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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.12071 of 2022
and
Crl.M.P(MD)No.7630 of 2022

Nitheeshkumar ... Petitioner/Sole Accused

Vs

1.The Inspector of Police,
Kodaikanal Police Station,
Dindigul District. ...1st Respondent/ Complainant

2.Tamilselvan ... 2nd Respondent/De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to Crime No.1470 of 2020 on the file of the respondent Police and quash the same.

For Petitioner : Mr.R.Kannappan

For R-1 : Mr.M.Sakthi Kumar,
Government Advocate,
(Criminal Side).

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O R D E R

This criminal original petition has been filed seeking to quash the FIR in Crime No.1470 of 2020 on the file of the respondent Police.

2.The learned counsel for the petitioner submitted that a case has been registered by the respondent Police in Crime No.1470 of 2020 for offences under Sections 279 and 337 I.P.C on 07.11.2020 and investigation is not completed within the statutory period of one year. Being the offence is punishable below one year and bought by limitation hence pleaded to quash the F.I.R in Crime No.1470 of 2020 on the file of the respondent Police.

3.The learned Government Advocate (Crl.side) appearing for the respondent police submitted that in this case, initially a case has been registered for offences under Sections 279 and 337 I.P.C. But, after obtaining the medical opinion, the Doctor given the report stating that the injuries sustained by the victim is a grievous one and F.I.R has been altered into Section 338 I.P.C and it is punishable by imprisonment for two years or

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with fine of Rs.1000 or both. Therefore, the limitation for filing final report is of three years as per 458(C) within a statutory period. Further the final report is also filed and not taken on file.

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 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.

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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

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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 records, it is seen that a case has been registered against the petitioner by the respondent Police in Crime No.1470 of 2020 for offences under Sections 279 and 337 I.P.C. On subsequently, the investigation officer obained the medical opinion from the Government hospital as injuries sustained by the victim is grievous in nature. Hence altered the F.I.R into Section 338 and filed final report. So far Section 338 is punishable by imprisonment of two years or with fine of Rs.1000/- or both and limitation is of three years and so it is well within the limitation. It is with regard to the disputing the fact of involvement of the vehicle of the petitioner has to be decided by considering the evidence

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produced before the Trial Court. Therefore, it is inappropriate to quash the proceedings by invoking Section 482 Cr.P.C. Hence I find no merits in this petition.

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 entirely, 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

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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 vengenance 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. If the allegations made in the First Information Report *prima facie* discloses a cognizable offences, interference with the investigation is not proper, because that amounts to interfere with the statutory power of the police to investigate a cognizable offences in accordance with the provisions of Cr.P.C. Without thorough investigation, it is not possible or proper to hold whether the allegations made by the complainant are true or not. Hence, the investigation should have been allowed to continue, so that on filing of the final report under Section 173 Cr.P.C, the affected party

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could pursue its remedy against the final report in accordance with law.

11. Therefore, the police will proceed to complete the investigation fairly on the same expeditious and submit the required final report to the learned Jurisdictional Judicial Magistrate who shall act in accordance with law.

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

07.07.2022

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

To
1.The Inspector of Police,
Kodaikanal Police Station,
Dindigul District.

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

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V.SIVAGNANAM, J.

Nsr

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