



Crl.O.P.(MD) No.11524 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE **V.SIVAGNANAM**

Crl.O.P.(MD) No.11524 of 2022

and

Crl.M.P(MD) Nos.7269 and 7270 of 2022

1. Chinthamani,
2. Deivendran,
3. Parani,
4. Bhavani,
5. Suresh

: Petitioners

Vs

1.State represented by
The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.
Crime.No. 1 of 2021.

2. Ilavarasi,

: Respondents



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PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records and quash the charge sheet filed before the Judicial Magistrate Court, Manamadurai in C.C.No. 1007 of 2022.

For Petitioners : M/s.Sudalaiyandi K,
For R1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor

ORDER

This criminal original petition has been filed seeking to quash the charge sheet filed before the Judicial Magistrate Court, Manamadurai in C.C.No. 1007 of 2022.

2.The learned Counsel appearing for the petitioners submitted that the second respondent lodged a complaint and the petitioners are now prosecuted for the offences under Sections 498(A) and 406 of IPC in C.C.No.1007 of 2022, pending on the file of the learned Judicial Magistrate Court, Manamadurai. Before the said complaint, there was a dispute between the husband and wife and now, they are living separately. Particularly, a divorce petition has also been pending. There is no specific allegation against all the



petitioners. Since there is no truth in prosecution, it has be quashed.

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3.The learned Additional Public Prosecutor submitted that except the fifth petitioner, there is a specific overt act attributed against the petitioners 1 to 4 that they were assaulted the complainant/Illavarasi. Under these circumstances, whether the petitioners 1 to 4 are involved in the crime and assaulted the complainant has to be decided by the trial Court, by letting in the prosecution evidences and it is not a fit case for quashing the criminal proceedings and pleaded to dismiss this petition.

4.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.



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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.



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(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.

5.I have considered the matter in the light of the submissions made by both the parties.

6.On a perusal of records, it is seen that the case has been registered against the petitioners on a complaint given by Ilavarasi, who was married to the first petitioner's son/Muruali, in the year 2009. There was a dispute between the husband and wife and the alleged occurrence took place on 06.11.2020. On that date, at about 07.00 pm, the complainant's husband/Muruali, after consuming liquor quarrelled with the complainant. At



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that time, the petitioners herein, came to the spot, abused her with filthy language, assaulted and driven her out from the house. But, this fact is disputed by the petitioners.

7.On perusal of the charge sheet and the statement of witnesses shows that *prima facie* an offence and allegation made therein will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and leading of evidence, to quash prosecution is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition.

8.At this stage, it cannot be quashed. However, with regard to the fifth petitioner, there is no allegation against him in the complaint itself and after investigation, the police has also not specifically charge sheeted the fifth petitioner. Therefore, the criminal proceedings in C.C.No.1007 of 2022, on the file of the Judicial Magistrate Court, Manamadurai, against the fifth petitioner herein, alone is liable to be quashed and the same is quashed. I find no merit in quashing the charge sheet in C.C.No.1007 of 2022 against the



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petitioners 1 to 4. Hence, this criminal original petition is dismissed.

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9.However, the learned Counsel appearing for the petitioners submitted that the personal appearance of the petitioners before the trial Court may be dispensed with.

10.I have considered the submission. The personal appearance of the petitioners 1 to 4 is dispensed with a condition that they should appear before the trial Court whenever required for further proceedings.

11.Consequently, the connected miscellaneous petitions are closed.

29.06.2022

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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V.SIVAGNANAM, J.

lr

To

1.The Inspector of Police,
All Women Police Station,
Manamadurai,
Sivagangai District.

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

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