



CRL.O.P (MD) No.11404 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.11404 of 2022

and

CrI.M.P(MD)No.7200 of 2022

1.Suruthi

2.Nehru

...Petitioners/Accused Nos.1 & 2

Vs.

1.State Represented through
The Inspector of Police,
Nerkuppai Police Station,
Sivagangai District.
(Cr.No.26 of 2022)

...1st Respondent/Complainant

2.Manikandan

...2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the impugned F.I.R made in Crime No.26 of 2022 on the file of the first respondent and quash the same.

For Petitioners : Mr.M.Sam Eugene Jebakumar

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the F.I.R in

Crime No.26 of 2022 pending on the file of the first respondent police.



CRL.O.P (MD) No.11404 of 2022

2.The learend counsel appearing for the petitioners submitted that the first petitioner is an advocate and the second petitioner is the father of the first petitioner. The second respondent / defacto complainant has love affair with one Suryakerthi and due to some difference of opinion, they are in good terms and that earlier, the second respondent received a sum of Rs.1,15,000/- from the said Suryakeerthi and failed to return the same. The petitioners have involved in a compromise with regard to the problem of the second respondent / defacto complainant and his ex-lover Suryakeerthi and the case has been compromised on 26.01.2022 and the second respondent gave the said amount to the first petitioner. But the first petitioner failed to hand over the same to the said 'Suryakeerthi' and cheated her. When the same is questioned by the defacto complainant, the petitioners threatened him with dire consequences and hence, the complaint. He further submitted that the complaint is false one and the first petitioner has also given a complaint against the second respondent/defacto complainant and the same was registered in Crime No.27 of 2022 for the offences punishable under Sections 147, 294(b), 506(i) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act 2002. Therefore, he prays for quashing the said F.I.R.

3.The learned Additional Public Prosecutor appearing for the respondent police submitted that the alleged occurrence happened on various



CRL.O.P (MD) No.11404 of 2022

dates. According to the complainant, the first petitioner being an advocate threatened the second respondent and so far received a sum of Rs.1,65,000/- and she received a sum of Rs.60,000/- as fees. Hence, the second respondent/defacto complainant gave a complaint against the petitioners and the case has been registered in Crime No.26 of 2022. The petitioners have also given a complaint against the second respondent and the same was also registered in Crime No.27 of 2022. Both the cases are under investigation. At this stage, the said F.I.R cannot be quashed.

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

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

(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



WEB COPY



CRL.O.P (MD) No.11404 of 2022

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 F.I.R. in Crime No.26 of 2022 shows that the first petitioner being an advocate compromised the issue between the second respondent and one Suryakeerthi and also received the settlement of payment from the second respondent and subsequently, the petitioners threatened the second respondent/defacto complainant as the said Suryakeerthi is going to give a complaint against the second respondent. To prevent the same, he has given some amount to Suryakeerthi. So the second respondent has paid so far Rs.1,65,000/- and also paid a sum of Rs.60,000/- as Advocate fees. But the petitioners failed to hand over the same to the said 'Suryakeerthi' and cheated the defacto complainant. A perusal of complaint discloses the commission of offence and investigation is still pending. Apart from that the petitioners have also given a complaint



CRL.O.P (MD) No.11404 of 2022

against the second respondent/defacto complainant, which was registered in Crime No.27 of 2022 and both the cases are under investigation.

7.On perusal of impugned F.I.R, 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 their entirety, do no *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



CRL.O.P (MD) No.11404 of 2022

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.

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

27.06.2022

Index : Yes / No
Internet : Yes/ No
vsd

To

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



WEB COPY



CRL.O.P (MD) No.11404 of 2022

V.SIVAGNANAM, J.

vsd

CRL.O.P (MD) No.11404 of 2022

and

CrI.M.P(MD)No.7200 of 2022

27.06.2022