



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.08.2023

Coram:

The Hon'ble Mr.Justice V.SIVAGNANAM

**Crl.O.P.No.18496 of 2021
and Crl.M.P.No.10148 of 2021**

- 1.Mrs.S.Devi
- 2.Mrs.Lakshmi
- 3.Sankar
- 4.Shavariyaar

...Petitioners

Versus

- 1.State represented by
The Inspector of Police,
V-4, Rajamangalam Police Station,
Anna Nagar District,
Chennai – 600 049.
(Crime No.615/2019)

- 2.K.S.Sivakumar

...Respondents

This Criminal Original Petition is filed under Section 482 of Cr.P.C praying to call for the records in S.C.No.282 of 2021 pending on the file of VII Additional Sessions Court, Chennai in Crime No.615 of 2019 (on the file of respondent police) and quash the same.



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For Petitioners	:	Mr.R.Vivekananthan
For Respondent - 1	:	Mr.V.J.Priyadarsana Government Advocate (Crl.Side)
For Respondent – 2	:	No Appearance

ORDER

This criminal original petition has been filed by the petitioners seeking to quash the proceedings in S.C.No.282 of 2021 pending on the file of VII Additional Sessions Court, Chennai.

2. The learned counsel for the petitioners submitted that the petitioners 1 & 2 are sisters; 3rd petitioner is the husband of 1st petitioner and 4th petitioner is the husband of 2nd petitioner. On 31.12.2019, one Ravi and the 2nd respondent/de-facto complainant went to 2nd petitioner's house and the said Ravi insisted the petitioners 1 & 2 to have physical relationship with him, but, the petitioners 1 & 2 refused to do so and that, the Ravi attempted to abduct the 2nd petitioner's son Jacob. In order to safeguard the 2nd petitioner's son, the petitioners had attacked the Ravi, as a result of which, the Ravi had sustained injuries and died on the spot.



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2.1. As per Section 96 of I.P.C, the act of the petitioners is nothing but exercising their right of private defense. However, without considering the said aspect, the 1st respondent police had filed the final report before the learned Metropolitan Magistrate-XIII, Egmore stating that the petitioners have committed the offence punishable under Sections 302, 341 & 34 of I.P.C. The petitioners have not willfully assaulted the said Ravi. Therefore, the learned counsel prayed this Court to quash the proceedings in S.C.No.282 of 2021 on the file of VII Additional Sessions Court, Chennai.

2.2. In support of his submissions, the learned counsel placed reliance on the judgment passed by the Hon'ble Apex Court in the case of ***Darshan Singh Vs. State of Punjab & Anr.*** reported in ***(2010) 2 SCC 333.***

The relevant paragraphs of the said judgment are as follows:

“56. In order to find out whether the right of private defence is available or not, the injuries received by the accused, the imminence of threat to his safety, the injuries caused by the accused and the circumstances whether the accused had time to have recourse to public authorities are all relevant factors to be considered.

57.

58. The following principles emerge on scrutiny of the following judgments:

(i) Self-preservation is the basic human instinct and is duly



recognised by the criminal jurisprudence of all civilized countries. All free, democratic and civilized countries recognise the right of private defence within certain reasonable limits.

(ii) The right of private defence is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.

(iii) A mere reasonable apprehension is enough to put the right of self-defence into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defence. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defence is not exercised.

(iv) The right of private defence commences as soon as a reasonable apprehension arises and it is coterminous with the duration of such apprehension.

(v) It is unrealistic to expect a person under assault to modulate his defence step by step with any arithmetical exactitude.

(vi) In private defence the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.

(vii) It is well settled that even if the accused does not plead self-defence, it is open to consider such a plea if the same arises from the materials on record.

(viii) The accused need not prove the existence of the right of private defence beyond reasonable doubt.

(ix) The Penal Code confers the right of private defence only when that unlawful or wrongful act is an offence.

(x) A person who is in imminent and reasonable danger of losing his life or limb may in exercise of self-defence inflict any harm even extending to death on his assailant either when the assault is attempted or directly threatened.”

3. The learned Government Advocate (Crl.Side) appearing for the 1st respondent police submitted that the case in S.C.No.282 of 2021 pending



on the file of VII Additional Sessions Court, Chennai has been posted to 07.09.2023, for confirming the charges framed against the petitioners.

4. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the 1st respondent police.

5. From a perusal of the materials on record, it is seen that the petitioners are accused in S.C.No.282 of 2021 on the file of VII Additional Sessions Court, Chennai. Based on the complaint given by the 2nd respondent/de-facto complainant, the 1st respondent police had registered the FIR in Crime No.615 of 2019 against the petitioners and after the completion of investigation, the 1st respondent police had filed the final report before the learned Metropolitan Magistrate – XIII, Egmore which was taken on file in P.R.C.No.41 of 2021. Later, the case in P.R.C.No.41 of 2021 was transferred to VII Additional Sessions Court, Chennai, where, it was taken on file in S.C.No.282 of 2021. It is also seen that the 1st respondent police had examined 21 witnesses including the 2nd respondent/de-facto complainant and recorded their statement. The 2nd



petitioner's son Jacob was examined as L.W.9. During examination, L.W.9 has stated about the incident occurred on 31.12.2019 and also, he stated about the manner in which the petitioners had attacked the Ravi (deceased).

6. According to the petitioners, on the date of occurrence, one Ravi had made an attempt to abduct the 2nd petitioner's son Jacob and hence, they attacked the said Ravi only in order to save the 2nd petitioner's son Jacob, but, unfortunately, the said Ravi died in the attack. They pleaded that their act is nothing but exercising their right of self-defense.

7. As per the dictum laid down by the Hon'ble Supreme Court, if the accused has taken a specific plea of right of self-defense, it is not necessary that he should prove the existence of the right of private defense beyond reasonable doubt. It is enough for him to show that the preponderance of probabilities is in favour of his plea.

8. As far as this case is concerned, the petitioners/accused had not denied the incident. The only stand taken by the petitioners/accused is that



their case is covered by the right of private defense. Though the petitioners/accused have taken a plea of right of self-defense, they ought to prove before the trial Court that the preponderance of probabilities is in their favour. While exercising the powers under Section 482 of Cr.P.C, the High Courts cannot analyze the truthfulness of evidences and statement of witnesses. Hence, this Court is of the opinion that the trial Judge is the appropriate authority to analyze the truthfulness of evidences and statement of witnesses and decide the case on hand.

9. At this juncture, it is pertinent to point out that the Hon'ble Supreme Court has discussed in detail about the inherent powers of the High Courts under Section 482 Cr.P.C in the following cases:

(i) *R.P.Kapur Vs. The State of Punjab* reported in *AIR 1960 SC 866*

(ii) *State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.* reported in *AIR 1992 SC 604*

(iii) *M/s.Neeharika Infrastructure Pvt. Limited Vs. State of Maharashtra & Ors.* reported in *2021 SCC Online SC 315*



9.1. In the case of ***R.P.Kapur Vs. The State of Punjab*** reported in

WEB COPY ***AIR 1960 SC 866***, the Hon'ble Supreme Court has held as follows:

“6. It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the Court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the first information report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person



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do constitute offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained.”

9.2. Further, in the case of ***State of Haryana & Ors. Vs. Ch.Bhajan Lal & Ors.*** reported in ***AIR 1992 SC 604***, the Hon'ble Supreme Court issued seven guidelines to be followed by the High Courts in the exercise of its inherent power vested by Section 482 Cr.P.C to quash the FIR/complaint, which are as follows:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.



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(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*

(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.”*

9.3. Similarly, in the case of ***M/s.Neeharika Infrastructure Pvt.***

Limited Vs. State of Maharashtra & Ors. reported in ***2021 SCC Online SC***

315, the Hon'ble Apex Court has observed as follows:

“80., our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or “no coercive steps to be adopted”, during the pendency of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or “no



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coercive steps to be adopted” during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;



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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;*

xi) *Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;*

xii) *The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;*

xiii) *The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;*

xiv) *However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;*

xv) *When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;*



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xvi) *The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or “no coercive steps to be adopted” and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or “no coercive steps” either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.*

xvii) *Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.*

xviii) *Whenever an interim order is passed by the High Court of “no coercive steps to be adopted” within the aforesaid parameters, the High Court must clarify what does it mean by “no coercive steps to be adopted” as the term “no coercive steps to be adopted” can be said to be too vague and/or broad which can be misunderstood and/or misapplied.”*



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10. It is to be noted that the present case does not the parameters laid down by the Hon'ble Supreme Court in the decisions cited *supra*. Further, I do not find any merit in this case.

11. For the foregoing reasons, this criminal original petition is dismissed. However, liberty is granted to the petitioners/accused to raise all their defense before the trial Court. Consequently, connected miscellaneous petition is closed.

18.08.2023

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Index: Yes/No

Speaking Order (or) Non-Speaking Order

To

1.The VII Additional Sessions Judge,
Chennai.

2.The Inspector of Police,
V-4, Rajamangalam Police Station,
Anna Nagar District,
Chennai – 600 049.

3.The Public Prosecutor,
High Court, Madras.

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V.SIVAGNANAM, J.

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