



Crl.O.P(MD).No.12966 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.12966 of 2019

and

Crl.M.P.(MD)Nos.7972 and 7973 of 2019

L.G.Sarath Inigo

...Petitioner

Vs

1.State through
The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli City
(In Crime No.331 of 2018)

2.Karthika

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in C.C.No.642 of 2019 on the file of the learned Judicial Magistrate No.I, Tirunelveli and quash the same.

For Petitioner	: Mr.Veera Associates, For Mr.S.Ramsundar Vijayraj
For 1 st Respondent	: Mr.M.Sakthi Kumar Government Advocate (Crl. Side)
For 2 nd Respondent	: Mr.M.Saravana Kannan

ORDER

This petition is filed to quash charge sheet passed in C.C.No.642 of 2019
on the file of the learned Judicial Magistrate No.I, Tirunelveli.



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2. According to the petitioner, the second respondent had lodged a false complaint against the petitioner before the first respondent and the first respondent registered a case in Crime No.331 of 2018 and thereafter, filed final report for the offence under Sections 294(b), 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and Section 67 of Information Technology Act and the same was taken on file as C.C.No.642 of 2019.

3. As per prosecution case, on 30.10.2018, while the second respondent was having telephonic conversation, the petitioner approached her and introduced himself as an advocate and told her that he knew the second respondent for 1½ years and the petitioner continued to speak to the second respondent through cell phone and even though the second respondent did not like the petitioner, the petitioner kept on talking to her. On 22.11.2018, the petitioner abused her in filthy language and on 08.12.2018 at about 06.30p.m., when the second respondent along with the family members near a park, the petitioner came there in his car and got down and abused in filthy language and when the father and brother-in-law of the second respondent came there, the petitioner left the place of occurrence and also criminally intimidated the second respondent. In fact no such offence has happened as alleged in the



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complaint and the final report. In fact an estranged love affair between the petitioner and the second respondent. The second respondent has been maliciously given a criminal color at the instigation of the second respondent's father, who is not practicing advocate. The second respondent suppressed the real fact that she had often visited the petitioner in his office and spent more time with the petitioner and his parents. The date of alleged occurrence is 08.12.2018. But the complaint was given on 11.12.2018. The allegations are vague and will not constitute any offence. But the first respondent without conducting the proper investigation filed final report. Hence the charge sheet is liable to be quashed.

4.No counter was filed by the respondents.

5.The learned counsel appearing for the petitioner has argued that the second respondent gave a complaint against the petitioner before the first respondent. The first respondent registered a case in Crime No.331 of 2018 and thereafter, without conducting proper investigation, the first respondent filed final report and the same is taken on file as C.C.No.642 of 2019. In fact, the petitioner and the second respondent loved each other and due to the instigation of father of the second respondent, this false complaint has been lodged by the defacto complainant. Even according to the allegations of the



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complaint, no offence is made out and the allegations as against the petitioner are vague allegations and therefore, the registration of FIR itself is abuse of process of law and further the first respondent without conducting proper investigation mechanically filed final report. Hence, the charge sheet is liable to be set aside.

6.The learned counsel appearing for the third respondent and the learned Government Advocate have contended that the petitioner abused the obscene words and threatened the defacto complainant and thereby, she gave a complaint before the first respondent and FIR in Crime No.331 of 2018 registered and thereafter, the first respondent investigated the case and filed final report. As per investigation and final report, *prima facie* materials available to proceed with the case and thereby, the learned Magistrate had taken the case on file in C.C.No.642 of 2019 and the case is pending for further adjudication. At this stage there is no valid ground to quash the C.C. Proceedings. The grounds raised by the petitioner are defence and the same can be raised before the trial Court and this is matter of trial and at this stage, this petition is not maintainable and the petition is liable to be dismissed.

7.Heard both sides and perused the materials available on records.



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8. According to the petitioner, the second respondent at the instigation of her father gave a complaint before the first respondent and the first respondent police also registered FIR and without conducting proper investigation, filed final report. According to the second respondent, the petitioner has tortured the second respondent and abused obscene words and criminally intimidated over phone and in person, the petitioner continuously tortured the defacto complainant and thereby, she gave a complaint. The grounds raised by the petitioner is that the Investigating Officer has not done a fair investigation and the second respondent maliciously gave criminal complaint and the allegations made in the FIR are vague allegations.

9. This Court has perused the entire records and as per final report, there are *prima facie* materials available to proceed the case as against the petitioner and after elaborate investigation only, the police have filed final report. At this stage, this Court cannot test the veracity of the statement of witnesses and the documents collected during investigation. Further it is for the learned Magistrate to decide as to whether any offences are made out as against the petitioner at the time of framing charges. It is admitted fact that so far charges have not been framed by the learned Magistrate. Therefore, if no *prima facie* materials available to constitute particular offence, the petitioner can very well approach the Magistrate Court by filing discharge petition. There are no



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sufficient grounds to quash the C.C. Proceedings and thereby, this Court is of the opinion that this petition has no merits and liable to be dismissed.

10.The learned counsel appearing for the petitioner has argued that the offence under Section 67 of Information Technology Act would not attract and no averments in the FIR to constitute the offence under Section 67 of Information Technology Act. To support his contention, he relied in judgment in *Sharat Babu Digumarti v. Government (NCT of Delhi)* reported in (2017) 2 Supreme Court Cases 18, wherein the Hon'ble Supreme Court dealt with the overriding effect of Information Technology Act and once the Court holds that no materials to invoke Section 67 of Information Technology Act, there cannot proceed to case under Section 292 of IPC. However, in the case on hand, no such question arise. Hence, the said judgment will not applicable to the present facts of the case.

11.Since the case is at the stage of framing the charges, it is for the Magistrate to decide what kind of offences are made out at stage. This Court cannot quash the charge sheet filed by the first respondent.



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12.In the result, this Criminal Original Petition is dismissed.

Consequently, connected miscellaneous petition are closed.

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NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate No.I, Tirunelveli.

2.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli City.

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



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P. DHANABAL,J.

Mrn

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