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Crl.O.P.No.32870 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.32870 of 2019

and

Crl.M.P.Nos.18131 & 18133 of 2019

G. Parthasarathy

... Petitioner / Accused

-Vs-

1. The State Rep. by its

Inspector of Police (L & O)

P-6, Kodungaiyur Police Station,

Kodungaiyur,

Chennai – 600 118.

... 1st Respondent / Complainant

2.S. Chithra

... 2nd Respondent / De-facto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the Charge Sheet in C.C.No.45 of 2019 pending on the file of the Additional Mahila Metropolitan Magistrate, Egmore and to quash the same.

For Petitioner

: Mr. R.C. Paul Kanagaraj

For R1

: Mr. A. Damodaran,



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Additional Public Prosecutor

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For R2

: No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.45 of 2019 on the file of the Additional Mahila Metropolitan Magistrate Court, Egmore, Chennai, filed for the offence under Sections 354, 294(b), 506(i) and 509 IPC and Section 4 of TNPWH Act.

2.It is alleged in the final report that the defacto complainant and the petitioner are neighbours; that the petitioner had recorded the picture of the defacto complainant in his mobile phone; that on 24.03.2018 at about 10.00 p.m., when the defacto complainant and her relative were talking with each other, the petitioner had abused the defacto complainant in filthy language and outraged her modesty by pulling her thuppatta; that he had further threatened the defacto complainant that if she or her husband gave a complaint against the petitioner, he would take severe action and they would face dire consequence. Hence, the final report has been filed for the above said offences.



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3(a).Mr. R. C. Paul Kanagaraj, learned counsel for the petitioner would mainly base his submissions on the ground that the complaint given by the defacto complainant and the consequential final report is an abuse of process of law and is a malafide action. The defacto complainant's husband had prior enmity as against the petitioner, since the petitioner had given several complaints stating about the illegal activities of the defacto complainant's husband in using his terrace portion of the house for gambling and also for allowing the drainage water into the common road. The petitioner's wife had earlier given complaints against the defacto complainant's husband on 26.07.2017 and 05.09.2017. Thereafter, the petitioner's wife had filed C.M.P.No.3861 of 2017 before the learned Additional Mahila Metropolitan Magistrate, Egmore, for a direction to the respondent police to investigate her complaint and file a final report. Since, no action was taken on the said complaint, the petitioner's wife filed a complaint under Section 21 read with Section 44 of the Tamil Nadu District Police Act, 1859 praying for the action against the then Inspector of Police one Pugazhendi, who had not taken any action.



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3(b).The learned counsel therefore submitted that aggrieved by the action taken by the petitioner's wife, the said Inspector of Police had instigated the de-facto complainant to give a false complaint against the petitioner. He had also arrested the petitioner and sought for remand before the learned Metropolitan Magistrate. However, the learned Metropolitan Magistrate refused remand stating that the arrest was not in accordance with the dictum of the Hon'ble Supreme Court in *Arnesh Kumar Vs. State of Bihar*.

3(c).Thereafter, the petitioner had given several complaints against the defacto complainant and her husband. While so, the defacto complainant had also made a false complaint against the petitioner, stating that the petitioner had committed offences under POCSO Act against her daughters. The petitioner was arrested in the said complaint and even in that case, remand was refused by the learned Metropolitan Magistrate. Thereafter, the All Women Police Station filed a final report against the petitioner in Spl. S.C.No.198 of 2021. The petitioner filed a discharge petition before the Special Court and the Special Court after



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considering the materials available on record and the submissions of the petitioner held that the prosecution had *prima facie* failed to establish the case as even there was no grave suspicion against the petitioner accused and hence, discharged the petitioner.

3(d).The learned counsel submitted that therefore the petitioner had also made a complaint before the Human Rights Commission against the acts of the said Inspector of Police and the Human Rights Commission held that action of the said Inspector in registering the case against the petitioner was malafide and directed action against the said Inspector. The Human Rights Commissioner further held that the petitioner was entitled for compensation of Rs.3,00,000/-.

4.The learned Additional Public Prosecutor submitted that there are allegations in the impugned final report and the points raised by the learned counsel for the petitioner has to be adjudicated only before the Trial Court.



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5. Though notice was served on the 2nd respondent and the learned counsel had entered appearance, there is no representation for the 2nd respondent on 12.04.2023 and 25.04.2023. Even today when the matter was called under the caption 'for orders' there is no representation for the 2nd respondent.

6. This Court finds that, there is a substantial force in the submissions made by the learned counsel for the petitioner. The petitioner, who is a practicing advocate, had given a complaint against the defacto complainant's husband and it appears that the defacto's complainant husband was inimical towards the petitioner. The petitioner's wife had given a complaint against the defacto complainant's husband, for which no action was taken by the police. The petitioner's wife had filed a complaint against the said Inspector praying for action under Section 21 read with Section 44 of the Tamil Nadu District Police Act, 1859. It appears that, aggrieved by the said action against him, the Inspector of Police had registered the FIR after obtaining the complaint from the defacto complainant. The Human Rights Commission in the order dated 17.12.2021 had held as follows:



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“39. Considering the materials on record, this Commission is of the considered opinion that the respondents instigated the said defacto complainant Chithra and obtained complaint and registered criminal case against the complainant and immediately arrested him.”

7. That apart this Court finds that the defacto complainant is in the habit of giving false complaints against the petitioner. She had also filed a complaint under the POCSO Act, against the petitioner, in which her daughters were shown as victims. The Special Court found that there were no sufficient grounds for proceeding against the petitioner in the said case.

8. Considering the facts and circumstances of this case and the submissions made by the learned counsel for the petitioner and the learned Additional Public Prosecutor, this Court is of the view that the continuation of the prosecution would be clearly an abuse of process of Court. The Judgment of the Hon'ble Supreme Court in ***Vineet Kumar and others Vs. State of U.P*** and others reported in ***2017 (3) CTC 751***, squarely applies to the facts of the case. The relevant paragraph is extracted hereunder:

“39. Inherent power given to the High Court under



*Section 482, Cr.P.C. is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the Categories as illustratively enumerated by this Court in **State of Haryana V. Bhajan Lal**, 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding, which cannot be allowed to be converted into an instrument of operation or harassment. When there was material to indicate that a Criminal proceeding is manifestly attended with mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482, Cr.P.C. to quash the proceeding under Category 7 as enumerated in **State of Haryana V. Bhajan Lal**, 1992 Supp (1) SCC 335, which is to the following effect:*

“(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.”

*Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the Judgment of the **State of Haryana V. Bhajan Lal**, but did not advert to the relevant facts of the present case, materials on which Final Report was submitted by the IO. We, thus, are*



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fully satisfied that the present is a fit case, where High Court ought to have exercised its jurisdiction under Section 482, Cr.P.C. and quashed the Criminal proceedings.

9. Therefore, this Court is of the view, for all the above reasons that the impugned proceedings in C.C.No.45 of 2019 on the file of the Additional Mahila Metropolitan Magistrate Court, Egmore, are liable to be quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

05.06.2023

smv

Index : Yes/No

Speaking : Yes / No

Neutral Citation : Yes / No

To,

1. Inspector of Police (L & O)
P-6, Kodungaiyur Police Station,
Kodungaiyur,
Chennai – 600 118.
2. The Additional Mahila Metropolitan Magistrate Court,
Egmore, Chennai.
3. The Public Prosecutor,
High Court of Madras.

SUNDER MOHAN,J.



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