



Crl.O.P.(MD).No.343 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Crl.O.P.(MD).No.343 of 2023

and

Crl.M.P.(MD).No.264 of 2023

Sivasurya

.. Petitioner/Accused No.4

Vs.

1.The State through
The Deputy Superintendent of Police,
Rural Sub-Division,
Papanasam,
Thanjavur District.

2.The State through
The Sub-Inspector of Police,
Melattur Police Station,
Thanjavur District.

.. Respondents 1 & 2/Complainants

3.Pandiyan

.. 3rd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to Spl.S.C.No.42 of 2019 on the file of the learned I Additional District and Sessions Judge (PCR), Thanjavur and quash the same against this petitioner alone and consequently allow this Criminal Original Petition.



Crl.O.P.(MD).No.343 of 2023

For Petitioner : Mr.J.Anandkumar
For R-1 & R-2 : Mr.RMS.Sethuraman
Additional Public Prosecutor

ORDER

The present Criminal Original Petition is filed by the fourth accused in Spl.S.C.No.42 of 2019 on the file of the learned I Additional District and Sessions Judge (PCR), Thanjavur, seeking for quash of the criminal proceedings initiated against him.

2. In the final report, the allegations levelled against the accused are as follows:

On 03.05.2018, around midnight 12.00 hours, the defacto complainant's son, namely, Baranidharan and his two friends, namely, Bharathiraja and Praveenkumar went to Nagalur Mariamman Temple festival and they were sitting near a Chicken Stall, at that time, the accused No.1 abused them by mentioning their caste and attacked them. This incident was informed to the defacto complainant. Thereafter, the defacto complainant and his son were called to Maligai Thidal Arch by one Vijay, S/o.Ramamurthy. Accordingly, the defacto complainant and his family were



while proceeding in auto, they were waylaid by the accused and the accused attacked them with stick indiscriminately and also by abusing caste name.

The Police have registered the case in Crime No.36/2018 and the case was investigated and final report was filed against the accused A1 to A5 for the offences under Sections 147, 148, 294(b), 324, 506(2) IPC, Section 3(1)(r), 3(1)(s) and 3(2)(va) of the SC/ST Act, 2015. Challenging the final report filed against the Accused No.4, he has filed this petition under Section 482 Cr.P.C. to quash the trial proceedings.

3. The learned counsel for the petitioner/A4 would submit that the petitioner has not attacked the defacto complainant as stated in the final report and there is no material available to implicate the petitioner and a *prima facie* case is made out against the petitioner herein. Hence, he prays to quash the proceedings initiated against the petitioner.

4. Per contra, the learned Additional Public Prosecutor appearing for the first and second respondents would submit that there are specific overt acts against the petitioner/A4 and that the accused have attacked the defacto complainant and his wife using wooden log and criminally intimidated them



with dire consequences. Hence, a *prima facie* case is made out and there is no ground to quash the charge sheet and he prayed for dismissal of the quash petition.

5. I have carefully considered the submissions made on both sides and perused the records.

6. The inherent jurisdiction of High Court under Section 482 Cr.P.C to quash the criminal proceedings is well settled. Recently in ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another*** reported in ***(2019) 9 SCC 608***, the Hon'ble Apex Court has reiterated the legal position in the following manner:

"6. Section 482 is an overriding section which saves the inherent powers of the court to advance the cause of justice. Under Section 482 the inherent jurisdiction of the court can be exercised (i) to give effect to an order under CrPC; (ii) to prevent the abuse of the process of the court; and (iii) to otherwise secure the ends of justice. The powers of the court under Section 482 are wide and the court is vested with a significant amount of discretion to decide whether or not to exercise them. The court should be guarded in the use of its extraordinary jurisdiction to quash an FIR or



WEB COPY



Crl.O.P.(MD).No.343 of 2023

criminal proceeding as it denies the prosecution the opportunity to establish its case through investigation and evidence. These principles have been consistently followed and reiterated by this Court. In Inder Mohan Goswami v. State of Uttaranchal [Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259] , this Court observed : (SCC p. 10, paras 23-24)

“23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 CrPC. Every High Court has inherent powers to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 CrPC can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of the court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under Section 482 CrPC though wide have to be exercised sparingly, carefully and with great caution and only when exercise is justified by the tests specifically laid down in this section itself. Authority of the court exists for the advancement of justice. If any abuse of the process leading to injustice is brought to the notice of the court, then the court would be justified in preventing



WEB COPY



Crl.O.P.(MD).No.343 of 2023

injustice by invoking inherent powers in absence of specific provisions in the statute.”

7. Given the varied nature of cases that come before the High Courts, any strict test as to when the court's extraordinary powers can be exercised is likely to tie the court's hands in the face of future injustices. This Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] conducted a detailed study of the situations where the court may exercise its extraordinary jurisdiction and laid down a list of illustrative examples of where quashing may be appropriate. It is not necessary to discuss all the examples, but a few bear relevance to the present case. The Court in Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] noted that quashing may be appropriate where : (SCC pp. 378-79, para 102)

“102. ... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the



Code except under an order of a Magistrate within the purview of Section 155(2).

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

8. In deciding whether to exercise its jurisdiction under Section 482, the Court does not adjudicate upon the veracity of the facts alleged or enter into an appreciation of competing evidence presented. The limited question is whether on the face of the FIR, the allegations constitute a cognizable offence. As this Court noted in Dhruvaram Murlidhar Sonar v. State of Maharashtra, [(2019) 18 SCC 191 : 2018 SCC OnLine SC 3100] , (Dhruvaram Sonar) : (SCC para 13)

“13. It is clear that for quashing the proceedings, meticulous analysis of factum of taking cognizance of an offence by the Magistrate is not called for. Appreciation of evidence is also not permissible in exercise of inherent powers. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken, it is open to the High Court to quash the same in exercise of its inherent powers.” "

7. In this case, on perusal of the statements recorded and the final



Crl.O.P.(MD).No.343 of 2023

report, it is seen that the accused have unlawfully assembled and subsequently, attacked the defacto complainant and his wife. There are statements recorded from the witnesses against the petitioner/A4 and it is also specifically stated that the petitioner/A4 has attacked the Witness No.2 with wooden log and also kicked her and subsequently, the accused have also jointly intimidated them. These allegations on the face of it would constitute a cognizable offence. Since *prima facie* statements are available on record against the petitioner and the truth or otherwise can be decided only during trial, this Court finds no merits in the quash petition and the same is liable to be dismissed.

8. At this juncture, the learned counsel for the petitioner submits that a counter case is also registered against the defacto complainant and others and the same is pending investigation. Since the counter case is also registered, the same may be ordered to be investigated and final report shall be filed. Thereafter, trial may also be ordered to be held along with this case.



Crl.O.P.(MD).No.343 of 2023

9. In reply, the learned Additional Public Prosecutor reported that the counter complaint lodged by the accused herein has already been investigated and final report is also filed and now the case is pending trial in S.C.No.230 of 2019 on the file of the Sessions Court, Mahalir Neethimandram, Thanjavur.

10. In view of the above submission, since the present petition is filed only for the purpose of quashing the complaint, I am not inclined to pass any orders transferring the case.

11. In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition stands closed.

07.06.2024

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



Crl.O.P.(MD).No.343 of 2023

To

1. The I Additional District and Sessions Court (PCR),
Thanjavur.
2. The Deputy Superintendent of Police,
The State,
Rural Sub-Division,
Papanasam, Thanjavur District.
3. The Sub-Inspector of Police,
The State,
Melattur Police Station,
Thanjavur District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD).No.343 of 2023

K.RAJASEKAR,J.

Lm

Crl.O.P.(MD).No.343 of 2023

07.06.2024