



Crl.O.P.(MD)No.15603 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.15603 of 2024

and

Crl.M.P.(MD)No.9771 of 2024

1.Harijeevan
2.N.Pavithra
3.Vijayaranai

... Petitioners

Vs.

1.State of Tamil nadu rep. by
The Inspector of Police,
Devadanapatti Police Station,
Theni District.
(Crime No.259 of 2024)

2.Mariyammal

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the entire records pertaining to the FIR in Crime No.259 of 2024 on the file of the Inspector of Police, Devadanapatti Police Station, Theni District and quash the same.

For Petitioners : Mr.J.Amirtharaj

For R1 : Mr.P.Kottai Chamy
Government Advocate (Crl. Side)



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ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders to quash the FIR in Crime No.259 of 2024 pending on the file of the first respondent.

2. The petitioners are the accused 1 to 3 in Crime No.259 of 2024 on the file of Devadanapatti Police Station, Theni.

3. It is evident from the records that on the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No. 259 of 2024 on 28.07.2024 for the alleged offences under Sections 296(b), 115(2) and 351(3) BNS and Section 4 of TN Prohibition of Harassment of Women Act, 2002 against the petitioners.

4. The case of the prosecution is that due to previous enmity, on 27.07.2024 at about 05.00 p.m., the petitioners abused the second respondent in filthy language and assaulted her and also threatened her with dire consequences.



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5. The main contention of the petitioners is that though the first petitioner has lodged a complaint, the first respondent has not taken any action so far. Since the counter complaint was not taken into consideration and FIR was not registered, that by itself is not a ground to quash the FIR. If the police refused to take action on the complaint given by the first petitioner, the first petitioner has to invoke 175(3) or 223 BNSS. Except the above, the petitioners have not canvassed any other reason or ground to quash the FIR.

6. The learned Government Advocate (Criminal Side) appearing for the first respondent would submit that the above aspect, by no stretch of imagination, can be taken as a reason or ground to impugn the FIR, that there are specific allegations against the petitioners and that they have examined three witnesses and investigation is pending.

7. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are



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extracted hereunder:-

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“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 extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of 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 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



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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,



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

8. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.

9. The Hon'ble Supreme Court in ***Kaptan Singh Vs. The State of Uttar Pradesh and others*** reported in **2021 (3) Crimes 247** has stated that, that Court in catena of decisions has observed that the High Court is



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not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and *prima facie* materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

10. It is pertinent to note that if the petition under Section 528 B.N.S.S., was filed at the stage of FIR, the allegations in the FIR/ complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered.

11. In the case on hand, as rightly contended by the learned Government Advocate (Criminal Side), a cursory perusal of the FIR makes out a *prima facie* case against the petitioners and contains specific allegations against the petitioners and it is a matter for investigation and as such, the question of quashing the FIR at this stage does not arise at all. Hence, this Court concludes that this is not a fit case to invoke



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Section 528 B.N.S.S., for quashing the FIR at this stage and the same is liable to be dismissed.

12. In the result, this Criminal Original Petition stands dismissed.

Consequently, connected Miscellaneous Petition is closed.

18.09.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

1.The Inspector of Police,
Devadanapatti Police Station,
Theni District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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