



Crl.O.P.No.913 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 17.04.2023

Pronounced on : 24.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.913 of 2021

and

Crl.M.P.No.575 of 2021

1.Muthukumar
2.Manojkumar
3.Senthilkumar
4.Suresh
5.Moorthi

...Petitioners/A1 to A5

Vs.

1.State by Inspector of Police,
V-5, Thirumangalam Police Station
Anna Nagar District
(Crime No. 64 of 2020)

...1st Respondent/Complainant

2.S.Roja

...2nd Respondent/Defacto complainant



Crl.O.P.No.913 of 2021

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.64 of 2020 on the file of the 1st Respondent herein and quash the same.

For Petitioners : Mr.N.R.Elango
Senior Counsel for
M/s.Aruna Elango

For R1 : Mr.S.Balaji
Government Advocate (Crl.Side)

For R2 : No Appearance

ORDER

The petition is to quash the first information report registered in Crime No.64 of 2020 for the offence under Section 364-A of IPC, which was subsequently altered to offences under Sections 364-A, 147, 342, 294 (b), 323 and 506 (i) IPC.

2. It is alleged in the impugned FIR that on 21.02.2020, the second respondent's husband/Mr. K.Sudalaimuthu and one Mr. Suresh went along with their driver by the name Mr. Raghuram to meet the first petitioner/Mr. Muthukumar herein; that about 5:30 PM, the driver had informed the second respondent/defacto complainant that the first petitioner along with the other petitioners had illegally confined the second respondent in a place near SKY PARK Hotel at 15th Main Road



Anna Nagar, Chennai – 600 040; and that the first petitioner stated that he would send the defacto complainant's husband/Mr.K.Sudalaimuthu and said Mr.Suresh, only if they pay the money due to the first petitioner; and that hence, the second respondent had given a complaint before the respondent Police which was registered initially for the offence under Section 364-A of IPC.

3. Mr. N.R.Elango, the learned Senior Counsel for the petitioners, would submit that the impugned FIR is an abuse of the process of law; that the defacto complainant's husband had cheated the first petitioner's father by selling a Government Poramboke land by creating false documents; that in order to prevent any action by the petitioners for recovery of money and for a criminal prosecution, the defacto complainant has come up with this false and innovative complaint. In the impugned FIR, there is no allegation that the petitioners had demanded ransom so as to attract the offence under Section 364-A of IPC. Further, the other alleged offences also are not attracted. The offence under Section 294 (b) of IPC is not made out since, admittedly, no obscene words were uttered. The offence under Section 506 (i) IPC was also not made out since the alleged words do not amount to real threat. The offences of Sections 147, 342 and 323 IPC have been ingeniously



included with a malafide intention. The learned Senior Counsel also pointed out the order passed by the learned District Principal Sessions Judge, Chennai, while granting bail to the petitioners. The learned District Principal Sessions Judge, Chennai, had given certain findings which would belie the prosecution case. Hence, the learned Senior Counsel submitted that since the defacto complainant's husband has cheated the first petitioner of nearly Rs.3,00,00,000/- (Rupees Three Crores only), the impugned FIR has been lodged to prevent any action and arm-twist the petitioners.

4.Mr. S.Balaji, the learned Government Advocate (Crl.Side) appearing for the first respondent/complainant, would submit that the question of whether the FIR is true or motivated cannot be adjudicated in a quash petition. The respondent Police, during investigation, found that the petitioners have committed other offences and altered the penal provisions from Section 364 -A IPC to Sections 364-A, 147, 342, 294(b), 323 and 506 (i) IPC. He further submitted that the investigation could not be scuttled at the nascent stage and prayed for the dismissal of the quash petition.



5. Though notice was sent to the second respondent/defacto complainant, and a learned counsel had entered appearance, there is no appearance, for the second respondent.

6. This Court on perusal of the impugned final report, finds that the allegations appear to be highly artificial and opposed to common sense, as rightly observed by the learned Principal Sessions Judge, Chennai, while considering the bail application of the petitioners. The defacto complainant's husband had sold the property to the first petitioner's father by deceiving him and concealing the fact that the property is a Government Poramboke land. The impugned FIR is an afterthought and has been filed only to neutralise any action for recovery and criminal prosecution of the first petitioner against the defacto complainant's husband. Even if the allegations are accepted to be true, the impugned FIR does not state that the petitioners had demanded ransom in order to constitute the offence under Section 364-A of IPC. The learned Principal Sessions Judge, Chennai, had made certain observations in the bail order which is worth extracting for a better understanding of the facts :

“5....Apart from the complaint was lodged. As per



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CrI.O.P.No.913 of 2021

the printed FIR at 7.30 p.m. the case was registered and the victims were rescued at 9.00 p.m. The quick action taken by the police is doubtful. The observation mahazer is prepared with affair by the prosecution. It is alleged in the statement of victims as if 7 persons were attacked them by hands repeatedly. However, in the Case Diary, the Accident Register Copy of the accused are available. The victims are not even subject to medical examination. There is no explanation for such assault by the prosecution. It is not the case of the prosecution as if the accused called the relatives of the victims and demanded money. Under such circumstances, the argument advanced by the learned counsel for the petitioners as if the prosecution is tried to help the persons who had cheated the first accused Muthukumar's father by selling a Government Poramboke land and cheated Rs.3 Crores."

7. There is nothing in the impugned FIR and the materials collected during the investigation to attract the other offences as well. The victim who had been allegedly attacked by the petitioners was not subjected to any medical examination. The offences under Sections 294(b) and 506 (i) IPC are also not made out. In order to attract the offence under Section 294 (b) IPC, it has been repeatedly held by this Court and by the Hon'ble Apex Court that the words uttered must be



obscene. The offence of criminal intimidation is also not made out as there is no allegation that there was any real threat made to the victims.

This Court, in the facts and circumstances of the case, finds that the impugned FIR has been maliciously instituted. The defacto complainant's husband had cheated the first petitioner's father. In such circumstances, the impugned FIR, which is not only improbable but also malafide, is liable to be quashed as per the dictum of the Honourable Supreme Court in ***State of Haryana and Others vs. Bhajan Lal and others*** reported in ***1992 Supp (1) SCC 335*** which is extracted for better understanding.

“102...

(7)Where a Criminal Proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

The instant case is an exceptional case where non interference would result in the miscarriage of Justice. The Honourable Apex Court in ***Neeharika Infracture Pvt.Ltd., vs. State of Maharashtra*** reported in ***2021 SCC Online SC 315*** held as follows :



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Crl.O.P.No.913 of 2021

“57...(x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences.”

8. For the above reasons, this Court is inclined to quash the FIR. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

24.04.2023

dk

NCC: Yes/No

Index : Yes/No

Speaking/Non Speaking Order



CrI.O.P.No.913 of 2021

To

1.The Inspector of Police,
V-5, Thirumangalam Police Station
Anna Nagar District

2.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN. J,
dk

Pre Delivery Order in
Crl.O.P.No.913 of 2021
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