



CRL.O.P(MD)No.11263 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 24.06.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.11263 of 2022

and

CrI.M.P(MD)No.7103 of 2022

Amalajothi

... Petitioner/Accused No.3

Vs.

**1.The Sub Inspector of Police,
Kotticode Police Station,
Kanyakumari District.
(Crime.No.171 of 2021)**

... 1st Respondent/Complainant

2.Sarojini

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the First Information Report in Crime No.171 of 2021 pending on the file of the first respondent police and quash the same as illegal in respect of the petitioner herein.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.M.Sakthikumar

Government Advocate (CrI.side) for R1



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ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.171 of 2021 pending on the file of the first respondent police.

2.The learned counsel for the petitioner submitted that the petitioner and the defacto complainant are neighbors. Without obtaining any permission from the authorities, the defacto complainant's family is running business unit by installing rubber roller machine, very adjacent to the petitioner's house. While processing the rubber sheet, lot of waste was occurred, it is danger to the human life and the petitioner's family members are facing severe health issues. Therefore, the petitioner's husband gave a complaint before the Panchayat Authorities and also filed a Writ Petition before this Court. Based on the order passed by the Writ Court, the Panchayat Board passed an order to close the unit. Therefore, the defacto complainant's husband has filed a Writ Petition before this Court and the same is also pending. Further on 04.12.2021 at about 12.00 p.m. while the second respondent/defacto complainant was taking bath, the first accused



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tried to take video on his mobile phone and on seeing that, her younger son shouted the accused and warned him. On the same day at 9.30 p.m. the accused persons 1 to 3 came to the house of the defacto complainant and shouted, but there is no overt act. The respondent police has registered the case without any evidence and further, there is no overt act attributed against this petitioner in the complaint. In fact, the petitioner's husband gave a complaint on 04.12.2021 against the defacto complainant and their family, the case has been registered in Crime No.170 of 2021 for the offences punishable under Sections 294(b) and 506(i) of IPC. Subsequently, this false complaint was made against the petitioner on 19.12.2021 and the case has also been registered in Crime No.171 of 2021 for the offences punishable under Sections 294(b) and 506(i) of IPC. Therefore, he prays for quashing the said F.I.R.

3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that it is a case in counter. Based on the complaint given by the petitioner's husband, the case has been registered in Cr.No.170 of 2021 for the offence punishable under Sections 294(b) and 506(ii) of IPC as well as the complaint given by the defacto complainant

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against the accused persons has been registered in Crime No. 171 of 2021 for the offence punishable under Sections 294(b) and 506(i) of IPC. Insofar as Crime No.170 of 2021 is concerned, investigation has been completed and charge sheet is also ready and as far as Crime No.170 of 2021 is concerned, final report is not ready. At this stage, the said F.I.R cannot be quashed.

4. I have considered the submission of the learned counsel appearing for the petitioner and the learned Government Advocate (criminal side) appearing for the respondent police.

5.The Hon'ble Supreme Court of India in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** has 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:-

(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.

6.In the case on hand, a perusal of the impugned FIR in Crime No.171 of 2021, shows that on 04.12.2021 at about 12.00 p.m., while the defacto complainant was taking bath, the first accused took photograph through his mobile phone. On seeing that, her younger son shouted and



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warned him. On the same day at about 9.30 p.m. the petitioner and the accused persons 2 and 3 came to the defacto complainant's house and threatened the defacto complainant and her family and also abused with filthy language. Hence, the complaint. A perusal of another complaint in Crime No.170 of 2021, shows that the petitioner's husband lodged a same allegation against the defacto complainant in this case. So, it is clear that it is a case in counter and insofar as Crime No.171 of 2021 is concerned, investigation has been completed and as far as Crime No.170 of 2021 is concerned, investigation yet to be completed. Therefore, at this stage, it is inappropriate to quash the F.I.R.

7.On perusal of impugned F.I.Rs, it is seen that the allegation therein would *prima facie* make out a case for investigation by the police authority.

8.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

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their entirely, do not 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.

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



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

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Internet:Yes./No
Index:Yes/no
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To

- 1.The Sub Inspector of Police,
Kotticode Police Station,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

vsd

ORDER IN
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