



CrI.O.P(MD).No.2721 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 20.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P(MD).No.2721 of 2021

and

CrI.M.P.(MD)No.1442 of 2021

- 1.Ayyanar
- 2.Ayyammal @ Kavitha
- 3.Esh Kannan @ Kannan

...Petitioners

Vs

- 1.The State Rep. by,
The Inspector of Police,
Nagamalai Pudukkottai Police Station,
Madurai District.
(Crime No.240 of 2016)
- 2.Dhanaletchmi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records pertaining to the impugned FIR in Crime No.240 of 2016 on the file of the first respondent police dated 22.04.2016 and quash the same as illegal.

For Petitioners	: Mr.R.Shankar Ganesh M/s.Dictum Law Firm
For Respondents 1 and 2	: Mr.M.Sakthi Kumar Government Advocate (CrI. Side)
For 2 nd Respondent	: Mr.R.Ganeshan

ORDER

This petition has been filed to quash the FIR in Crime No.240 of 2016



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dated 22.04.2016 on the file of the first respondent Police.

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2. According to the petitioner, based on the complaint given by the second respondent, the first respondent registered FIR in Crime No.240 of 2016 under Sections 294(b), 323, 324, 506(ii) of IPC r/w. Section 4 of Tamil nadu Prohibition of Harassment of Women Act.

3. The prosecution case is that on 24.02.2016, at about 09.00 a.m., the petitioner harassed the second respondent and attempted to attack the second respondent and her husband with bill hook (aruval) and attacked them with wooden log and abused them in a filthy language and threatened dire consequences. In fact the petitioners are sisters and brothers of the second respondent's husband. The father of the petitioners namely Muniyandi and his wife Muthurakku were blessed with five children namely 1.Esh Kannan @ Kannan, Ayyammal, Ganesan, Ayyanar and Panjawarnam. Among all these children, Esh Kannan @ Kannan, Ayyammal and Ayyanar are the petitioners herein and the Ganesan is the husband of the second respondent. There is a civil dispute between the parties. The said Muniyandi executed a sale deed bearing Doc No.2878/1997 dated 17.11.1997 on the file of the Sub Registrar office, Thiruparangundram in favour of the petitioner's mother namely Muthurakku and she is in peaceful possession and enjoyment of the aforesaid



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property and after the demise of the said Muniyandi on 08.03.2000.

Subsequently, the petitioners constructed house in the half portion of the above said property through Indra Gandhi Memorial Scheme in the year 2011 and in the remaining land constructed a house with tiled roof. After marriage, the petitioner's mother gave one house bearing Door No.4/179 behind the above said property to the said Ganesan and the second respondent.

4.In order to grab further share in the property belongs to the mother, the second respondent's husband developed controversies with the petitioners and the mother. The petitioners mother lodged various complaints before the respondent police and those complaints were compromised, since the second respondent's husband is the son of the petitioner's mother. On 22.04.2016, the second respondent and her husband came to the petitioner's house and attacked the first petitioner brutally with knife and also were trying strangulate him and caused severe injuries and based on the complaint given by the first petitioner, a FIR in Crime No.239 of 2016 on the file of the second respondent has been registered for the offences under Sections 294(b), 341, 323, 324 and 506(ii) of IPC. In order to compel the petitioners to given up the above said property and also with the intention to escape from the clutches of law, the second respondent lodged a false case as counter case in Crime No.240 of 2016 on the file of the first respondent which has been



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challenged. The petitioner's mother filed a civil suit in O.S.No.176 of 2016 on the file of the learned District Munsif, Thirumangalam and the same was decreed in their favour on 21.02.2019. Even after the civil Court decree, the second respondent and her husband are creating problems with the petitioners and their mother. The petitioners have not committed any offence as alleged by the prosecution and the first petitioner is an educated and completed his B.A., M.Ed and they never indulged in any unlawful activities. The first respondent is without conducting proper enquiry foisted a false case and it is abuse process of law. Hence, the impugned FIR is liable to be quashed.

5.No counter was filed on the side of the respondents.

6.The learned counsel appearing for the petitioners contended that on 22.04.2016, the second respondent and her husband assaulted the first petitioner with bill hook. FIR was registered in Crime No.240 of 2016 for the offences under Sections 294(b), 323, 324, 506(ii) of IPC r/w. Section 4 of Tamil nadu Prohibition of Harassment of Women Act. In order to escape from the aforesaid complaint, the present complaint has been lodged with false allegations. Already suit was filed in O.S.No.176 of 2016 on the file of the learned District Munsif, Thirumangalam and the same was decreed in favour of the petitioner's mother. Even after the decree, the second respondent and



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her husband created problems with the petitioners. Therefore, the pending FIR is abuse process of law and the same is liable to be quashed.

7.The learned Government Advocate appearing for the first respondent would contend that the second respondent gave a complaint before the first respondent. The first respondent registered a FIR in Crime No.240 of 2016. There are *prima facie* materials available as against the petitioners and these petitioners also gave a complaint against the second respondent and the same is at investigation stage. Since there is a case and case in counter, in both cases, investigation was completed and charge sheet was filed, at this stage, this petition is not maintainable. Thereby, this petition is liable to be dismissed.

8.This Court heard both sides and perused the materials available on records.

9.On perusal of the records, it is admitted fact that the petitioners and the second respondent are close relatives and there is a civil dispute pending between the parties and thereby, there was frequently quarrel between them. Two FIR were registered in Crime Nos.239 of 2016 and 240 of 2016 as against each parties. Thereafter, the first respondent investigated the case and



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filed final report in both the cases. Therefore, at this stage, this Court cannot quash the single FIR. Since the counter case is also pending.

10.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Anand Kumar Mohatta and another v. State and another** reported in **(2018) 4 MLJ (Crl.) 732 (SC)**, wherein the Hon'ble Supreme Court in para nos.17 and 18 held as follows:-

“17. There is nothing in the words of this Section which restricts the exercise of the power of the Court to prevent the abuse of process of court or miscarriage of justice only to the stage of the FIR. It is settled principle of law that the High court can exercise jurisdiction under Section 482 of Cr.P.C even when the discharge application is pending with the trial Court G.Sagar Suri and another v. State of U.P. And others AIR 2000 SCC 754 : (2000) 2 SCC 636 (Para 7) : LNIND 2000 SC 186, Umesh Kumar v State of Andhra Pradesh and Another AIR 2014 SC 1106 : (2013) 10 SCC 591 (Para 20) : LNIND 2013 SC 793. Indeed, it would be a travesty to hold that proceedings initiated against a person can be interfered with at the stage of FIR but not if it has advanced, and the allegations have materialized into a charge sheet. On the contrary it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any court.



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18. *The second submission of learned counsel for the Respondent No.2 is that the Appellant No.1 has fraudulently transferred the property which is the subject matter of the agreement dated 03.06.1993 to his wife and has thereby committed criminal breach of trust. This charge is wholly untenable and rather extraordinary since the alleged fraudulent transfer of property by the Appellant No.1 to his wife, assuming it to be illegal, by no stretch of imagination can constitute the offence of a criminal breach of trust, since the property was not entrusted by the Respondent No.2 to the Appellants. The property belonged to Appellant No.1 and there was therefore no question of Appellants having been entrusted with their own property, and that too by the complainant, who had merely entered into a development agreement in respect of the property.”*

11.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of ***Abhishek v. State of Madhya Pradesh*** in ***Criminal Appeal No.1457 of 2015***, wherein the Hon'ble Supreme Court in para no.16 held as follows:-

“16.Of more recent origin is the decision of this Court in Mahmood Ali and others vs. State of U.P. and others (Criminal Appeal No. 2341 of 2023, decided on 08.08.2023) on the legal principles applicable apropos Section 482 Cr.P.C. Therein, it was observed that when an accused comes before the High Court, invoking either the inherent power under Section 482 Cr.P.C. or the



extraordinary jurisdiction under Article 226 of the Constitution, to get the FIR or the criminal proceedings quashed, essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection, to try and read between the lines.”

12.The learned counsel appearing for the petitioner relied upon the judgment of the Hon'ble Supreme Court in the case of **Indian Oil Corporation v. NEPC India Ltd., and Other** reported in **(2006) 6 Supreme Court Cases 736**, wherein the Hon'ble Supreme Court in para no.15 held as follows:-

“15. Coming to the facts of this case, it is no doubt true that IOC has initiated several civil proceedings to safeguard its interests and recover the amounts due. It has filed C.S. No. 425/1997 in the Madras High Court and O.S. No.3327/1998 in the City Civil Court, Chennai seeking injunctive reliefs to



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restrain the NEPC India from removing its aircrafts so that it can exercise its right to possess the Aircrafts. It has also filed two more suits for recovery of the amounts due to it for the supplies made, that is CS No.998/1999 against NEPC India (for recovery of Rs.5,28,23,501/90) and CS No.11/2000 against Skyline (for recovery of Rs.13,12,76,421/25), in the Madras High Court. IOC has also initiated proceedings for winding up NEPC India and filed a petition seeking initiation of proceedings for contempt for alleged disobedience of the orders of temporary injunction. These acts show that civil remedies were and are available in law and IOC has taken recourse to such remedies. But it does not follow therefrom that criminal law remedy is barred or IOC is estopped from seeking such remedy.”

13.On careful reading of the aforesaid judgments, it is clear that the proceedings initiated against the person can be interfere with at the stage of FIR, but not if it has advanced and the allegations have materialized into a charge sheet. On the contrary, it could be said that the abuse of process caused by FIR stands aggravated if the FIR has taken the form of a charge sheet after investigation. The power is undoubtedly conferred to prevent abuse of process of power of any Court. In this case, as per final report, *prima facie* materials available to proceed with the case and the case is connected with another counter case. Thereby, the aforesaid case law submitted by the petitioners would not applicable to the present facts of the case. At this juncture, this



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Court would like to rely upon the decision of the Hon'ble Supreme Court in the case of *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others* reported in *2021 SCC Online SC 315*, wherein the Hon'ble Supreme Court has issued some important guidelines. As per guidelines, it is not appropriate to allow this application at this stage. Hence, this petition is liable to be dismissed.

14. Accordingly this Criminal Original Petition is dismissed and the petitioners are at liberty to challenge the final reports. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

- 1.The Judicial Magistrate, Sivagiri.
- 2.The Inspector of Police,
Nagamalai Pudukkottai Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

Mrn

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