



Crl.O.P.(MD) No.14976 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.08.2022

CORAM:

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

Crl.O.P.(MD) No.14976 of 2022

and

Crl.M.P(MD) Nos.9767 and 9768 of 2022

1. Narayanapillai,
2. Bagavathiammal,
3. Sundaravel,

: Petitioners

Vs

1. The State represented by
The Inspector of Police,
Boothapandy Police Station,
Kanyakumari District.
(Crime No.41/2020)

2. Suresh Babu,

: Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for records in C.C.No.73/2022, on the file of the learned Judicial Magistrate, Boothapandy, Kanyakumari District and to quash the same as illegal and without jurisdiction.



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For Petitioners : Mr.Govindchandrasekhar,

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

ORDER

This criminal original petition has been filed seeking to quash the charge sheet in C.C.No.73/2022, on the file of the learned Judicial Magistrate, Boothapandy, Kanyakumari District.

2.The learned Counsel appearing for the petitioners submitted that since the abusive words are not uttered in the public places, there is no injury to the defacto complainant and the accused persons not threatened the defacto complainant, Sections 294(b), 323 and 506(2) IPC will not be attracted. Hence, he pleaded to quash the entire proceedings.

3.The learned Additional Public Prosecutor submitted that in this case, there is a dispute between the parties. On 18.02.2020, the petitioners caused damage to the compound wall of the complainant and also assaulted the complainant. Under these circumstance, before commencement of trial, it is not proper to quash the criminal proceedings. Hence, he pleaded to dismiss



this petition.

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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.

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

6.On a perusal of records, it is seen that the petitioners are the accused persons in C.C.No.73/2022, on the file of the learned Judicial Magistrate, Boothapandy, Kanyakumari District. The case is posted for appearance of the accused, on 26.08.2022. The learned Counsel appearing for the petitioners denied the allegations stated in the complaint. But, denial of the fact has to be adjudicated before the trial Court.

7.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 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



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no merits in the Criminal Original Petition.

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

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

10.I have considered the submission. The personal appearance of the petitioners before the trial Court is hereby, dispensed with. But, they should appear before the trial Court, whenever required for further proceedings.

11.Consequently, the connected miscellaneous petitions are closed.

22.08.2022

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

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1. The Inspector of Police,
Boothapandy Police Station,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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