



Crl.O.P.(MD) No.13635 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.07.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.13635 of 2022

and

Crl.M.P(MD) Nos. 8704 and 8705 of 2022

1. A.Samuvel Vijay
2. Mrs.Valarmathi @ Arokiamary
3. Mrs.Stalin Mary ... Petitioners/ Accused Nos 1 to 3
Vs

1. The State Represented by
The Inspector of Police,
Devakottai Town Police Station,
Devakottai
Sivagangai District.
(in Crime No.390 of 2021) 1st Respondent /Complainant

2. Senthamarai Selvi ... 2nd Respondent/ Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C,
praying to call for the records in C.C.No.105 of 2021, on the file of the
Judicial Magistrate, Devakottai and to quash the same.

For Petitioners : Ms.V.Raghavendri
for Mr.S.Muthukrishnan

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



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ORDER

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This Criminal Original Petition has been filed to quash the Charge Sheet in C.C.No.105 of 2021, on the file of the Judicial Magistrate, Devakottai.

2. The case of the prosecution is that due to previous enmity, the petitioners herein entered into their neighbour's house of one Manimaran, the husband of the second respondent herein. The petitioners scolded the said Manimaran and his wife in a most abusive and filthy language and also threatened them with murder. Hence, the defacto complainant gave a complaint to the respondent Police. The first respondent Police has registered a case in Crime No.390 of 2021 for the offences under Sections 452, 294(b), 506(i) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002 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.105 of 2021, on the file of the the learned Judicial Magistrate, Devakottai.



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3. 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 first petitioner. This case has been registered and final report has been filed and the case was taken on file in C.C.No.105 of 2021 and counter case has been registered and final report has been filed and the case was taken on file in C.C.No.106 of 2021. Both the cases are pending before the learned Judicial Magistrate, Devakottai.

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.



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.

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

6. Perusal of the records would reveal that the petitioners are the accused in this case. The case has been registered in Crime No.390 of 2021 for the offences under Sections 452, 294(b), 506 (ii) I.P.C., and 4 of Tamil Nadu Prohibition of Harassment of Women's Act. After investigation, final report has been filed and the same was taken on file in C.C.No.105 of 2021 on the file of the Judicial Magistrate, Devakottai. The counter case has been



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registered in Crime No.391 of 2021 for the offences under Sections 294(b), and 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and final report has been filed and taken on file in C.C.No. 106 of 2021. Both the cases had been pending before the learned Judicial Magistrate, Devakottai.

7. In these circumstances, the trial Court has to continue the trial to find out the truthfulness and that the petitioners denied the allegations against them as false and the factual aspects have to be considered by letting evidence before the trial Court. Being a case and case in counter before the commencement of trial, one case cannot be quashed. Therefore, I find no merit in this petition.

8. However, the learned counsel appearing for the petitioners submitted that the third petitioner is having new born baby, the second petitioner is the mother of the third petitioner, the first petitioner is working as a teacher and hence, the personal appearance of the petitioners before the trial Court may be dispensed with.



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9. I have considered the submission of the learned counsel for the petitioners that, the third petitioner is having new born baby, the second petitioner is the mother of the third petitioner, the first petitioner is working as a teacher. Hence, the personal appearance of the petitioners before the trial Court is hereby, dispensed with, subject to the condition that the petitioners shall appear before the trial Court, whenever required for further proceedings.

10. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed.

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

1. The Judicial Magistrate Court,
Devakottai.
2. The Inspector of Police,
Devakottai Town Police Station,
Devakottai
Sivagangai District.
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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