



Crl.O.P.(MD).No.282 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Crl.O.P.(MD).No.282 of 2023
and
Crl.M.P.(MD).No.231 of 2023

1.Manivarajan

2.Vanjikodi

3.Vijayasankari

.. Petitioners/Accused

Vs.

1.The Sub-Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.

.. 1st Respondent/Complainant

2.Selvi

.. 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to C.C.No.1884 of 2022 pending on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai and quash the same as illegal.

For Petitioners : Mr.M.Musthafakhan

For R-1 : Mr.S.Manikandan
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition is filed by the accused in C.C.No.1884 of 2022 on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai, seeking for quash of the criminal proceedings initiated against them.

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

The defacto complainant, namely, Selvi, had entered into an agreement to purchase the house, which belongs to the first accused, namely, Manivarajan, for a sum of Rs.7,00,000/- and possession was handed over to her. The accused 1 to 3 have started to demand the defacto complainant to vacate the house and hand over the possession. In this background, on 30.09.2021, at about 7.00 PM, while the defacto complainant was in her house, the accused 1 to 3 trespassed into the house and scolded the defacto complainant in filthy language and slapped on her face. In continuation of the same, they also threatened her and her family with dire consequences. The final report was filed stating that the accused



A1 committed the offences under Sections 448, 294(b), 323, 506(i) IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. A2 and A3 were charged for the offences under Sections 448, 294(b), 323 and 506(i) IPC.

3. Mr.M.Musthafakhan, learned counsel for the petitioners submitted that there was an enormous delay in lodging the FIR and also the FIR reached the concerned Court very belatedly. Hence, it has to be considered as a malafide complaint in order to prevent the petitioners from claiming the right over the property, which belongs to them. Since there is delay in lodging the FIR and it has been lodged with malafide intention, the same is not valid and liable to be quashed. He also submitted that the house belongs to the petitioners herein and hence, no offence under Section 448 IPC, as stated in the final report, is attracted. Similarly, the other offences are also not attracted since the occurrence had not taken place in a public place. He further submitted that the matter relates to civil dispute and the statement of witnesses were recorded in verbatim without proper investigation by the Investigation Officer and prayed to quash the proceedings initiated against the petitioners.



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4. Per contra, Mr.S.Manikandan, learned Government Advocate (Crl. Side) appearing for the first respondent submits that based on the complaint dated 30.09.2021 received on 02.10.2021, a case in Crime No.400/2021 was registered for the offences under Sections 448, 294(b) and 506(1) IPC and the case was investigated and final report was also filed against the accused persons. The statement of witnesses would show that all the offences, as stated in the final report, are attracted and there is no ground to quash the proceedings. He would further submit that A1 and A2 have also separately filed discharge petition before the Trial Court and the same is also pending. Hence, he opposed to quash the proceedings.

5. Notice sent to the second respondent/defacto complainant is awaited. I have considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) for the first respondent and perused the records.

6. Admittedly, the property, wherein, the house of the defacto complainant is situated, belongs to the petitioners herein. But they have



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handed over the possession of the same to the defacto complainant after receiving a huge amount. It is also the case of the prosecution that there is a written agreement permitting the defacto complainant to stay in the house and the statements have also been recorded showing that the accused herein have received a sum of Rs.7,00,000/- and the defacto complainant was residing in the house. This shows that the petitioners herein are not in possession of the property and they cannot claim that they should not be prosecuted for the trespass and they have entered into the house forcibly, even though it was handed over to the possession of the defacto complainant.

7. Section 441 IPC defines the term “criminal trespass”, Section 442 IPC defines the term “house trespass” and Section 448 IPC provides for punishment of house trespass, which reads as follows:

“441. Criminal trespass.—

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.



442. House trespass.—

Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit “house-trespass”.Explanation.—The introduction of any part of the criminal trespasser’s body is entering sufficient to constitute house-trespass.

448. Punishment for house-trespass.—

Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

The definition of “criminal trespass” in Section 441 IPC is unambiguously clear that whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit “criminal trespass”.

8. In this case, admittedly, the possession of the house is with the defacto complainant and the petitioners herein are not in possession and they are not entitled to claim that since the property belongs to them, they



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are entitled to enter into the property forcibly, which was already handed over and the same would not fall within the term “criminal trespass”.

9. In this case, the statements recorded from the witnesses, L.W.1 to L.W.3 shows that the accused herein have broken the door lock of the house caused injury to the complainant lady and intimidated her to vacate the house and to hand over the possession, otherwise, she will be done to death. The exact words used by the accused have been recorded in the statements under Section 161 of CrPC. That being so, without subjecting those statements in the trial process, they could not be taken as a verbatim statement and to throw away and to question the veracity of the above statements.

10. The other ground raised that the incident has not occurred in the public place in order to attract the offence under Section 294(b) IPC is concerned, it is true that for attracting the offence under Section 294(b) IPC, the offence must have been committed in the public place or near any public place, whereas, the evidence of the witnesses shows that in the presence of



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other witnesses, i.e., the private parties, who were near the house, the accused have abused the defacto complainant by uttering obscene words.

The rough sketch prepared by the Investigation Officer, shows that, the place where the occurrence had taken place is adjacent to the road and other houses are also situated. Since the allegation of trespassing, intimidation have been *prima facie* established, this Court is not inclined to quash the charge under Section 294(b) IPC, since recording of evidence is required to decide whether the occurrence had taken place at public place or near public place.

11. One of the major grounds raised by the petitioners herein is the delay in lodging the FIR as well as the delay in forwarding the same to the concerned jurisdictional Magistrate. The learned counsel for the petitioners also relied on the judgment of the Hon'ble Apex Court in the case of ***Mahmood Ali and others Vs. State of U.P. and others*** reported in **2023 CRI.L.J.3896** and the decision of this Court in ***Crl.O.P.No.3687 of 2021 dated 12.04.2022*** in the case of ***S.Shanmuga Pandian Vs. State and another***. The Apex Court in ***Mahmood Ali and others Vs. State of U.P.***



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and others cited supra, has considered the case of lodging FIR after delay of 14 years and this Court in **S.Shanmuga Pandian Vs. State and another** cited supra, dealt with the case of alteration of date of complaint and malafide registration case and both the above judgments are not applicable to the facts of this case.

12. It is well settled that the delay in lodging the FIR and forwarding the same to the jurisdictional Magistrate within the reasonable time, is to be considered as the defective investigation process and the same is not a ground to throw away the prosecution case, if otherwise *prima facie* case is established. In **Thulia Kali Vs. State of Tamil Nadu** reported in (1972) 3 **SCC 393**, the Apex Court has observed as follows:

“12. ...First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the above report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was



committed, the names of the actual culprits and the part played by them as well as the names of eyewitnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.”

13. In ***Tarasingh Vs. State of Punjab*** reported in ***AIR 1991 SC 63***, the Apex Court has observed as follows:

“4. It is well settled that the delay in giving the FIR by itself cannot be a ground to doubt the prosecution case. Knowing the Indian conditions as they are we cannot expect these villagers to rush to the police station immediately after the occurrence. Human nature as it is, the kith and kin who have witnessed the occurrence cannot be expected to act mechanically with all the promptitude in giving the report to the police. At times being grief-stricken because of the calamity it may not immediately occur to them that they should give a report. After all it is but natural in these circumstances for them to take some time to go



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to the police station for giving the report. Of course the Supreme Court as well as the High Courts have pointed out that in cases arising out of acute factions there is a tendency to implicate persons belonging to the opposite faction falsely. In order to avert the danger of convicting such innocent persons the courts are cautioned to scrutinise the evidence of such interested witnesses with greater care and caution and separate grain from the chaff after subjecting the evidence to a closer scrutiny and in doing so the contents of the FIR also will have to be scrutinised carefully. However, unless there are indications of fabrication, the court cannot reject the prosecution version as given in the FIR and later substantiated by the evidence merely on the ground of delay. These are all matters for appreciation and much depends on the facts and circumstances of each case.”

14. In ***Vidyadharan Vs. State of Kerala*** reported in (2004) 1 SCC 215, the Apex Court has held that, even if there is delay in lodging FIR, it is but natural in a traditional bound society to avoid embarrassment, which is inevitable when the reputation of a woman is concerned. Delay in every case cannot be a ground to arouse suspicion. It can only be so when the delay is unexplained. The prosecution is always entitled to explain the delay before the Trial Court and if they are not able to explain the same, the



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consequences will follow. Accordingly, this Court is of the view that a mere delay in registering the FIR or forwarding the FIR to the concerned jurisdictional Magistrate is not a ground to quash the entire criminal proceedings at this stage and this Court finds no merit in this quash petition.

15. Accordingly, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition stands closed.

26.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate,
Additional Mahila Court, Madurai.
- 2.The Sub-Inspector of Police,
Nagamalai Pudukottai Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.RAJASEKAR,J.

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