



CRL.O.P(MD)No.14390 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P(MD)No.14390 of 2022
and
Crl.M.P(MD)No.9273 of 2022

1. Harikumar
2. Manimuthu

... Petitioners

VS

1. The Inspector of Police
Meignanapuram Police Station,
Tuticorin District

2. Selvanathan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in connection with the impugned complaint in Crime No. 96 of 2021, Dated. 28.07.2021 pending on the file of the respondent police and quash the same in so far as the petitioners are concerned

For Petitioner : Mr.Sarvagan Prabhu

For R1 :Mr.A.Sakthikumar

Government Advocate(Crl.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. 96 of 2021 pending on the file of the respondent police

2.The learned counsel for the petitioners submitted that already civil case is pending with regard to S.No. 565 in Thandhupatti Village in respect of 18.25 cents. The allegation is that the petitioners trespassed in to said land and removed the iron fence worth about Rs.35,000/-. It is a false allegation and they have not trespassed into the said land.

3.The learned Government Advocate (Crl.side) appearing for the respondent police would submit that the case is under investigation.

4. I have considered the submission of the learned counsel appearing for the petitioners 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. 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.



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6. According to the petitioners there is a civil dispute between the parties with regard to the property situated in S.No. 565 in Thandhupatti Village in respect of 18.25 cents. While pending suit criminal case was given by the complainant. On going through the complaint and allegations, in the complaint it is stated that on 28.07.2021 at about 13.30 hrs while the complainant was making iron fence these petitioners threatened not to fix iron fence on 21.07.2021, the complainant was informed. When the petitioners were removing the iron fence, he immediately informed the police, then he came to station on 24.07.2021 @4.30 hrs and found the fence fixed by the complainant was removed and the iron fence was worth about Rs.35,000/-.

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



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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 entirety, 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 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 vengeance 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.



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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 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. Therefore this case is liable to be dismissed, since it does not satisfy the parameter laid down by the Hon'ble Supreme Court in the ***State of Haryana vs.Ch.Bhajan Lal*** reported in ***(AIR) 1992 SC 604***.



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13.In the light of the above factual and legal positions, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed. Further the respondent police is directed to complete the investigation and file the final report before the concerned Court within a period of two months from the date of receipt of a copy of this order.

11.08.2022

Internet:Yes./No

Index:Yes/no

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To

1. The Inspector of Police
Meignanapuram Police Station,
Tuticorin District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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