



Crl.O.P(MD).No.3527 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.3527 of 2019 and
Crl.M.P(MD).Nos.2009 and 2010 of 2019

1.Kalaiselvan
2.V.Peraman

...Petitioners

Vs

State rep. by
1.The Inspector of Police,
Karamabakkudi Police Station,
Pudukkottai District.
(Crime No.16 of 2018)

2. Amsavalli

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the C.C.No.129 of 2018 on the file of the District Munsif Cum Judicial Magistrate, Alangudi, Pudukkottai District and quash the same.



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For Petitioners : Mr. N. Sankar Ganesh
For Respondent No.1 : Mr. M.Sakthi Kumar
Government Advocate (Crl. Side)
For Respondent No.2 : Mr. T. Eashwar

ORDER

This Criminal Original Petition has been filed to quash the C.C.No. 129 of 2018 pending on the file of the District Munsif Cum Judicial Magistrate, Alangudi, Pudukkottai District.

2. According to the petitioners, based on the complaint given by the second respondent a case has been registered in Crime No.16 of 2018 on the file of the 1st respondent police, for the offence punishable under sections 294(b), 509 IPC and Section 4 of TNPH Women Act, 2002.

3. The case of the prosecution is that the second respondent has preferred a complaint before the first respondent alleging that the petitioners 1 and 2 came to the defacto complainant's petty shop on 16.01.2018 and purchased the Cigarette and Biscuits but have not paid for the same. When the same was questioned by the defacto complainant, they have damaged the shop and also abused her in filthy language and pushed



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her to the ground, due to which, an FIR has been registered in Crime No. 16 of 2018 for the offences under Sections 294(b), 509 IPC and Section 4 of TNPH Women Act, 2002. After the investigation, the first respondent had filed a final report and the same was taken on file in C.C.No.129 of 2018, on the file of the Judicial Magistrate, Alangudi, Pudukottai District for the offence under Sections 294(b), 509 IPC and Section 4 of TNPH Women Act, 2002. Already, these petitioners have given a complaint and based on the complaint, a case has been registered in Crime No.18 of 2018, dated 16.01.2018 for the offence under Section 147, 294(b), 323, 363, 342 IPC r/w. 3(1)(r), 3(1)(s) and 3(2) V(a) of the SC and ST (PA) amendment Act, 2015 and in order to curtail petitioners from the prosecution of above said case the present false case has been foisted against them.

4. Already, another complaint registered in Crime No.17 of 2018 based on the complaint given by the son of the second respondent herein for the offence under Sections 147, 148, 294(b), 352, 379, 506(i) IPC and Section 3(1) of TNPPDL Act 1992. In the present case, the defacto complainant is none other than the mother of the informant in Crime No. 17 of 2018 and this complaint also repeated the same allegations of the



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earlier complaint and thereby, the Registration of this Second First Information Report and the charge sheet proceedings are abuse of process of law.

5. No counter was filed by the respondents.

6. The learned counsel appearing for the petitioners contended that the second respondent has given a false complaint as against the petitioners and that a case has been registered in Crime No.16 of 2018, on the file of the 1st respondent police, for the offence punishable under sections 294(b), 509 IPC and Section 4 of TNPH Women Act, 2002 and thereafter, without proper investigation, they have filed a final report in C.C.No.129 of 2018. Already, these petitioners have given a complaint against the defacto complainant and others and the same is pending in Crime No.18 of 2018 and in order to curtail the petitioners from prosecuting the said complaint, the present complaint has been lodged as against the petitioners and already the son of the defacto complainant has lodged another complaint and the same has been registered in Crime No.17 of 2018. This complaint in which an FIR has been registered for the same set of allegations and



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there cannot be two FIRs for the single occurrence. Therefore, this First Information Report is an abuse of process of law. But, without conducting proper investigation, the first respondent has filed a charge sheet and the same is liable to be quashed.

7. In support of his contention, the learned counsel appearing for the petitioner relied on the Judgment of the Hon'ble Supreme Court reported in **2010 (95) AIC 232** in the case of **(Babubhai Vs. State of Gujarat and others)**.

8. The learned counsel for the 2nd respondent contended that based on the complaint given by the defacto complainant, the second respondent registered FIR against these petitioners. The petitioners came to the petty shop of the defacto complainant and purchased some articles and thereafter, they refused to give the amount thereby, there was some wordy altercations and thereafter, the petitioners have damaged the petty shop and had stolen a sum of Rs.6,000/- and thereby, her son gave a complaint and on the basis of that complaint an FIR has been registered and again after some time, these petitioners came to the place of occurrence, then the



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defacto complainant was present and the petitioners have also assaulted the defacto complainant and abused her in filthy language and thereby, she gave a complaint as against these petitioners and thereby, FIR has been registered in Crime No.16 of 2018. Crime Nos.16 to 18 of 2018 are arising out of same day in the same place and the two occurrence happened in the same date on two different occasions. Therefore, the first respondent police after an elaborate investigation filed the final report. Since the final report has been filed as against the petitioners, they have to face the trial and thereby, this petition is liable to be dismissed.

9. The learned Government Advocate (Crl. Side) appearing for the first respondent would submit that based on the complaint given by the second respondent, first respondent police registered an FIR in Crime No. 16 of 2018 and another case in Crime No.17 of 2018 registered for the same offence. In the said Crime No.17 of 2018 investigation has already been completed and the charge sheet also filed, but not yet taken on file. Since in this case, prima facie materials are there as against the petitioners already final report filed and taken cognizance in C.C.No.129 of 2018, this petition is liable to be dismissed.



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10. This Court has heard the learned counsel appearing on either side and perused the records.

11. On a perusal of the FIR, it is seen that two different FIRs' have registered for the occurrences, one is given by the defacton complainant and the another one is by the son of the defacto complainant. The present FIR has been registered by the 1st respondent based on the complaint given by the second respondent. As per the prosecution case, this occurrence had happened on a different time and the previous occurrence is on a different time by the different accused. Further, investigation was completed in this case and final report also filed. As per the investigation, there are prima facie materials available as against the petitioners and thereby, charge sheet is pending before the trial Court. Since there are prima facie materials available as against the petitioners at this stage it is not proper to quash the proceedings and further already these petitioners have also lodged a complaint and the same is pending in Crime No.18 of 2018. Therefore, on a perusal of the records it shows that three FIRs have been registered as against the parties. It is well settled law that the veracity



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of statements recorded during investigation cannot be tested at this stage and this case requires elaborate trial. Therefore, at this stage, this Court cannot quash the charge sheet. Further, the learned counsel for the petitioners has relied the Judgment reported in **2010 (95) AIC 232** in the case of **(Babubhai Vs. State of Gujarat and others)**, wherein the Hon'ble Supreme Court held that FIR is a very important document and the test of sameness is to be applied to find out whether both FIRs' relate to same incident or they are in respect of same occurrence or they are in regard to incidents which are two or more parts of the same transaction. If answer is affirmative, second FIR is liable to be quashed. However, where version of second FIR is different and they are in respect of two different incidents / crimes, second FIR is permissible and investigation in both FIRs has to be conducted. In the present case two different occurrences were taken place on two different times and two separate FIRs have been registered.

12. In view of the said discussions and considering the facts and circumstances of the case, this Court is of the opinion that this petition has no merits and deserves to be dismissed. Hence, this Criminal original



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Petition is dismissed. Consequently, the connected Miscellaneous
Petitions are closed.

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

1.The Inspector of Police,
Karamabakkudi Police Station,
Pudukkottai District.

2. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai



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P. DHANABAL,J.

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