



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2022

CORAM:

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

Crl.O.P.(MD)No.7959 of 2022

and

Crl.M.P(MD) No.5388 of 2022

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Kani ... Petitioner/Sole Accused

Vs

1. The Inspector of Police
Bodinacyakkanur Town Police Station
Theni District
(Crime No.39/2022)

... 1st Respondent/Complainant

2. Soniya ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records pertaining to the impugned FIR in Crime No.39 of 2022 dated 31.01.2022 on the file of the first respondent police and to quash the same as illegal.

For Petitioner : Mr.S.Vikram

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.39 of 2022 on the file of the first respondent police.

2. The case of the prosecution is that the defacto complainant is the wife of the petitioner and both of them have one male child and one female child. The defacto complainant stay at separate home for rent. Petitioner by profession being an advocate has not taken care of the family and he has affair with another woman friend. On 31.01.2021 at about 10.00 p.m., when the defacto complainant cleaning their newly constructed work at that time petitioner had attacked the complainant with burner from stove and scolded with filthy language. With the above allegations, the respondent police registered the above FIR.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is innocent and he 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 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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7.....

8.....

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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."

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 (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police
Bodinacyakkanur Town Police Station
Theni District



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

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SS/12.05.2022 : 4P/3C