



Crl.O.P.(MD)Nos.20697 and 21885 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved : 21/12/2023

Date of Pronounced : 20/03/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVA**

Crl.OP(MD)Nos.20697 and 21886 of 2023

and

Crl.MP(MD)No.16222 of 2023

(1)Crl.OP(MD)No.20697 of 2023:-

R.Inbha Sudha : Petitioner/A2

Vs.

1.The State Rep. by
The Inspector of Police,
C.B.C.I.D,
Tirunelveli District
(Crime No.1 of 2021 which was
originally in the file of Perumalpuram
Police Station, Tirunelveli City
in Crime No.133 of 2019) : 1st Respondent/Complainant

2.P.Janarthana : 2nd Respondent/De-facto
Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in PRC No.153 of 2023 pending on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same as against the petitioner and pass such any or other orders.

For Petitioner : Mr.R.Anand

For 1st Respondent : Mr.K.Satkthi Kumar
Government Advocate
(Criminal side)

For 2nd Respondent : M/s.Lita Srinivasan



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(2)Crl.OP(MD)No.21885 of 2023:-

Janarthana.P

: Petitioner/De-facto
Complainant

Vs.

The State Rep. by
The Inspector of Police,
C.B.C.I.D,
Tirunelveli District
(Crime No.1 of 2021 which was
originally in the file of Perumalpuram
Police Station, Tirunelveli City
in Crime No.133 of 2019) : Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to direct the expeditious trial of PRC No.153 of 2023 on the file of the Judicial Magistrate No.1, Tirunelveli or pass such further or other orders.

For Petitioner : M/s.Lita Srinivasan

For Respondent : Mr.K.Satkthi Kumar
Government Advocate
(Criminal side)

COMMON ORDER

Crl.OP(MD)No.20697 of 2023 is filed seeking quashment of the case in PRC No.153 of 2023 pending on the file of the Judicial Magistrate No.1, Tirunelveli, whereas Crl.OP(MD)No.21885 of 2023 has been filed seeking direction for the expeditious trial of PRC No.153 of 2023 on the file of the Judicial Magistrate No.1, Tirunelveli.



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2. The facts in brief:-

The de-facto complainant is the wife of A1 namely R.Pusushothaman. A2, who is the petitioner in Crl.OP(MD)No.20697 of 2023 is the sister of A1. There was a matrimonial issue between the de-facto complainant and A1. A1 is aged about 65 years and the de-facto complainant is aged about 60 years. At the advanced stage of their age, it appears that problem has started in the form of matrimonial issue.

3.To understand the issue between them, we can briefly look into the complaint given by the de-facto complainant.

4.The marriage between them took place in the year 1983. They got two children. Now they got married and living separately. A1 was running a Company called 'Sushee Auto Centre'. In that Company, the de-facto complainant and their son by name Hariprasath are partners. On 1985 onwards, the de-facto complainant was looking after the management. Due to the misconduct of A1, trouble arose between them. She was prevented from attending the office. This problem took the different direction in the form of separation in 2003. She went to her parental home and started living there. After that,



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there was a compromise between them. At that time, they started putting up a construction in the name of A1 in Thendral Nagar. To meet out the expenditure, some properties, which stood in the name of the de-facto complainant were transferred to his name. In 2006, they started living in Thendral Nagar in the new house. A1 started making trouble to her to transfer the other properties also in his name. In 2011, she filed MC No.18 of 2011 before the Judicial Magistrate No.1, Tirunelveli. A1 came forward to make a compromise. But that was not liked by her. Later, at the intervention of the Advocate, she has also consented for compromise. In 2012, A1 agreed to settle the properties namely the husband properties situated in Thendral Nagar in favour of her father. One key was kept by her. Another for A1. For some-time, A1 exhibited good behaviour. Later started harassing her. That was also started by A1 and the sister of A1.

5.In 2018, she received a notice from A1 stating that the house property situated in Thendral Nagar is settled in favour of A2 by him. A2 in-turn executed a power deed in favour of one Rajendran and Rajendran is residing in the house. Only at that time, she came to know the property, which was agreed to be given to her, in pursuance of the compromise in MC No.18 of 2011, she



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came to know that settlement. She issued public notice in a daily.

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6. On 18/05/2019, she went to see her mother in Theni. On the previous day, A1 went to Theni. On the next day namely 19/05/2019, she returned to the house and found the door looked inside. Some 10 persons came out of the house. When she made enquiry, they disclosed that at the instance of A1 and A2, they came to the house. Among those 10 persons, one Perumal and Thangaraj, stated that they purchased the property, started abusing her in filthy language and criminally intimidated her. She immediately called the police. Her friends and others also came to that spot. The police arrived the spot and made enquiry with the people, who were inside the house. During the enquiry by the Sub Inspector of Police, some of the persons told that they are Advocates and documents will be shown to them on the next day. The police advised them to vacate the house and they also vacated the spot and went away. She went inside the house and found damages to the household articles. She videographed the entire events. On 21/05/2019, she lodged a complaint making allegations against A1 and A2 and others.



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6.No proper investigation was undertaken, the police filed a final report deleting certain important accused. But added the Company staffs. So, she filed a protect petition and also filed Crl.OP(MD)No.10278 of 2020 to transfer the investigation to CBCID. In pursuance of the above said order, the matter was transferred to CB-CID to investigate the matter. Filed the final report making allegations as noted above.

7.Seeking quashment of the same, A2-R.Inbha Sudha filed Crl.OP(MD)No.20697 of 2023, whereas seeking speedy disposal of PRC No.153 of 2023, the de-facto complainant filed Crl.OP(MD)No.21885 of 2023.

8.Heard both sides.

9.The de-facto complainant namely P.Janarthana has upon the judgment of the Hon'ble Supreme Court in Salib @ Shalu @ Salim Vs. State of U.P and others (Criminal Appeal No.2344 of 2023, dated 06/08/2023) for the purpose of argument that quashment of the criminal proceedings can be resorted only in rare and rarest cases and in compelling situation. The relevant portion of the judgment runs like this.



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"26. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look



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into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under [Section 482](#) of the CrPC or [Article 226](#) of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as



alleged."

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10.As mentioned in the preamble portion of this order, it appears that there is a long standing matrimonial issue between A1 and the de-facto complainant. As mentioned above, at their advance age, it appears that the matrimonial issue has arisen between them. What was the real issue between them is the beyond the scope of the enquiry. So, we will confine ourselves only with regard to the facts on hand.

11.The learned counsel appearing for A2 would submit that the disputed property namely the house property situated in Thendral Nagar is not at all the subject matter of the compromise that reached between the husband namely A1 and the de-facto complainant. A1 at his own accord and out of love and affection only, executed a settlement deed in her favour namely A2. After realizing that because of the property, the issue has arisen between the husband and wife, it was cancelled. So, absolutely, she is not involved in the issue between the husband and wife. She is also ready to file an undertaking affidavit that she will not involve herself in the issue.



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12.Per contra, the learned counsel appearing for the de-facto complainant would make a lengthy argument starting from the issue between the husband and wife touching upon the role played by A2 namely the petitioner herein and would submit that in-spite of repeated directions issued in various cases by this court, the criminal case namely the subject criminal case is not attended properly by the Committal Magistrate is kept pending without any progress. Apart from that, she has filed a petition in CRP(MD)No.1642 of 2021. There is a direction in that matter. That was also not complied.

13.According to the learned counsel appearing for the 2nd respondent, the entire issue arose only at the instance and for the benefit of Inbha Sudha. So, she is the prime accused and the reason for the issue on the particular date of occurrence, even though, she was not present in that place, at her instructions caused damaged, broke open the lock and entered into the house, occupied the same causing damage to the articles also. What is more dangerous is that the persons, who were involved in the above said occurrence are Advocates. Occurrence was also videographed, quashment of the criminal prosecution is completely out of place.



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14.Per contra, as mentioned above, the learned counsel appearing for the 2nd accused would submit that all those things are not connected with her. As mentioned above, she is also ready to file an undertaking affidavit.

15.So, a short question question, which arises for consideration is that whether A2 namely Inbha Sudha can be exonerated from the criminal liability at this stage.

16.A report has been called for to the stage of the committal process. The Judicial Magistrate No.1, by letter, dated 15/12/2013, has stated as follows:-

"Further I most humbly submit that, the Final Report of CBCID Police Cr.No. 257 of 2021 has taken on file of this court U/s.147, 148,448,427,341,294(b), 506(ii), 498(A) IPC, 201, 205, 406, 120(B), 150 IPC, 149, 109, 34 IPC & 4 of TNPHW Act. Since this case was also taken on file Un/s.201 IPC. The said case was mistakenly assigned PRC number by over sight as this offence is triable by Court of Sessions Sec.201 IPC



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(Part-i). On careful perusal, the said case to be taken as Calender case as it comes U/s.201 (Part-iii). I most humbly and respectfully Submitting my unconditional Apologies for the mistake on the part of the court. Further I humbly that this court will immediately covert this case from PRC to Calendar Case. This court will carefully scrutinized the cases in future while taking cases on file. I beg for Apology for the inconvenience caused on the part of this court. This is for your Honour's kind consideration."

17. Reading of the above said, by mistake the case was taken as PRC No.153 of 2023, thinking that the offence under section 201(i) IPC is involved; But on careful perusal of the records, it came to know that only Part-iii of section 201 of IPC are attracted; So, the PRC will be converted into regular Calendar Case and it will be disposed of.

18. Which offences are attracted is also beyond the jurisdiction of his inquiry. It is well within the power



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of the concerned Magistrate before whom the final report is pending. He can take his own decision on the materials placed, for which, no direction can be issued by this court.

19.Be that as it may, the question, which arises for consideration is whether in view of the undertaking given by A2 namely Inbha Sudha that she will file a undertaking affidavit, can she be discharged from the criminal prosecution.

20.I am afraid that such a course is available to this court. Because, as mentioned by the de-facto complainant, the main reason for the occurrence that took place, on 19/05/2011 is the issue in respect of the house property. Now the house property was also settled in the name of A2 Inbha Sudhar and thereafter only, she sold the property and trouble has arisen. During the course of investigation, materials have been collected by the Investigating Officer to implicate her also. In that issue, sections 120-B, 109 and 34 of IPC are also included.

21.Whether the occurrence said to have been taken place, on 19/05/2022 at the instance or instigation or



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abetment, as a result of which, criminal conspiracy took place or not, beyond the scope of the inquiry by this court under section 482 of Cr.P.C.

22.So, without going into the other aspects, I am of the considered view that this is not the fittest case to quash the criminal proceedings. But however, considering the fact that she is aged about 60 years, her personal appearance is alone is dispensed with. Beyond that, she is not entitled for any relief in this matter. Accordingly, Crl.OP(MD)No.20697 of 2023 is dismissed.

23.So far as Crl.OP(MD)No.21885 of 2023 is concerned, the de-facto complainant namely Janarthana filed this petition seeking direction of this court to expedite the trial of PRC No.153 of 2023 pending on the file of the Judicial Magistrate No.1, Tirunelveli. Since the Hon'ble Supreme Court has issued guidelines in **Sali @ Shalu @ Salim's** case as noted above, should not and could not in normal circumstances issue direction to the trial court to dispose the matter within a stipulated time. So, only in rare and rarest cases and that too on compelling circumstances, such a direction can be issued.



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24.As noted above, the grievance of the de-facto complainant is that in-spite of repeated directions, those are not complied by the trial court. Since, already direction by this court in the previous matter, second direction is not permissible under law.

25.Even, no material is placed before this court to show that direction was issued in the subject matter, but on the contrary, it is seen that directions were issued in DVC No.26 of 2019. So, it is for the trial court to comply the order.

26.The petitioner is at liberty to approach the concerned Court itself to take up the matter and comply the same by setting out the facts and circumstances. It is well within the power of the Judicial Magistrate No.1, Tirunelveli, to decide the further course of action. With the above said direction and liberty, Crl.OP(MD)No.21885 of 2023 is disposed of.

27.In the result, Crl.OP(MD)No.20697 of 2023 filed seeking quashment of the PRC No.153 of 2023 is **dismissed**, whereas Crl.OP(MD)No.21885 of 2023 seeking direction for expeditious trial in PRC No.153 of 2023 on the file of the Judicial Magistrate No.1, Tirunelveli is **disposed of**



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with the above said direction and liberty. Consequently,
connected Miscellaneous Petition is closed.

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20/03/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Judicial Magistrate No.1,
Tirunelveli.
- 2.The Inspector of Police,
C.B.C.I.D,
Tirunelveli District.
- 3.The Inspector of Police,
Perumalpuram Police Station,
Tirunelveli City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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