basis of the information received through the phone call received at child line, the second respondent has lodged the complaint. It is the specific complaint of the prosecution that the petitioners 3 and 4 with the help and in the presence of the fifth petitioner and the sixth accused had sold their female child to the petitioners 1 and 2.

16.No doubt, the learned counsel for the petitioners would submit that the provisions of law under which FIR was registered would not attract the case on hand, but that by itself is not sufficient enough to quash the FIR as the contents of the FIR/complaint alone is to be looked into at this stage and the Investigating Officer after investigation, is having necessary power to lay the charge sheet for the offences shown in the FIR or some other offences which get attracted.

17.On considering the contents of the FIR, as rightly contended by the learned Government Advocate (Criminal Side), the same discloses cognizable offence and as such, the same has to be investigated.

18.As already pointed out, the petitioners have raised the defence that they have conducted adoption ceremony and also entered into an adoption deed on 08.10.2018. No doubt, while exercising powers under Section 482 Cr.P.C., it is the general rule that the materials put forth by the defence cannot be looked into, as the Court is required only to consider the allegations made in the FIR, but at the same time, as per the dictum of the Hon'ble Apex Court, can very well look into the defence materials, if the same are of such sterling and impeccable quality and capable of completely negating the allegations of the complainant.

19.In the case on hand, no doubt, the petitioners have produced the adoption deed dated 08.10.2018 and as rightly pointed out by the learned counsel for the petitioners, the same was attested by three



witnesses and the same was executed in the presence of Advocate and Notary Public. The petitioners have also produced the receipt issued by Central Adoption Resource Authority (CARA) in favour of the petitioners 1 and 2 for adopting a child on 29.11.2017, but admittedly, the petitioners 1 and 2 have not adopted the child through Central Adoption Resource Authority (CARA) but privately.

20.As rightly contended by the learned Government Advocate (Criminal side), though adoption deed does not require any registration, in case, if the adoption deed was registered prior to the registration of FIR, then the Court can very well consider the registered adoption deed as an evidence of sterling and impeccable quality and rely on the same but in the case on hand, as already pointed out, the adoption deed produced by the petitioners is not a registered document and as such, the same cannot be considered as a sterling and impeccable quality and capable of completely negating the allegations of the complainant. Whether adoption ceremony alleged by the petitioners was conducted, whether the adoption deed alleged to have been entered into between the parties is true and genuine, whether the alleged adoption was made as per the provisions of Hindu Adoption and Maintenance Act, 1956, are the aspects that cannot be gone into at this stage while exercising powers under Section 482 Cr.P.C. and are the matter for investigation.

21.Considering the above, this Court has no hesitation to hold that since the FIR discloses *prima facie* case, the question of quashing the FIR does not arise at all. Hence, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

22.In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

csm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To

1.The Sub-Inspector of Police,
Uppliyapuram Police Station,
Tiruchirappalli District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-3853[F] dated
03/02/2022)

Crl.O.P. (MD)No.5875 of 2019

and

Crl.M.P. (MD)No.3786 of 2019

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