



Crl.O.P.(MD)No.5529 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.5529 of 2022
and Crl.M.P.(MD)No.3928 of 2022

Ganapathiyappan

... Petitioner

Vs.

1.State Rep.by
The Inspector of Police,
Dhalavayapuram Police Station,
Virudhunagar District.
(In Crime No.98 of 2021)

2.Malathi

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the final report in PRC.No.2 of 2022 on the file of the learned Judicial Magistrate, Rajapalayam and quash the same as illegal and un-sustainable insofar as the petitioner is concerned.

For Petitioner : Mr.R.Gandhi
Senior Counsel
for M/S.Balaji.A

For R1 : Mr.P.Kottaichamy,
Government Advocate (Crl. Side)

For R2 : Mr.P.Banu Prasath



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ORDER

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This Criminal Original Petition has been filed to quash the final report in PRC.No.2 of 2022 on the file of the learned Judicial Magistrate, Rajapalayam.

2.The case of the prosecution is that the second respondent was deserted by her husband since 2017 and she had been living along with her daughter as single woman. The petitioner's son approached her and promised her to marry and thereby, had physical relationship with her on various occasions. Thereafter, the son of the petitioner has estopped from his promise by marrying another woman. When the second respondent questioned about the same, the accused persons abused her in filthy language and also threatened her with dire consequences. Therefore, the second respondent filed a complaint under Section 156(3) Cr.P.C., before the learned Magistrate and as per the direction of the learned Judicial Magistrate, Rajapalayam, the first respondent Police registered a case in Crime No.98 of 2021 for the offences under Sections 376, 417, 506(1), 294(b), 312 IPC and Section 4 of the Tamil Nadu



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Prohibition of Harassment of Women Act, 2002. Upon completion of investigation, the first respondent filed a final report, which was taken on file in PRC.No.2 of 2022 by the learned Judicial Magistrate, Rajapalayam. Challenging the same, the present petition has been filed by the petitioner.

3.The learned Senior Counsel appearing for the petitioner submitted that based on the direction issued by the learned Magistrate, the first respondent Police registered a case and conducted investigation. While investigating the case, the first respondent Police recorded statement of the second respondent under Section 161(3) Cr.P.C., on 21.04.2021, 21.05.2021, 11.10.2021 and 22.12.2021. He further submitted that in the original complaint, which was filed by the second respondent before the learned Magistrate under Section 156(3) Cr.P.C., there is no allegations as against the petitioner herein and he was not even added as a respondent in the said complaint. He also submitted that a bare reading of the statements recorded under Section 161(3) Cr.P.C., dated 21.04.2021, 21.05.2021 and 11.10.2021 would reveal that the second respondent made allegations only as against the son of the



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petitioner and there is no allegations at all against the petitioner herein.

Thereafter, in the statement recorded on 22.12.2021, the second respondent has exaggerated her allegations by implicating the petitioner herein as if he threatened and abused her on December, 2020, which shows the *malafide* intention of the second respondent to rope the petitioner herein. Hence, the impugned final report has to be quashed based on the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***.

4.The learned counsel appearing for the second respondent submitted that all the ground raised by the petitioner herein is a triable issue, which cannot be agitated before this Court under Section 482 Cr.P.C. Accordingly, he prayed to dismiss the present petition.

5.The learned Government Advocate(Crl.side) appearing for the first respondent submitted that the first respondent has conducted a fair investigation and after examining the necessary witnesses and collecting all materials, he has filed the final report, which has been taken cognizance of by the court below. Accordingly, he prayed to dismiss the present petition.



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6.Heard the learned Senior Counsel appearing for the petitioner, learned counsel for the second respondent and the learned Government Advocate(Crl.side) appearing for the first respondent. This Court also perused the materials available in the record.

7.It is seen that the second respondent originally filed a complaint under Section 156(3) Cr.P.C., before the learned Judicial Magistrate, Rajapalayam. A reading of the same reveals that the second respondent was deserted by her husband and she had been living along with her daughter. Thereafter, the first accused in this case, by giving a promise to marry her, had physical relationship with her on various occasions and thereafter, he married another woman. When the same was questioned by the second respondent, he threatened her with dire consequences.

8.As per direction of the learned Magistrate, the first respondent Police registered a case in Cr.No.98 of 2021 for the offences punishable under Sections 376, 417, 506(1), 294(b), 312 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. During investigation, the first respondent Police recorded statement of



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the second respondent under Section 161(3) Cr.P.C., on various dates ie., 21.04.2021, 21.05.2021, 11.10.2021 and 22.12.2021.

9.In the statements recorded on 21.04.2021, 21.05.2021 and 11.10.2021, the second respondent made allegations only as against the petitioner's son and there is no allegations against the petitioner herein. Subsequently, in the last statement recorded on 22.12.2021, the second respondent has exaggerated her allegations by implicating the petitioner as if he has threatened and abused her. As rightly contended by the learned Senior Counsel appearing for the petitioner, a bare reading of the statements of the second respondent would reveal the malicious intention of the second respondent.

10.Useful reference in this regard can be had to the decision of the Hon'ble Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***, wherein, the Hon'ble Apex Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the



exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(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 F.I.R. 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) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in



support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(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



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with a view to spite him due to private and personal grudge.”

11.A careful reading of entire records shows that the present criminal proceedings is maliciously instituted with an ulterior motive for wreaking vengeance on the petitioner and the seventh category of the above said decision will applicable to the present case. Therefore, this Court is of the view that there is no need to the petitioner to face the trial for such malicious prosecution. Accordingly, the impugned final report in PRC.No.2 of 2022 pending on the file of the learned Judicial Magistrate, Rajapalayam is hereby quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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M.DHANDAPANI,J.

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To

- 1.The Judicial Magistrate, Rajapalayam
- 2.The Inspector of Police,
Dhalavayapuram Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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