



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.12.2021

Pronounced on : 31.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

WEB COPY

CRL.O.P. (MD) .No.19501 of 2019

and

CRL.MP. (MD) Nos.11450 and 11452 of 2019

A.Kannan

: Petitioners/A6

Vs.

1.The State rep through
The Inspector of Police,
Town South Police Station,
Dindigul.

Crime No.130/2018.

: 1st Respondent/Complainant

2.P.S.Sarfudeen

: 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.498 of 2017 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same.

For Petitioner

: Mr.M.Sheik Abdullah

For Respondents

: Mr.M.Muthu Manikkam,
Government Advocate

(Criminal Side),for R1.

: Mr.G.Karupppasamy Pandian, for R2.

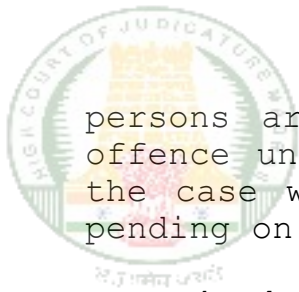
ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.498 of 2017 on the file of the learned Judicial Magistrate No.II, Dindigul and quash the same.

2.The petitioner is the sixth accused in C.C.No.244 of 2018 on the file of the Judicial Magistrate No.III, Dindigul. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.130 of 2018 against six persons including the petitioner for the alleged offence under Sections 448, 341, 294(b), 506(ii) IPC on the file of the first respondent.

3.The first respondent, after completion of investigation, has laid the final report under Section 173 of Cr.P.C against six

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persons arraying the petitioner as sixth accused for the alleged offence under Sections Sections 448, 341, 294(b), 506(ii) IPC and the case was taken on file in C.C.No.244 of 2018 and the same is pending on the file of the Judicial Magistrate No.III, Dindigul.

4.Admittedly, the second respondent/defacto complainant has lodged the complaint against his wife's brother/the first accused herein Mohammed Kalipulla, wife of the first accused Siraj Nisha and other three family members of the first accused Samsath Begam, Noorjahan and Vagith and family friend of the first accused, Kannan.

5.The case of the prosecution is that on 19.11.2017, at about 19.00 hours, all the accused had trespassed into the house of the defacto complainant, that all of them had abused the complainant in filthy language and threatened him to withdraw the case filed by him and caused criminal intimidation.

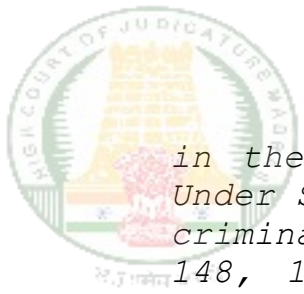
6.It is not in dispute that a civil case pending in O.S.No.334 of 2015 between the defacto complainant and the family of the first accused and consequently, there existed disputes between them.

7.As rightly pointed out by the learned counsel for the petitioner, the petitioner alone is a third party and all other accused are belonging to the same family.

8.The learned counsel for the petitioner would submit that since civil dispute was pending between the defacto complainant and the first accused family, the complainant has lodged the complaint implicating him falsely, that all the eye witnesses in their statements under Section 161(3) of Cr.P.C apart from admitting that there existed civil disputes between the parties and also indicating the involvement of the accused 1 to 5 in the alleged occurrence, that neither the defacto complainant nor any other eye witness had stated about the involvement of the present petitioner and that therefore, absolutely there is no material available to proceed against the present petitioner.

9.The learned Government Advocate (Criminal Side) would submit that the defacto complainant in his complaint has specifically alleged that the petitioner had also accompanied the other accused and also committed the offence, that the first respondent police after conducting investigation has laid the final report against the accused including the petitioner and that whether the petitioner had accompanied the other accused and committed the offence as alleged, is a matter for trial and that therefore, the question of quashing the case as against the petitioner does not arise at all.

10.At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Kaptan Singh Vs. State of U.P.**, reported in **2021 (3) Crimes (SC) 247.**



"9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers Under Section 482 Code of Criminal Procedure has quashed the criminal proceedings for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code. It is required to be noted that when the High Court in exercise of powers Under Section 482 Code of Criminal Procedure quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the Accused persons, has filed the charge-sheet before the Learned Magistrate for the offences Under Sections 147, 148, 149, 406, 329 and 386 of Indian Penal Code and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition Under Section 482 Code of Criminal Procedure was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation / inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of Dineshbhai Chandubhai Patel (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such



material as to how far and to what extent reliance can be placed on such material.

9.2. In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers Under Section 482 Code of Criminal Procedure to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction Under Section 482 Code of Criminal Procedure though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in Section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers Under Section 482 Code of Criminal Procedure. Similar view has been expressed by this Court in the case of Arvind Khanna (Supra), Managipet (Supra) and in the case of XYZ (Supra), referred to hereinabove.

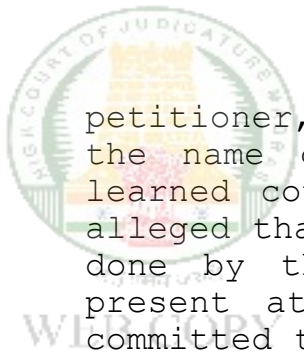
9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers Under Section 482 Code of Criminal Procedure."

11. In another judgment, the Hon'ble Apex Court in **Rajeev Kourav Vs. Baisahab and others reported in 2020 (3) SCC 317**, has reiterated the legal position that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 Cr.P.C for quashing criminal proceeding and that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding. Bearing the above legal position in mind, let us consider the case on hand.

12. As rightly pointed out by the learned counsel for the second respondent as well as the learned Government Advocate (Criminal Side), in the complaint lodged by the second respondent to the first respondent, it has been specifically alleged that the petitioner, who is the family friend of the first accused had also accompanied the accused to the house of the defacto complainant and all the accused had abused him and caused criminal intimidation.

13. Moreover, as rightly pointed out by the learned counsel for the second respondent, the defacto complainant in his statement under Section 161(3) Cr.P.C has reiterated the complaint version and specifically stated about the involvement of the petitioner in the alleged occurrence.

14. As rightly pointed out by the learned counsel for the



petitioner, the other eye witnesses have not specifically mentioned the name of the petitioner, but as rightly pointed out by the learned counsel for the second respondent, they have specifically alleged that all other accused had abused and caused threatening, as done by the first accused. Whether the petitioner was actually present at the occurrence place and whether the petitioner had committed the offences as alleged by the prosecution, cannot be gone into, with the help of the statements recorded under Section 161(3) Cr.P.C and that the same is a matter for trial.

15. As rightly contended by the learned Government Advocate (Criminal Side), the final report and the materials produced would disclose the ingredients of the offence alleged against the accused and that since *prima facie* case is made out, this Court has no jurisdiction to appreciate the materials placed by the prosecution and to enter into the merits of the case.

16. Considering the above, this Court has no hesitation to hold that the petitioner has not made out any case to quash the proceedings in C.C.No.498 of 2017 pending on the file of the learned Judicial Magistrate No.II, Dindigul. Consequently, this Court concludes that the Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

17. It is clarified that this Court has not expressed any opinion on the merits of the case and all the pleas raised by the petitioner are left open and it is for the trial Court to proceed further and decide the case in accordance with law, on its own merits.

19. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

das

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. Judicial Magistrate No.II,
Dindigul.

2.The Inspector of Police,
Town South Police Station,
Dindigul.

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

Copy to

The Additional Public prosecutor,
Madurai Bench of Madras High Court, Madurai

+1 CC to M/s.M.SHEIK ABDULLAH, Advocate (SR-3459[F] dated
01/02/2022)

CRL.O.P. (MD) .No.19501 of 2019
and

CRL.MP. (MD) Nos.11450 and 114520 of 2019
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SB (CO)
KB (23.02.2022) 6P 6C