



CRL.OP.(MD)No.17061 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.11.2022

DELIVERED ON : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.OP.(MD)No.17061 of 2022

and

CRL.MP.(MD).No.11464 of 2022

1. Chithravani

2. Ramesh

: Petitioners/Accused 1 &2

Vs.

Eswari

: Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the private Complaint in C.C.No.120 of 2022 on the file of the learned Judicial Magistrate – III, Nagercoil.

For Petitioners

: Mr.T.Selvakumaran

For Respondent

: Mr.S.Ram Sundar Vijayaraj

ORDER

This Criminal Original Petition has been filed to quash the private Complaint in C.C.No.120 of 2022 on the file of the learned Judicial Magistrate – III, Nagercoil.

2. The brief facts, which are relevant to decide the case on hand, are



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as follows:

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2.1.The first Petitioner is the first Accused. The second Petitioner is the second Accused in the private complaint in C.C.No.120 of 2022 on the file of the learned Judicial Magistrate No.III, Nagercoil. The first Petitioner is the sister. The second Petitioner is the brother. The first Petitioner is the daughter-in-law of the Respondent. There had been matrimonial dispute between the son of the Respondent and the first Petitioner herein. The son of the Respondent had filed H.M.O.P.No.109 of 2018 on the file of the Family Court, Kanyakumari at Nagercoil. On 06.06.2019 the Petitioners 1 and 2 went to the house of the *De-facto Complainant*. In the house of the *De-facto Complainant*, there was exchange of words between the *De-facto Complainant* and the Petitioners herein. As per the complaint by the Respondent, the Petitioners are alleged to have attacked her in front of her house. Hearing her cry for help, the neighbours rushed to her house to rescue her. At that time, the Petitioners herein left the place threatening her of dire consequences. The Respondent had lodged a complaint with the Suchindram Police and based on which, FIR in Crime No.299 of 2019 was registered by the Suchindram Police. On investigation, the Sub Inspector of Police, Suchindram Police Station had found out that the Petitioners herein had not attacked the Respondent. Therefore, they had closed the case as



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Mistake of Fact and referred the case as Referred Charge Sheet before the Court of the learned Judicial Magistrate No.III, Nagercoil. Subsequently, the Respondent herein had preferred a complaint before the learned Judicial Magistrate No.III, after two years from the date of occurrence. The Respondent had not filed protest petition for the Referred Charge Sheet filed by the Sub Inspector of Police, Suchindram Police Station closing the FIR as Mistake of Fact. Instead, she had preferred private complaint with false allegations. Therefore, the Petitioners herein had approached this Court seeking to quash the private complaint pending on the file of the learned Judicial Magistrate No.III, Nagercoil in C.C.No.120 of 2022.

3. The learned Counsel for the Petitioners submitted that the Complaint was preferred by the Respondent before the Inspector of Police, Suchindram Police Station. After completion of the investigation, negative final report has been filed before the learned Judicial Magistrate – III, Nagercoil and notice was also issued to the Respondent/*De-facto Complainant*. Instead of filing protest Petition, she had filed the private Complaint belatedly after 2 ½ years before the learned Judicial Magistrate – III, Nagercoil and the same was taken on file in C.C.No.120 of 2022 for the offences punishable under Sections 294(b) and 323 of IPC.



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4. The learned Counsel for the Petitioners submitted that the jurisdictional Police had conducted enquiry and during the course of investigation, they found that the private Complaint before the learned Judicial Magistrate – III, Nagercoil in C.C.No.120 of 2022 was filed with false allegation and therefore, the investigation was dropped. Instead of filing protest Petition for the Referred Charge Sheet before the Judicial Magistrate, she had filed the private Complaint with false allegation. The private Complaint was filed only with an intention to harass the Petitioners herein. Hence, this Petition has been filed to quash the private Complaint in C.C.No.120 of 2022 on the file of the learned Judicial Magistrate – III, Nagercoil.

5. On perusal of the Complaint filed by the Respondent in this Petition, it is found that the Petitioners herein are alleged to have attacked the Respondent. On perusal of the copy of the Referred Charge Sheet filed by the Suchindram Police in Crime No.299 of 2019 filed by the Sub Inspector of Police, Suchindram, it is found that the occurrence alleged in the FIR in Crime No.299 of 2019 had taken place on 06.06.2019 by around 07.00 p.m. in front of the house of the *De-fact Complainant*/Respondent herein. Further on perusal of the report of the Sub Inspector of Police,



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Suchindram Police Station, it is found that the Petitioners herein also had given a complaint against the Respondent herein and the Respondent had given a complaint against the Petitioners. Therefore, it is a case and counter. When there is case and counter, the Investigation Officer had closed the FIR in Crime No.299 of 2019 as Mistake of Fact and proceeded with the investigation of the complaint preferred by the Petitioners herein.

6. When it is a case and counter, the conduct of the Police in dropping one complaint or one FIR as Mistake of Fact and proceedings with other complaint or other FIR and taking the complaint to the laying of the final report against the other party is not found acceptable. The Investigation Officer is duty bound to lay the final report in both the FIRs fairly before the learned jurisdictional Magistrate.

7. In this case, notice was ordered by this Court on 23.09.2022 to the Respondent/*De-facto Complainant* and the case was adjourned to 20.10.2022. On 20.10.2022 when the case came up for hearing, the learned Counsel for the Petitioners sought extension of the interim stay but had not taken notice even though this Court had directed the learned Counsel for the Petitioners to take private notice also. Therefore, on 20.10.2022 the



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order of interim stay was vacated and the case was adjourned to 11.11.2022.

On 11.11.2022 the Respondent was not served with notice. Therefore, this Court had posted the case for perusal and reserved for orders.

8.As per the reported ruling of the Hon'ble Supreme Court in **1992 Supp (1) SCC 335:1992 SCC (cri) 426** in the case of **State of Haryana Vs. Bhajanlal**, the extraordinary powers of the High Courts under Section 482 Cr.P.C. shall not be exercised leniently and it has to be exercised sparingly. Also in the very same ruling, certain guidelines had been issued to the High Courts before exercising the extraordinary powers of the High Courts under Section 482 of Cr.P.C. One such guidelines is that before proceeding with the quash of either FIR/Final Report/Charge Sheet or Private Complaint, the Complainant party had to be heard. Here in this case, inspite of the fact that the Petitioners were granted time to take notice on the Respondent, the learned Counsel for the Petitioners was shy of taking notice even though private notice also was ordered originally on 23.09.2022. Interim stay was granted but the stay was not extended after 20.10.2022. Therefore, without hearing the learned Counsel for the Respondent, this Court cannot quash the complaint filed by the Respondent as it will result in miscarriage of justice. The Complainant had preferred the private complaint without filing



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protest petition to the Referred Charge Sheet filed by the Sub Inspector of Police in FIR in Crime No.299 of 2019 is the contention of the learned Counsel for the Petitioners seeking to quash the complaint preferred by the Respondent in C.C.No.120 of 2022 before the Court of the learned Judicial Magistrate No.III, Kanyakumari at Nagercoil. Whether the complaint preferred by the Respondent was belatedly after 2 ½ years after the date of alleged occurrence or the Respondent as De-facto Complainant had filed protest petition after receiving the notice in the negative final report, Referred Charge Sheet filed by the Sub Inspector of Police, Suchindram Police Station in FIR in Crime No.299 of 2019, this Court is unable to get details as the Respondent was not served with notice. Therefore, without hearing the learned Counsel for the Respondent, this Court cannot quash the complaint in C.C.No.120 of 2022. Further, only after hearing the learned Counsel for the Respondent, this Court can get a clear picture whether the Respondent as De-facto Complainant filed private complaint or whether the protest petition filed by her after conducting due enquiry was taken on file by the learned Judicial Magistrate as C.C.No.120 of 2022 can be considered only after hearing the learned Counsel for the Respondent. Here the chance does not arise as the learned Counsel for the Petitioners had not taken notice even though Private Notice was ordered by this Court



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on 23.09.2022 and even after extension of time. Therefore, the case was reserved for orders.

9. On perusal of the daily status of the learned Judicial Magistrate No.III, it is found that the Private Complaint against which the Petitioners had filed this Petition to quash had proceeded to the level of questioning under Section 313 Cr.P.C. Therefore, evidence for the Complainant side had been closed and it has reached the stage of questioning under Section 313 of Cr.P.C. wherein the Accused in the charge sheet was questioned regarding the incriminating circumstances and evidence available before the trial against the Accused. When the case had reached the stage of questioning under Section 313 Cr.P.C., as per the reported ruling of the Hon'ble Supreme Court in **1992 Supp (1) SCC 335:1992 SCC (cri) 426** in the case of **State of Haryana Vs. Bhajanlal**, it is not a fit case for quashing the proceedings.

10. The learned Judicial Magistrate, Nagercoil is directed to proceed with C.C.No.120 of 2022 along with the connected case and dispose of the same as expeditiously as possible. If the Petitioners herein do not appear before the learned Judicial Magistrate, the learned Judicial Magistrate shall



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issue Warrant and if the Accused are secured on Warrant, the Accused may be remanded to the Prison till the C.C.No.120 of 2022 is disposed of.

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

Consequently, connected Miscellaneous Petition is closed.

13.06.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-speaking Order
dh

To

1. The Judicial Magistrate – III,
Nagercoil.
2. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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