



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.12187 of 2021

Gaja @ G.Gajapathy

...

Petitioner

versus

1.The State represented by
Inspector of Police,
F2 Egmore Police Station,
Egmore, Chennai - 600 008.

2.M.Babu

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, praying to call for the records in FIR dated 31.03.2021 in Crime No.133 of 2021 under Sections 294(b), 323, 148, 506(2) and 448 of IPC on the file of the respondent police and quash the same.

For Petitioner : Mr.V.T.Narendiran

For Respondent No.1 : Mr.A.Gopinath
Government Advocate (Crl. Side)

For Respondent No.2 : No Appearance

ORDER



This Criminal Original Petition has been filed seeking for a direction to quash the F.I.R. in Crime No.133 of 2021 on the file of the first respondent police.

2. The petitioner is the first accused; the second respondent has given a complaint by alleging that the petitioner and others had trespassed into his shop and attacked him with iron rod and abused him in filthy language. It is further alleged that the accused have also damaged his properties and they have locked his shop by threatening him. In fact, the complaint has been registered subsequent to the direction given by the learned XIV Metropolitan Magistrate, Egmore on 07.10.2020 on the petition filed under Section 156(3) Cr.P.C.

3. The learned counsel for the petitioner submitted that subsequent to the order of the learned XIV Metropolitan Magistrate dated 07.10.2020, the first respondent has filed a petition in Crl.O.P.No.17964 of 2020 seeking police protection. While disposing the said petition on 29.01.2021, this Court has given a direction to the first respondent that he should not cause any threat or disturbance to the possession and enjoyment of



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the property of the second respondent and the second respondent has to work out his remedy in the pending appeal and await for the final orders in the Second Appeal. Only if the petitioner continues to cause threat, action should have been taken. But the first respondent police had registered the F.I.R. without making any preliminary enquiry or preliminary assessment and hence, the F.I.R. is liable to be quashed.

4. The learned Government Advocate (Crl. Side) for the first respondent submitted that the order of the learned XIV Metropolitan Magistrate dated 07.10.2020 is not set aside. There are sufficient ingredients seen in the complaint to make out a case and to continue the investigation. The pendency of the civil suit cannot be a bar for criminal proceedings.

5. No doubt, the order of the learned XIV Metropolitan Magistrate, Egmore, to register the F.I.R. on the complaint filed under Section 156(3) Cr.P.C. is in force. This Court while passing the order on 29.01.2021 in Crl.O.P.No.17964 of 2020 had made an observation that the second respondent can seek his remedy by conducting the Second Appeal. Whether the petitioner had caused threat subsequent to the direction of this



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Court on 29.01.2021 is a question of fact and that can be known only through investigation. While passing the order dated 29.01.2021, the earlier order of the learned XIV Metropolitan Magistrate dated 07.10.2020 was in force.

6. In fact, the second respondent has filed the petition just to seek police protection and has not challenged the order dated 07.10.2020 passed by the learned XIV Metropolitan Magistrate. The petitioner has not challenged the order of the learned XIV Metropolitan Magistrate dated 07.10.2020 in which a direction to register the F.I.R. has been given. The strength of the argument of the petitioner only rests on the incidental observation given by this Court in the order passed by the petition filed by the second respondent for seeking police protection.

7. Since the order of the learned XIV Metropolitan Magistrate has not been set aside and the petitioner had not chosen to challenge the same, he cannot stress only upon the observation made in a subsequent order of this Court. However, it is obligatory on the part of the first respondent to act only in accordance with law. Since the F.I.R. has been registered in accordance with the direction already passed by the learned XIV



Metropolitan Magistrate and the same is also still in force, I do not find any reason to quash the proceedings.

8. With the above observations, this Criminal Original Petition stands dismissed. However, the first respondent police is directed to complete the investigation in Crime No.133 of 2021 within a period of two weeks from the date of receipt of a copy of this order.

02.01.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

sri

- To
- 1.The State represented by
Inspector of Police,
F2 Egmore Police Station,
Egmore, Chennai - 600 008.
 - 2.The Public Prosecutor,
Madras High Court,
Chennai.

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