



Crl.O.P.No.19902 of 2022

of Cr.P.C and Sections 16, 357, 363, 342, 365 & 109 of IPC.

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2. The learned counsel for the petitioners submitted that in order to harass the petitioners, they were falsely implicated in this case. He further submitted that no such occurrence happened as alleged by the prosecution and summons were also issued against them. Aggrieved by the same the accused / petitioners have approached this Court to quash the proceedings as such is a false case.

3. On 10.06.2020 by virtue of the complaint given by one Senthil Kumar, FIR has been registered in Crime No.465 of 2020 under Section 294(b), 323, 324 and 506(ii) of IPC, against 3 accused persons namely K.R.Moorthi @ Krishnamoorthy, SibiNivas and Durai @ Thangavel. It is stated that the said Senthil Kumar had registered as case as a result of constant trouble caused by the 3 accused attempting to marry the daughter of Senthil Kumar who is only pursuing 2nd year of CA in SCS institute to the 2nd accused therein. In addition to this, the 3 accused persons have been indulging in illegal and unlawful activities by threatening and blackmailing the said Senthil Kumar thereby compelling him to marry his daughter to 2nd accused. Admittedly, all the petitioners are Police official of Perundurai Police Station. As per the complaint on 23.06.2020 at about 1.15 p.m., when



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the defacto complainant with his friend Palanisamy, the petitioners herein had forcibly taken the complainant to one Mani's lodge and said to be have been kept in an unlawful custody without food and also alleged on the same day at about 6.00 p.m., the petitioners call his friend one AppuKutti @ Venkatachalapathi and threatened him to advice the petitioners to compromise with MLA for which he refused and thereafter he was abused and attacked by them. Therefore, the case was registered in Crime No.488 of 2020 on the complaint given by the defcto complainant / Senthilkumar about 7.15 p.m., he was produced before the Magistrate for judicial custody. Subsequently, he availed bail. Now the contention of the petitioners is that he was denied in unlawful custody under 3 ½ hours without providing any food.

4. The learned counsel for the petitioners submitted that petitioners were arrested at 6.00 p.m., and the reason for arrest was also explained to him. At 9.00 p.m., he was produced before the Doctor, where he was medically examined and found to have no injury and no medical signatures. Thereafter, he was produced before the learned Magistrate on 23.06.2020 at 9.46 p.m. At that time, no complaint against the police officials by alleged treatment was made. Thereafter, he was remanded to judicial custody. After availing bail, the defacto complainant / respondent gave a false complaint in



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order to harass the police officials, who discharged their duty properly. He further submitted that already an FIR was lodged against the petitioners on 10.06.2020, based on the complaint given by one Senthil Kumar. Subsequently, on 20.06.2020 in Crime No.488 of 2020, there was some dispute between the said Senthil Kumar and these petitioners, as well as the then MLA of Perundurai. Admittedly, the petitioners belong to one political party, as such, there is a difference of opinion as they belong to different political parties concerned with sitting MLA's during the period.

5. The learned counsel for the respondent submitted that the unlawful custody made by the petitioners was proved and the prima facie was proved before the trial Court through 3 witnesses by filing the counter affidavit. Considering that only, the learned trial Judge has taken case on file and there is prima facie material produced on the side of the respondent. Therefore, at the investigation stage, the petitioners and the police officials are not entitled to approach the Court for quashing the proceedings. To that effect, he produced the Judgment of the Hon'ble Supreme Court of India in the case of Saranya Vs. Bharathi and another in Crl.A.No.873 of 2021, dated 24.08.2021, in which reads as follows:



“9. It also appears that during the course of the investigation, the investigating officer has collected very important evidence in the form of call details between A1 & A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent No.1 herein has been charge sheeted for the offence under Sections 420, 302 r/w 109 IPC and as observed herein above when there is ample material to show at least a prima facie case against the respondent No.1 herein -A2, the Hon'ble High Court has committed a grave error in quashing the charge sheet / entire Criminal proceedings qua her in exercise of powers under Section 482 of Cr.P.C. Quashing the charge sheet against the accused is not justified. The Hon'ble High Court has evidently ignored what has emerged during the course of investigation. The Hon'ble High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C. The Hon'ble High Court was not as such conducting the trial and /or was not exercising the jurisdiction as an appellate Court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the Hon'ble High Court ought to have quashed the charge sheet qua the respondent No.1 herein

— original accused No.2.”



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6. Admittedly, as per the ratio laid down in this case, this Court is not empowered to conduct mini-trial. However, if there is any irregularity committed on the side of the defacto complainant, this Court is inclined to quash the proceedings. Coming to the facts of the case, according to the defacto complainant these petitioners, who are the police officials of the concerned police station, kept him in unlawful custody by detaining him for about 3 ½ hours without giving any phone, thereby violating his human rights. Admittedly, as per the case of the petitioners, he was arrested on 6.00 p.m., after completing the formalities, he produced before the Doctor, and finally thereafter he was produced at 9.45 p.m. before the concerned Magistrate. He has not made complaint about the alleged attack made by the police officials. One of the witnesses filed an affidavit before the trial Court stating that in his presence, the police officer attacked the defacto complaint on the head, but no such complaint was given before the Doctor. Admittedly, the defacto complaint is not an illetriate man, he is one of the leaders of the political party of the locality and also well-versed with attending the legal procedure. Because there was some dispute pending him and the local MLA's, for which the petitioners were unnecessarily dragged to Court.



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“dated 23.06.2020 at 9.46 p.m. Accused produced before me at residence on 23.06.2020, 9.46 p.m. The reason for arrest explained. No complaints against Police for ill treatment. Medical aid given under Section 54 of CrPC complied with. The accused estimated regarding few legal aid. Reason for counsel satisfactory. Thereby, the accused is remanded to Judicial Custody till 07.07.2020.”

8. If indeed he suffered with illegal custody, he would have informed the Magistrate when he was produced before the Court. Furthermore, as discussed above, he is well aware of the case, but the counsel for the respondent submitted that already he had been threatened by the police officials, that they would lodge a case against him under Goondas. Such



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allegations are not been acceptable. Even otherwise, he is entitled to express if he was truly threatened by police officials before producing the Magistrate but he failed, considering his personality in the locality, the pending litigation between the parties, and then dispute between himself and the local MLAs, also the remand report of Judicial Magistrate which clearly reveals that the petitioners were unnecessarily implicated in order to harass them. I do not find any prima facie material against the provision, trial Judge without application of mind erroneously taken cognizance is liable to be set aside, and the authority relied upon by the respondent is also not applicable to the facts of the case. Accordingly proceedings initiated in PRC.No.4 of 2022 is ordered to be quashed.

9. Accordingly, this Criminal Original Petition is allowed.

Consequently, connected Miscellaneous petition is closed.

21.02.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

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T.V.THAMILSELVI, J.

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CrI.O.P.No.19902 of 2022
and
CrI.M.P.No.13104 of 2022

21.02.2024