



Crl.O.P.(MD) No.13907 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2022

CORAM:

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

Crl.O.P.(MD) No.13907 of 2022

and

Crl.M.P(MD) Nos.8919 and 8920 of 2022

- 1.N. Muthu Renganatha Vijayan
- 2.N.Sanmuga Vijakumari
- 3.M.Suganya
4. T.Navaneetha Krishnan
- 5.S.Muthuraj

.....Petitioners

.vs.

1. The Inspector of Police
Theni Police Station
Theni District

2. M.Banu Priya

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records in C.C. No.318 of 2018 on the file of the learned Judicial Magistrate, Theni, Theni District and quash the same as illegal.

For Petitioner : Mr.S.Rajesh Kanna

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



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ORDER

This criminal original petition has been filed seeking to quash the charge sheet in C.C.No.318 of 2018, on the file of the learned Judicial Magistrate, Theni, Theni District

2.The learned counsel for the petitioners would submit that the petitioners are A1to A3 and A5 in C.C.No.318 of 2018 on the file of the learned Judicial Magistrate, Theni. They are prosecuted by the respondent police for the offences under Sections 147,323 and 506(2) of IPC. He would further submit that only for harassing the petitioners the defacto complainant namely Banupriya has lodged this complaint and she has also filed HMOP No.153 of 2018 before the Sub Court, Theni, HMOP No.64 of 2019 before the Sub Court, Uthamapalayam, HMOP No.80 of 2022 before the Sub Court, Uthamapalayam, hence the petitioners seek to quash the entire proceedings.

3. The learned Additional Public Prosecutor would submit that the case is under trial.



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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.



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(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.



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

6. On perusal of the record it is seen that the petitioners are A1 to A3 and A5 in C.C.No.318 of 2018 on the file of the learned Judicial Magistrate, Theni. The case has been registered against the petitioners along with others for the alleged offence committed upon the complainant Banupriya. According to the prosecution, on 23.03.2011 at about 14.30 hrs at the house of the petitioner, the complainant was assaulted by the accused persons and thereby caused injuries to the complainant and she was treated by Dr.Suganthi, Assistant Surgeon, Government Hospital, Theni.

7. A reading of the final report and the statement of the witnesses *prima facie* shows the commission of offence and therefore trial has to be conducted to find out the truth to arrive at the just decision, hence it is in appropriate to quash the case before commencement of trial.

8.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



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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.

9.At this stage, it cannot be quashed. Therefore, I find no merit in this criminal original petition and the same is dismissed.

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

11.The second petitioner being a sixty two year old senior citizen, mother-in-law of the complainant, fourth petitioner being the father-in-law of the complainant and the third petitioner being the sister of the first petitioner, the personal appearance of the petitioners namely 2,3 and 4 before the trial Court is hereby, dispensed with. But, they should appear before the trial Court, whenever required for further proceedings.



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12. Consequently, the connected miscellaneous petition in Crl.M.P(MD) No.8919 of 2022 stands dismissed and Crl.M.P(MD) No.8920 of 2020 stands partly allowed.

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Internet: Yes
Index: Yes/No
Speaking/Non speaking order
aav

To

1. The Judicial Magistrate, Theni, Theni District
2. The Inspector of Police
Theni Police Station
Theni District.
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court.
Madurai



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V.SIVAGNANAM, J.

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