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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.04.2022

PRONOUNCED ON : 22.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.20719 of 2021

and

Crl.M.P (MD)Nos.11813 of 2021 & 2901 of 2022

1.A.Syed Ali Fatima @ Fathima

2.Ayisha ... Petitioners/Accused Nos.1 & 2

Vs.

1.The State represented by,
The Inspector of Police,
Theni Police Station,
Theni District.

(In Crime No.1460 of 2015).

... 1st Respondent/Complainant

2.M.Raja

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records of charge sheet in C.C.No.239 of 2020 on the file of the learned Judicial Magistrate, Theni and quash the same against the petitioners as illegal.

For Petitioners : Mr.Susi Kumar
for Mr.N.C.Ashok Kumar

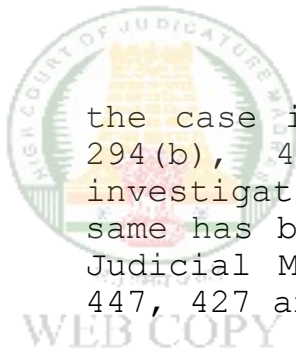
For R - 1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For R - 2 : Mr.M.A.M.Raja
(Party-in-person)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.239 of 2020 on the file of the learned Judicial Magistrate, Theni, as against the petitioners.

2.The case of the prosecution is that on 15.09.2014, at about 21.10 hours, while the second respondent was in his office, Accused Nos.1 and 2 trespassed into his office and abused him with filthy language and threatened him with dire consequences. Thereafter, Accused No.2 tried to attack with Arivalmani and damaged the glass doors. On receipt of the complaint, the first respondent registered



the case in Crime No.1460 of 2015 for the offences under Sections 294(b), 447, 427 and 506(ii) of I.P.C. After completion of investigation, the first respondent laid the charge sheet and the same has been taken cognizance in C.C.No.239 of 2020 by the learned Judicial Magistrate, Theni for the offences under Sections 294(b), 447, 427 and 506(ii) of I.P.C.

3.The learned counsel appearing for the petitioners would submit that the petitioners are arraigned as Accused Nos.1 and 2. On 18.09.2014, the husband of the first petitioner lodged complaint before the Inspector of Police, Allinagaram Police Station against the second respondent and the same was registered in Crime No.414 of 2014 for the offences under Sections 147, 341, 294(b), 323, 379(NP) and 506(ii) of I.P.C. After completion of investigation, filed a final report and the same has been taken cognizance in S.T.C.No.2460 of 2019 on the file of the learned Chief Judicial Magistrate, Theni and it is pending for trial. Consequent to the said complaint, the second respondent also filed another complaint before the Inspector of Police, Thenkarai Police Station and the same was registered in Crime No.373 of 2014 for the offences under Sections 294(b) and 506(ii) of I.P.C and it was referred as 'mistake of fact'. Hence, the second respondent filed a protest petition in Cr.M.P.No.6616 of 2015 and the same was also dismissed. While being so, the present impugned complaint has been lodged with false averments.

4.The learned counsel appearing for the petitioners would further submit that even according to the case of the prosecution, no offence is made out as against the petitioners, since they have not committed any offence as alleged by the prosecution. In fact, on the complaint lodged by the second respondent on 15.09.2014, he was issued with C.S.R.No.623 of 2014. After a period of one year, F.I.R has been registered on 15.10.2015. In fact, the first respondent, after concluded the investigation, closed the F.I.R as 'mistake of fact'. On the protest petition submitted by the second respondent, the learned Magistrate ordered for further investigation. On the basis of the direction by the learned Magistrate, the first respondent filed the final report.

5.The learned counsel appearing for the petitioners would further submit that the learned Magistrate, without stating any reasons for ordering further investigation, mechanically ordered further investigation under Section 173(8) of Cr.P.C. In support of his contention, he relied upon the Judgment of the Honourable Supreme Court of India in ***Luckose Zachariah alias Zak Nedumchira Luke and others Vs. Joseph Joseph and others [2022 SCC Online SC 241]***, in which, the Honourable Supreme Court of India held as follows:-



"16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhai Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. While the High Court has relied upon the decision in Vinay Tyagi (supra), it becomes necessary for this Court to set the matter beyond any controversy having due regard to the fact that the Sessions Judge in the present case had while remitting the proceedings back to the Magistrate relied on the judgment of the Single Judge of the Kerala High Court in Joseph (supra) which is contrary to the position set out in Vinay Tyagi. Hence, the JFCM - I Alappuzha shall reexamine both the reports in terms of the decisions of this Court in Vinay Tyagi vs Irshad Ali alias Deepak and Vinubhai Haribhai Malaviya vs State of Gujarat as noted above and in terms of the observations contained in the present judgment. The Magistrate shall take a considered decision expeditiously within a period of one month from the date of the present order."

6. Per contra, the second respondent, who appeared in person, would submit that there are totally three accused in Crime No.1460 of 2015, in which the petitioners are arraigned as Accused Nos.1 and 2 and the third accused is an Advocate. The petitioners never appeared before the trial Court and even failed to receive any copy. Under the influence of the third accused, they obtained xerox copy illegally from the Court and filed this petition to quash the entire proceedings in C.C.No.239 of 2020. In fact all the accused persons were not arrested even till today and they have not filed any anticipatory bail petition. Though the first respondent registered the case in Crime No.1460 of 2015, due to the influence of the third accused, the first respondent closed the F.I.R as 'mistake of fact' and filed a closure report without doing any proper investigation. Therefore, the second respondent filed protest petition and the learned Magistrate ordered for further investigation. Even after direction issued by the learned Magistrate, the first respondent did not take any steps to proceed with the further investigation. Therefore, the petitioner was constrained to approach this Court by filing a petition in Crl.O.P(MD)No.19971 of 2015 for direction directing the first respondent to comply the order passed by the learned Magistrate. While pending the direction petition, the first respondent started with further investigation and filed the final report. Therefore, there are specific allegations as against the



petitioners to attract the offence under Sections 294(b), 447, 427 and 506(ii) of I.P.C.

7. Heard the learned counsel appearing for the petitioners, the learned Government Advocate (Criminal Side) appearing for the first respondent and the second respondent, who appeared in person and perused the materials available on record.

8. On a perusal of the records revealed that there are totally three accused in Crime No.1460 of 2015, in which the petitioners are arraigned as Accused Nos.1 and 2. Admittedly, the third accused and the second respondent are Advocates. Due to dispute with regard to their profession, there were complaints against each other. The first respondent investigated the complaint and closed the same as 'mistake of fact'. However, on the protest petition, the learned Magistrate ordered for further investigation. Thereafter, the first respondent completed the investigation, after recording statements under Section 156(3) of Cr.P.C and filed a final report. On a perusal of the statements, there are specific allegations and materials as against the petitioners to attract the offences under Sections 294(b), 447, 427 and 506(ii) of I.P.C.

9. The only ground raised by the petitioners is that when the learned Magistrate ordered for further investigation, failed to pass any order on the protest petition either to accept or reject the same.

10. On a perusal of the order passed in the protest petition, the learned Magistrate, after perusing the entire case records and on the basis of the objections raised by the second respondent herein, had sent all the entire records to the first respondent for further investigation. Thereafter, directed the first respondent to file a report on or before 04.01.2019. After conclusion of further investigation, the first respondent filed positive final report and the same has been taken cognizance in C.C.No.239 of 2020 for the offences under Sections 294(b), 447, 427 and 506(ii) of I.P.C by the trial Court. In this regard, the Honourable Supreme Court of India held that it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) of Cr.P.C as well as the supplementary report which was submitted after further investigation in terms of Section 173(8) of Cr.P.C. The learned Magistrate shall take a considered decision in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence.

11. In the case on hand, after filing the supplementary final report under Section 173(8) of Cr.P.C., the learned Magistrate found that there is a *prima facie* case to charge the petitioners for the offences under Sections 294(b), 447, 427 and 506(ii) of I.P.C and after satisfying with the materials produced along with the final



summons to the petitioners. Therefore, the trial Court duly followed the procedure as contemplated under the Cr.P.C and issued summons to the petitioners. That apart, there are specific allegations and materials to attract the offences under Sections 294(b), 447, 427 and 506(ii) of I.P.C as against the petitioners.

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12.It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in **Crl.A.No.579 of 2019** dated **02.04.2019** in the case of **Devendra Prasad Singh Vs. State of Bihar & Anr.**, wherein the Honourable Supreme Court of India held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13.In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

13.Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in **Crl.A.No.1572 of 2019** dated 17.10.2019 in the case of **Central Bureau of Investigation Vs. Arvind Khanna**, wherein the Honourable Supreme Court of India held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details,



on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

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20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

14. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, wherein the Honourable Supreme Court of India held as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

15. In view of the above discussions, this Court is not inclined to quash the proceedings in C.C.No.239 of 2020 on the file of the learned Judicial Magistrate, Theni. The petitioners are at liberty



to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this order.

16. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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

+1 CC to M/s.N.C.ASHOK KUMAR, Advocate (SR-20842[F] dated 25/04/2022)

Crl.O.P (MD) No.20719 of 2021
22.04.2022