



Crl.O.P.(MD).No.19890 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.09.2023

CORAM

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD).No.19890 of 2021

and

Crl.M.P.(MD).Nos.11192 and 11194 of 2021

1.S.Jeyalakshmi

2.S.Karthikeyan

3.S.Sanjai

... Petitioners/Accused

Vs.

1.The Inspector of Police,
Thillai Nagar Police Station,
Tiruchirappalli.
(Crime No.258/2021)

...1st Respondent/Complainant

2.S.Swaminathan

...2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of Cr.P.C, to quash the charge sheet filed in S.T.C.No.2871/2021 on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli.

For Petitioner

: Mr.K.Mani

For R-1

: Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor

For R-2

: Mr.R.Gandhi,
Senior Counsel
for Mr.J.Karthikeyan



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ORDER

This order has to be read in continuation and conjunction to the order passed by this Court dated 14.09.2023, which reads as follows:

“The petitioners, who are the accused in S.T.C.No.2871 of 2021 for the offences under Sections 294(b), 323 and 506(1) IPC, have filed this quash petition.

2. The gist of the complaint is that the petitioners and the second respondent/defacto complainant are residing in the same family property. The petitioners are residing in the ground floor and the second respondent is residing in the first floor. On 09.04.2021 at about 11.30 PM, there was disconnection of power, hence, the petitioners had come out to verify the same. At that time, they saw the defacto complainant handling the EB board, which was questioned and there was a wordy quarrel between them and the second and third petitioners are said to have assaulted the defacto complainant. Unable to bear with the pain, he immediately called his brother, who had come there and thereafter, they have also called the Police, who had also reached the scene. The second respondent got admitted in the Government Hospital because of the assault by the respondents 2 and 3. A complaint was lodged and a case in Crime No.258/2021 was registered for the offences under Sections 294(b), 323 and 506(1) IPC on 10.04.2021. Charge sheet has been made ready on 10.07.2021 listing witnesses, L.W.1 to L.W.10 and documents.



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3. The contention of the petitioners is that there is a dispute with regard to inheritance and enjoyment of family property. The mother of the first petitioner had earlier settled the property in favour of the first petitioner, which was later objected by the second respondent, who had taken the first petitioner's mother and cancelled the settlement deed, which was questioned by the first petitioner and a civil suit in O.S.No.378 of 2017 has been filed. For this motive, a false case has been projected against the petitioners. The learned counsel for the petitioners submitted that the second respondent, with the support of the Police, had initiated proceedings under Section 145 CrPC and this Court, in W.P.(MD).No.1063 of 2021 by order dated 11.11.2021, had quashed the initiation of the proceedings. He further submitted that a civil suit had been filed by the mother of the first petitioner along with the second respondent in O.S.No. 1413 of 2017 and the first petitioner and her sister filed a suit in O.S.No.151 of 2020 with regard to partition of other family properties. As regards O.S.No.378 of 2017 filed by the first petitioner seeking for declaration of cancellation deed dated 23.09.2010 as null and void, the Civil Court by its judgment dated 29.04.2023 had rendered a judgment in favour of the first petitioner. In this background, the above case would clearly prove that it is only an after thought, motivated complaint made against the petitioners for the civil suits filed by the second respondent. The learned counsel further submitted that in this



case, the Doctor, who had examined the second respondent on 10.04.2021, had clearly stated that he had found no external injuries and the second respondent had informed the Doctor that he was suffering with pain and nothing more. He further submitted that the second respondent had left the hospital against the medical advice, which would further versify that the second respondent attempted to create medical records against the petitioners. He further submitted that the offences under Section 294(b) and 506(i) IPC are only usage of abusive words and threats. This Court had held in various cases that mere threat would not suffice unless it has been followed by an action. With these submissions, the learned counsel prayed for quashing of the charge sheet.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that based on the complaint given by the second respondent, FIR has been registered and the respondent Police visited the scene of occurrence, collected the documents, prepared mahazars, examined the witnesses and recorded their statements. After collecting the documents, charge sheet has been filed against the petitioners even as early as on 10.07.2021 itself and thereafter, the petitioners had approached this Court immediately and for this reason, the trial could not be progressed. He further submitted that the points raised by the petitioners can be decided by the Trial Court during trial.



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5. *The learned Senior Counsel appearing for the second respondent submitted that this case is not as simple as projected by the learned counsel for the petitioners. It is not in dispute that the petitioners and the second respondent are residing in the same address. The petitioners are causing threat and regularly using abusive words, whenever the second respondent enters his house, not only against the second respondent but also against his family members. On the fateful day, since there was a disconnection of power, to find out the reason for disconnection, the second respondent had inspected the EB board and taking this as an excuse, the petitioners had assaulted the second respondent and beat him black and blue. The second respondent called the police immediately and they had visited the scene of occurrence and advised the second respondent to lodge a complaint to the jurisdictional police and further unable to bear the pain, the second respondent had called his brother for help and with his aid, the second respondent was admitted in the Government Hospital and the second respondent had complained about the pain all over his body due to the assault of the petitioners 2 and 3. The learned Senior Counsel further submitted that the petitioners, though projected the case as a civil dispute which resulted in suits, earlier, for the same incident, the first petitioner attempted to give a counter complaint as though she was not at fault, which the police had enquired and only C.S.R was assigned and further no action was taken. The petitioners have also not taken any action and left the case as it is. He would further submit that the*



first petitioner had lodged a complaint against her own brothers including the second respondent alleging forgery of an unregistered Will. There are several civil cases pending between the petitioners and the second respondent and his brother. The learned Senior Counsel further submitted that all the cases have been initiated by the first petitioner claiming right over the property. The second respondent and his brother had also filed civil suits. Be that as it may. The learned Senior Counsel for the second respondent submitted that if the first petitioner is willing to withdraw the criminal complaint earlier filed by her against the second respondent and his brother, the second respondent has got no objection in quashing of the charge sheet, otherwise on merits, this case is not sustainable and it ought to be decided only during trial.

6. At this stage, the learned counsel for the petitioners seeks for a short accommodation to get instructions from his client and report back to this Court.

7. Post the matter for orders on 15.09.2023.”

2. Today, the learned counsel for the petitioners submitted that there is no possibility of withdrawing the criminal complaint filed by the first petitioner against the defacto complainant and another brother and further argued on merits of this case. The learned counsel for the petitioners relied upon the following decisions of this Court:



i) ***Crl.O.P.No.20228 of 2019 dated 04.09.2020 (G.Selvamoorthy and others Vs. The State and another):***

“6. There are totally four accused persons in which the petitioners in Crl.O.P.No.20228 of 2019 have been arrayed as A1 to A3. Since the petitioner in Crl.O.P.No.2795 of 2020 was minor at the time of occurrence, separate proceeding has been initiated and he is the sole accused in J.C.No.29 of 2019. Admittedly, all the petitioners and the second respondent are close relatives and there is a dispute between them in respect of partition in the property. Already the first petitioner filed suit in O.S.No.130 of 2012 as against the second respondent on the file of the Sub Court, Cheyyar and subsequently, the said suit was withdrawn. Again the first petitioner filed a suit in O.S.No.128 of 2013 on the file of the Sub Court, Cheyyar, challenging the Will executed by the second respondent. In fact on the complaint lodged by the first petitioner a case has been registered in Crime No.373 of 2013 as against the second respondent and other family members.”

(ii) ***Crl.O.P.No.4451 of 2020 dated 28.06.2022 (P.Nakkeeran Vs. State and another):***

“12. Therefore, no specific averments and allegations are made to attract any of the offences as alleged by the prosecution. Therefore, the entire proceedings is nothing but a clear abuse of process of law and it cannot be sustained as against the petitioners. The proceedings is nothing but only to wreak



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vengeance as against the petitioners, for the reason that the petitioners initiated the proceedings as against the encroachers by the temple authorities in the Government Poramboke land.”

(iii) Crl.O.P.(MD).No.1748 of 2013 dated 02.07.2015 (G.Paramasivam and another Vs. The Deputy Commissioner of Police and others):

“9. Coming to the alleged offence under Section 506(ii) I.P.C., is concerned, as rightly submitted by the learned Senior Counsel, a mere threat p e r s e would not attract the said provision. The allegation is that the petitioners went to the house of the fourth respondent and threatened orally by showing their hands. A mere outburst would not attract Section 506(ii)IPC.”

3. On the contrary, the learned Senior Counsel for the second respondent relied upon the following decisions of the Hon'ble Supreme Court:

i) Central Bureau of Investigation Vs.Aryan Singh reported in 2023 LiveLaw (SC) 292:

"4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while



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exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

4.2 One another reason pointed by the High Court is that the initiation of the criminal proceedings / proceedings is malicious. At this stage, it is required to be noted that the investigation was handed over to the CBI pursuant to the directions issued by the High Court. That thereafter, on conclusion of the investigation, the accused persons have been chargesheeted. Therefore, the High Court has erred in observing at this stage that the initiation of the criminal proceedings / proceedings is malicious. Whether the criminal proceedings was/were malicious or not, is not required to be considered at this stage. The same is required to be considered at the conclusion of the trial. In any case, at this stage, what is required



to be considered is a prima facie case and the material collected during the course of the investigation, which warranted the accused to be tried.

5. In view of the above and for the reasons stated above, when the High Court has exceeded in its jurisdiction in quashing the entire criminal proceedings and applying the law laid down by this Court in catena of decisions on exercise of the powers at the stage of discharge and/or quashing the criminal proceedings, the impugned common judgment and order passed by the High Court quashing the criminal proceedings against the accused is unsustainable and the same deserves to be quashed and set aside."

ii) *Mohd.Allauddin Khan Vs. State of Bihar and others reported in (2019) 6 SCC 107:*

"11.The High Court failed to see that mere pendency of a civil suit is not an answer to the question as to whether a case under Sections 323, 379 read with Section 34 IPC is made out against respondent Nos. 2 and 3 or not.

12. The High Court should have seen that when a specific grievance of the appellant in his complaint was that respondents 2 and 3 have committed the offences punishable under Sections 323, 379 read with Section 34 IPC, then the question to be examined is as to whether there are allegations of commission of these two offences in the complaint or not. In other words, in



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order to see whether any prima facie case against the accused for taking its cognizance is made out or not, the Court is only required to see the allegations made in the complaint. In the absence of any finding recorded by the High Court on this material question, the impugned order is legally unsustainable.

...14. In our view, the High Court had no jurisdiction to appreciate the evidence of the proceedings under Section 482 of the Code Of Criminal Procedure, 1973 (for short “Cr.P.C.”) because whether there are contradictions or/and inconsistencies in the statements of the witnesses is essentially an issue relating to appreciation of evidence and the same can be gone into by the Judicial Magistrate during trial when the entire evidence is adduced by the parties. That stage is yet to come in this case.”

The learned Senior Counsel vehemently opposed the contention of the petitioners and submitted that the Hon'ble Apex Court had time and again reiterated that once a charge sheet is filed, it is for the accused to appear before the Court, participate in the trial and put forth his defence. At the stage of 482 CrPC proceedings, a mini trial cannot be conducted. At this stage, it has to be seen that whether there is a *prima facie* case made out to proceed with the trial and not to consider whether the case would end in conviction. The learned Senior Counsel submitted that now the charge sheet has been filed and there are



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statements clearly stating about the petitioners' overt act and hence, he opposed the quash petition.

4. The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, investigation has been completed, ten witnesses have been listed, their statements have been recorded, which confirmed the case of the prosecution and they clearly stated about the overt act of each of the accused. The identity of the accused are not disputed and the assault of the accused have been clearly spoken by the victim. In this case, the doctor has also confirmed the same. The pendency of the civil suit between them will not give a licence for the accused to assault the victim.

5. Considering the submissions made on either side and perusal of materials, it is seen that L.W.8, the Doctor, who had treated the second respondent, had clearly stated that two known persons had assaulted the second respondent on the day and he was also admitted, took treatment in the hospital. In view of the same, this Court is not inclined to entertain the petition filed by the petitioners except for A1 alone. Accordingly, the proceedings in S.T.C.No.2871/2021 is quashed insofar as the first petitioner, A1 is concerned. As regards the others, namely, A2 and A3, the Criminal Original Petition is



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dismissed. The Trial Court is directed to proceed with the trial against the second and third petitioners, within a stipulated period, considering that the case is kept pending for the past two years without any progress, not influenced by the observations made herein. These observations are only for the limited purpose of the dismissal of the quash petition.

6. In the result, the Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

15.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Judicial Magistrate No.IV,
Tiruchirappalli.
- 2.The Inspector of Police,
Thillai Nagar Police Station,
Tiruchirappalli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR, J.

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