



Crl.OP. No. 13517 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:17.03.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL OP No. 13517 of 2022 &
CrI.MP. No. 7233 of 2022

1. Vishnu
2. Aravinthan
3. Shridevi
4. Pushpalatha @ Puspavalli

... Petitioners

Vs

1. The State Represented by its.
The Inspector of Police,
Sadras Police Station (E-3)
Kancheepuram District.
Crime No. 957 of 2020
2. U.Archana

...Respondents

PRAYER : This petition has been filed under Section 482 of Cr.P.C., to call for records and quash the proceedings in Spl.S.C No. 56 of 2021 on the file of the Special Court for POCSO Cases, Chengalpattu.

For Petitioners : Mr. C.R. Hari



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For R1 : Mr. T. Meganathan
Government Advocate(Crl. side)
For R2 : Not appeared

ORDER

This petition has been filed to call for records and quash the proceedings in Spl.S.C No. 56 of 2021 on the file of the Special Court for POCSO Cases, Chengalpattu.

2. The petitioners herein are ranked as accused 1 to 4 in Spl. SC. No. 56 of 2021, pending on the file of the Special Court of POCSO Cases, Chengalpattu. On 04.10.2020, the first respondent registered a case in Crime No. 957 of 2020 for the offences under Sections 294(b), 323, 506(i) and Section 4 of TN Prohibition of Harassment of Women Act, 2002. On 16.03.2021, the first respondent police filed the final report under section 173(2) Cr.P.C altering the offence to 294(b), 323, 341, 354, 354A(2), 506(2) IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002 and Section 8, 10 and 12 of the POCSO Act, against these petitioners. Thereafter, the learned magistrate taken the cognizance of the final report. The petitioners filed this petition to quash the said proceedings.

3. The case of the prosecution is that on 30.09.2020, at about 06.30 p.m., when the victim was coming near her home after purchasing a pedestal fan from Sadras Bazaar, the first petitioner, who is residing at the same

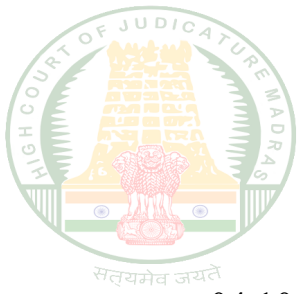


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address of the victim, wrongfully restrained her and touched her breast with sexual intent and harrassed her with abusive words, when the same questioned by her mother, she was assaulted by the accused persons. Hence, the case.

4. The learned counsel for the petitioner submitted that there is no progress in the investigation on the complaint lodged by the petitioners herein in crime No. 956 of 2020, which pertains to the same occurrence. Further, the first respondent had failed to carry out the investigation as case in counter, as mandated under Police Standing Order 588 A. The first respondent police filed only one final reports for the very same occurrences, without even finding who is the real aggressor in the occurrence. Therefore, the entire proceedings against the petitioners is abuse of process of Court and it cannot be sustained as against these petitioners. Further, there is a civil suit pending between the petitioners and the second respondent. The petitioners and second respondent, being the relatives have an animosity caused due to the property dispute, which had led to the respondent holding a grudge against the petitioners. The action of respondent is nothing but a malafide action by the respondent with ulterior motive for wreaking vengeance against the petitioners.

5. Further, the learned counsel for the petitioner argued that false case has been lodged against the petitioners with an ulterior motive in order to wreak vengeance and investigation has not been concluded in the complaint filed by the petitioners in crime No. 956 of 2020 pertaining to the same occurrence. Hence, he prays to quash the proceedings pending against the petitioners in Spl. S.C No. 56 of 2021.



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6. The learned Government Advocate (Crl. side) submitted that on 04.10.2010, second respondent herein/defacto complainant lodged a complainant before the first respondent police, based on the complaint lodged by the victim, the respondent police registered a case in Crime No. 957 of 2020 for the offence under Sections 294(b), 323, 506(i) and Section 4 of TN Prohibition of Harassment of Women Act, 2002. After investigation, the respondent police filed the final report after altering the offence to 294(b), 323, 341, 354, 354A(2), 506(2) IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002 and Section 8, 10 and 12 of the POCSO Act and in the counter complaint filed by the petitioners investigation is under progress.

7. The learned counsel for the second respondent submitted that admittedly there is civil dispute between the parties after the demise of the second respondent's husband/Udayakumar. The fourth petitioner (sister of the Udayakumar), her family members(petitioners), who were illegally occupied the house belongs to the Udayakumar and made false claim and used to threatened the second respondent and her minor daughter. While so, on on the date of occurrence(i.e., on 03.09.2020), when the second respondent's daughter returned from the shop, the first petitioner/Vishnu confronted her and touched her breast with sexual intent, when the same was questioned by her mother/second respondent, she was abused by the petitioners with filthy language and assaulted them due to which they sustained injuries. Immediately, thereafter, both of them was taken to the Government hospital, Chengalpattu with the help of one Hasinabegum. After completion of the treatment, the first respondent gave a complaint



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before the respondent police on 04.10.2020. Thereafter, the first respondent filed the final report after completing the investigation. In order to escape from the said complaint the petitioners lodged the false complaint. Hence, he prayed to dismiss this petition.

8. Heard, the learned counsel for the parties and perused the materials available on record. The fact reveals that fourth petitioner and one deceased Udayakumar are sister and brothers. The second respondent herein is the wife of the said Udayakumar and victim is the daughter of the said Udayakumar. The said Udayakumar committed suicide on 20.11.2017. There is a old tiled house with an extent of five cent was said to be purchased by Udayakumar . The contention of the fourth petitioner is that her father Narayana Rao was purchased the said house on 17.07.1980 and was running a small hotel till his demise and he was died in the year 1985 leaving behind his daughter/fourth petitioner and son as his legal heirs. Thereafter, fourth petitioner's husband/Aravindan developed the property. Subeqently, in the year 2002, the second respondent and Udayakumar marriage was solemnized and begotten child. While so, the said Udayakumar went abroad for some time, returned back and committed suicide due to the family dispute. Eventually, the property dispute was arosed between the fourth petitioner and his brother's family(the second respondent family). Thereafter, the fourth petitioner issued notice to the second respondent demanding share in the said house but the second respondent refused. So, she filed the suit in OS No. 20 of 2019 on the file of the Additional Sub Judge, Chengalpattu. In the said suit, the second



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respondent/defacto complainant along with her daughter filed the written statement stating that her husband went abroad in the year 1982 and constructed the building over the suit property after issuance of patta in the year 1997 the said Udayakumar is a absolute owner of the suit property, after his demise joint patta was issued and hence disputing the right and title of the plaintiff/fourth petitioner herein.

9. Therefore, on the alleged date of occurrence, civil suit was pending, and thereafter, near about 10 months later present FIR was filed against the petitioners stating that on 30.09.2020, while the second respondent's daughter returning from the tuition she was sexually harassed by the first petitioner by touching her breast when the second respondent enquired the first petitioner about the occurrence, there was a interaction between them at that time minor girl was abused and the second respondent also sustained injury immediately she was taken to the Government Hospital, Chengalpattu. After completion of treatment, she gave a complaint on 03.10.2020 and FIR was registered. Thereafter, the final report was filed by the first respondent police since the crime is against the minor child charges were altered into POCSO Act.

10. The fact reveals that FIR was registered near about four days later from the date of the occurrence and according to the victim and his mother/second respondent were immediately taken to Government hospital, Chengalpattu, with the help of one Hasinabegum but the said Hasinabegum was not shown as witness in the final report. On bare perusal of the final



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report, it shows that three witnesses L.W. 3, 4 and 5 are hearsay witnesses, before the investigating officer they stated that they were heard about the incident. Admittedly, they were not eye witnesses hence it is clear that none of the eye witnesses were enquired by the investigating officer. Further, one Hasinabegum said to have taken the defacto complainant to the hospital was not enquired by the investigating officer and also not shown as witness. Nor produced any medical proof to prove that they were taken treatment in the hospital. Admittedly, there was civil dispute in respect of the house property between the parties, after the demise of her husband Udayakumar, fourth petitioner/sister of Udayakumar occupied the house and there was dispute in respect of taking over the house property. Subsequently, there was civil suit filed in the year 2018 itself. During enquiry, this court directed both parties to appear before this accordingly both parties appeared while enquired by this Court, the second respondent stated that the petitioners are not allowed her to reside in the said house, soon after the present complaint, the petitioners vacated the said house and also the petitioners have stated that they have no objection to take over the property by the second respondent. Since, suit is pending before the civil Court both parties work out their remedy before the Civil Court. There was counter case filed by the



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petitioners in which investigation has not been completed. Therefore, the entire facts reveal that due to the property dispute between the parties, and also the civil suit is pending between the parties since 2018, and the suit house was under the occupation of the fourth petitioner. On the other side, the second respondent claiming right over the said house as it is her husband property. Hence, it is clear that there was a misunderstanding between the parties due to property dispute and there is no cordial relation between the petitioners and the second respondent. Further, near about ten months after filing of the civil suit, present complaint was lodged by the second respondent stating that her daughter was sexually abused by the first petitioner/Vishnu. When the petitioners were appeared before this Court stated that in order to get over the civil suit the defacto complainant gave a false complaint and at the time of filing the suit they were under the occupation of the house and first petitioner is running shop opposite to the house. Even prior to this complaint second respondent gave a complaint before the Mamallapuram Police, thereafter only civil suit was filed. After the present complainant, now the petitioners vacated the house and submitted that they have no objection to take the property by the defacto complainant.



11. As discussed above, no eye witness was examined by the first respondent police and they adduced the hearsay witnesses which shows that the petitioners were falsely implicated in this case based on the malicious complaint lodged by the defacto complaint due to the civil dispute pending between them, which is clear abuse of process of law. Further, the learned counsel for the petitioner relied the judgement of the Supreme Court in the case of State of Haryana Vs. Bajan Lal :

8.1....

(a) 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 ac- cused;

(b) 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 investi- gation 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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 institu- tion and continuance of the proceedings and/or where there is a specific provision in the Code or the



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concerned Act, providing efficacious redress for the grievance of the aggrieved party;

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(g) 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.

12. Considering the said legal proposition, the present case falls under category seven in para 8.1. Hence, there is no prime facie material against the petitioners. In order to harass the petitioners they were falsely implicated in this case. Further, the litigants like second respondent abused the provisions of POCSO Act as a tool to achieve their goal illegally which shall not be encouraged. Hence, the proceedings against the petitioners in Spl. S.C No. 56 of 2021 on the file of the Special Court for POCSO Cases, Chengalpattu, is hereby quashed.

13. In the result, this criminal original petition is allowed. Consequently, pending petition(s), if any, is/are closed.

17.03.2025

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To

1. The Section Officer,
V.R Section.
2. The Special Court for POCSO Cases, Chengalpattu.
3. The Inspector of Police,
Sadras Police Station
Kancheepuram District.

T.V.THAMILSELVI,J.



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