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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :11.05.2022

CORAM

THE HONOURABLE Mr.JUSTICE **M.DHANDAPANI**

Crl.O.P (MD) No.9028 of 2022

and

Crl.M.P (MD) No.6021 of 2022

1.M.Kanagaraj

2.Kumar

.. Petitioners

Vs

1.The Inspector of Police,
Courtallam Police Station,
Courtallam, Tenkasi District.

2.S.Packiaraj

.. Respondents

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the First Information Report in connection with Crime No.119 of 2012, on the file of the Inspector of Police, Courtallam Police Station, Courtallam, Tenkasi District and quash the same.

For Petitioners : Mr.S.Palani Velayutham

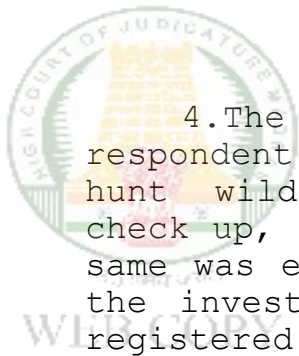
For Respondents :Mr.S.Ravi, APP, for R-1

ORDER

This criminal original petition has been filed to quash the FIR in Crime No.119 of 2022 on the file of the first respondent Police.

2.The case of the petitioner is that the first respondent Police has registered a case against the petitioners for the offences punishable under Sections 353 and 506(ii) of IPC and 25(1B) (a) of Arms Act, 1860, alleging that the petitioners were found in possession of the weapon for use for of hunting wild animals in the forest.

3.The learned counsel appearing for the petitioners submit that though the petitioners were implicated as accused for the offences punishable under Sections 353 and 506(ii) of IPC and 25(1B) (a) of Arms Act, 1860, no recovery was made from any of the accused persons. The said weapon was recovered only from the Poultry Farm. Mere recovery is not sufficient to implicate the petitioners in the above said offences. Therefore, the FIR registered against the petitioners is not sustainable. Hence, the present petition has been filed to quash the FIR.



4.The learned Additional Public Prosecutor appearing for the respondent Police would submit that the petitioners were trying to hunt wild animals in the reserved forest area and during a routine check up, the weapon was recovered from the accused persons and the same was entered in the recovery mahazer. He further submits that the investigation is at preliminary stage. The impugned FIR is registered on the basis of the information gathered by the Law Enforcing Agency. The allegations made against the petitioners have to be considered only during the investigation and if the petitioners are not found guilty, the name of the petitioners will be deleted while filing the charge sheet. However, without allowing the Law Enforcing Agency to conduct investigation, the petitioners cannot seek to quash the FIR at the threshold. Accordingly he prays for dismissal of the petition. Attention of this Court is also drawn to the decision of the Hon'ble Apex Court in the case of **State of Haryana Vs. Bajan Lal (1992 (3) SCC 335)**.

5. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondents.

6. A perusal of the materials available on record reveal that the impugned FIR was registered only in the month of March and till date, the investigation has not been completed and it is alleged that the Law Enforcing Agency has recovered the weapon from the accused persons.

7. In **State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335)**, the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given 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 guide myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. itself."

8. In yet another case in ***R.P. Kapur - Vs - State of Punjab (AIR 1960 SC 866)***, the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the



quashing of the impugned proceedings would secure the ends of justice;

(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;

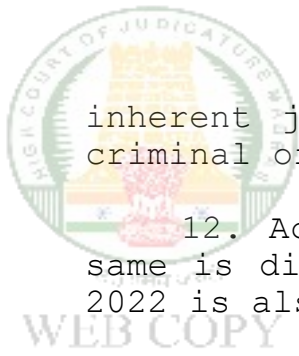
(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

9. From the above, it is amply evident that this Court is clothed with the requisite power to interfere with the proceeding at any stage, provided, the necessary satisfactions, as enumerated above, are fulfilled. Therefore, the test that is required to be made is whether the materials placed on record by the prosecution fulfill the test for the continuance of the case or falls short for its quashment is the sole question that requires consideration.

10. This Court is not averse to the invocation of its powers u/s 482 Cr.P.C., but the only limitation being that the tests as adumbrated by the Hon'ble Supreme Court in the aforesaid decisions should stand satisfied so as to continue the investigation, else, the same would deserve setting aside.

11. In the present case, it is alleged that the weapons were recovered from the accused persons, though it is countered otherwise by the accused/petitioners. It is borne out by record that investigation is yet to be completed. It is not as if that no weapon has been recovered. There are two versions as to the recovery. However, the authenticity of the recovery cannot be the issue before this Court and this Court also cannot go into the same at this point of time for determining whether the FIR is required to be quashed at this stage. It is only the *prima facie* satisfaction that is required at this point for permitting the investigation to continue. Further, it is also fairly submitted on behalf of the law enforcing agency that upon completion of investigation if the complicity of the accused/petitioners in the offence is not established, their names would be dropped at the time of filing the charge sheet. Such being the case, there being some *prima facie* materials to continue the investigation and no material so as to absolve the accused/petitioners at this point of time, this Court cannot preclude the law enforcing agency from conducting investigation by invoking its inherent power to quash the FIR as none of the guidelines postulated in *Bhajan Lal's case (supra)* stand attracted to the case on hand for this Court to exercise its



inherent jurisdiction. Therefore, the prayer sought for in this criminal original petition cannot be granted.

12. Accordingly, this Criminal Original Petition fails and the same is dismissed. Consequently, connected Crl.M.P.(MD).No.6021 of 2022 is also dismissed.

Sd/-

Assistant Registrar(CS-I)

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/06/2022

Sub Assistant Registrar(CS)

vsg/vsd

To

- 1.The Inspector of Police,
Courtallam Police Station,
Courtallam,
Tenkasi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P (MD) No.9028 of 2022
11.05.2022

MA (CO)

TR(22.06.2022) 5P 3C