



Crl.O.P.(MD) No.11945 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 05.07.2022

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THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.11945 of 2022

and

CrL.M.P(MD) No.7554 of 2022

1. Chellapandi
2. Palpandi
3. Muthupandi
4. Logamani @ Subbiah ... Petitioners/ Accused Nos. 1 to 4

Vs

1.The Sub Inspector of Police,
Ambathurai Police Station,
Ambathruai. ... 1st Respondent/1st Respondent
2.T.Mahendran ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records relating to C.C.No.394 of 2022 in Crime No. 415 of 2021 on the file of the Judicial Magistrate No.III, Dindigul and quash the same so far as the petitioners herein are concerned.



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For Petitioners : M/s.S.Vijayashanthi

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

ORDER

The Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.394 of 2022, on the file of the Judicial Magistrate No.III, Dindigul.

2. The case of the prosecution is as follows:-

On 27.09.2021 at about 9.00 p.m, on hearing that somebody is taking gravel sand from Thopapatti lake in the JCP-CAT Tractor bearing Registration No.TN57 BE 2588. When the defacto complainant along with others went to the scene of crime and prevented them from doing so and asking why they have taken the gravel sand in the night hours, for which, the accused persons scolded the defacto complainant in filthy language and further threatened him with iron rod and aruval unless and otherwise they leave them, they will face dire consequences and thereby, the defacto



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complainant and others sustained simple injuries. Hence, the defacto complainant gave a complaint to the respondent Police. The first respondent Police has registered a case in Crime No.415 of 2021 for the offences under Sections 294(b), 323 and 56(ii) I.P.C as against the accused persons. After the investigation, the first respondent has filed a charge sheet and the case was taken on file in C.C.No.394 of 2022, on the file of the the learned Judicial Magistrate No.III, Dindigul.

3. According to the prosecution on 26.09.2021, the petitioners/accused assaulted the defacto complainant and threatened him. Since no eyewitnesses stated against the accused, seeking to quash the charge sheet, the petitioners have filed the present Criminal Original Petition.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that it is a case and case in counter. Another complaint is also given against the defacto complainant by the petitioners. This case has been registered and final report has been filed and the case is taken on file in C.C.No.394 of 2022 and counter case has been registered



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and final report has been filed and the case was taken on file in C.C.No.395 of 2022. Both the cases are pending before the learned Judicial Magistrate No.III, Dindigul.

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 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



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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. Considered the matter in the light of the submissions made by both the counsels.

7. Perusal of the records would reveal that the petitioners are the accused in this case. The case has been registered in Crime No.415 of 2021 for the offences under Sections 294(b), 323, 506 (ii) I.P.C. After investigation, final report has been filed and the same was taken on file as C.C.No.394 of 2022 on the file of the Judicial Magistrate No.III, Dindigul. The counter case has been registered in Crime No.416 of 2021 for the offences under Sections 294(b), 427 and 506(ii) I.P.C, final report has been filed and taken on file as C.C.No.395 of 2022. Both the cases had been pending before the learned Judicial Magistrate No.III, Dindigul, and has to be tried simultaneously.



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8. Further, the learned counsel for the petitioners disputed the fact that there are no eyewitnesses against the accused persons as per the prosecution case. Whether the evidence is sufficient or not, has to be decided before the trial Court, based on the evidence adduced by the prosecution. Section 482 of Cr.P.C cannot be exercised in such proceedings by examining the provisions and this Court cannot evolve the truthfulness of the witnesses available in this petition.

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



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10. Accordingly, this Criminal Original Petition stands dismissed.

Consequently, the connected Miscellaneous Petition is closed.

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Internet:Yes./No

Index:Yes/no

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To

- 1.The Judicial Magistrate No.III,
Dindigul.
2. The Sub Inspector of Police,
Ambathurai Police Station,
Ambathruai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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ORDER IN
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