



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.04.2022

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P(MD)No.17753 of 2021

and

Crl.M.P(MD) .No.9685 of 2021

1.S.Richard Singh
2.Durairaj
3.Marimuthu
4.Arulanantham

... Petitioners/ Accused No.1 to 4
Vs.

1.State rep., by
The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.

... 1st Respondent/ Complainant

2.S.Francis Arockiya Mariyan

... 2nd Respondent/
Defacto Complainant

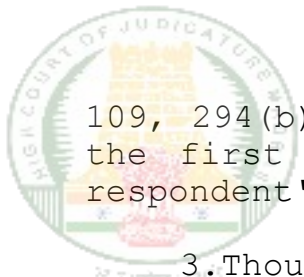
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of the impugned FIR in Crime NO.263 of 2021 dated 15.08.2021 on the file of the first respondent police and quash the same.

For Petitioner : Mr.G.Prabhu Rajadurai
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl.side)
For R2 : Mr.T.Arul

ORDER

The Criminal Original Petition has been filed to quash the impugned FIR in Crime No.263 of 2021 dated 15.08.2021 on the file of the first respondent police for the offence under Sections 109, 294 (b), 427 and 506(ii) IPC.

2.The case of the prosecution is that the second respondent is the owner of the property bearing Survey No.229/5A1B measuring 24 cents and that he had put up a fence in the said property. Due to previous enmity, the second petitioner and father-in-law of the first petitioner along with two other persons had entered into the said land and damaged the fence. Hence, the second respondent lodged a complaint before the first respondent and the same was registered in Crime No.262 of 2021 for the offence under Sections



109, 294(b), 427 and 506(2) IPC. Thereafter, on the instigation of the first petitioner, the petitioners 2 to 4 damaged the second respondent's land and threatened him.

3.Though a compromise entered between the petitioners and the defacto complainant, they failed to appear before this Court. It shows that the parties are not interested to settle the issue.

4.It is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** - ***Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors.***, wherein it is held as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

5. In view of the above discussion, this Court is not inclined to quash the First Information Report. Hence this Criminal Original Petition stands dismissed. However, the respondent police is directed to complete the investigation and file final report before the concerned Magistrate, within a period of eight weeks from the date of receipt of a copy of this Order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmk

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Inspector of Police,
Pudukkottai Police Station,
Thoothukudi District.



2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T. ARUL, Advocate (SR-22471[F] dated 29/04/2022)

+1 CC to M/s.G. PRABHU RAJADURAI, Advocate (SR-22451[F] dated
29/04/2022)

Crl.O.P(MD) .No.17753 of 2021
28.04.2022

RD(23.05.2022) 4P 5C