

REPORTABLE

16(172)

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 2266 OF 2014

ARISING OUT OF
SPECIAL LEAVE PETITION (CRL) NO. 10348 OF 2013

N. SOUNDARAM

...

APPELLANT

VERSUS

P.K. POUNRAJ & ANR.

...

RESPONDENTS

JUDGMENT

N.V. RAMANA, J.

Leave granted.

2. This appeal is preferred against the judgment and order dated 25th September, 2012 of the High Court of Judicature at Madras whereby learned Single Judge of the High Court allowed the appeal of the Respondent No. 1 (accused) filed under Section 482, Cr.P.C. quashing the final report filed by the police against him in Crime No. 889 of 1996 pending before the learned Judicial Magistrate III, Salem.

3. The brief facts of the case, sans unnecessary details, are that on 20th September, 1996 the appellant herein lodged a complaint with the Hasthampatty Police Station, Salem, Tamilnadu to the effect that on the preceding day at about 11 a.m. about 25 persons, sent by the accused—Respondent No.1, armed with deadly weapons entered her residence, forcibly tied her and her mother-in-law and locked them up in a room. Then they went into the office portion of her husband in the same premises and by threatening the staff at knife point, took away important documents pertaining to some transactions between her husband and the accused (Respondent No. 1). It was also alleged that the assailants had taken away some files relating to other clients of her husband.

4. From the complaint, it appears that the Respondent No. 1 owns a quarry of granites and husband of the appellant is an Auditor by profession and also deals with quarrying business. At the relevant time there were business transactions going on between them out of which, the Respondent No. 1 owed a sum of Rs.36,87,933/- to the husband of the complainant. Since the accused was repeatedly asked to repay the debt amount, enmity erupted between the complainant's husband and the Respondent No.1.

5. On the basis of the complaint, on 20th September, 1996 an FIR was registered by the Hasthampatty Police Station as Crime No. 889 invoking Sections 147, 447, 395 and 506 (ii) IPC against the Respondent No. 1 and 25 other persons for the offences of unlawful assembly with common intention of committing dacoity, house trespass, wrongful confinement of the appellant and her mother-in-law with criminal intimidation etc. Subsequently, upon investigation, the FIR was closed by the police as a mistake of fact and the appellant claims that she was not put on notice before closing the FIR.

6. Thereafter, the appellant filed a protest petition and the learned Judicial Magistrate directed re-investigation. Aggrieved by the order of learned Magistrate, the complainant preferred Criminal O.P. No. 12277 of 2001 before the High Court of Madras seeking transfer of investigation to C.B., C.I.D. The High Court by order dated 10th July, 2001, directed the appellant to approach the Superior Police Officer for investigation. Then, on the application moved by the appellant, the Deputy Commissioner of Police, Salem entrusted the investigation to Inspector of Police, Sooramangalam Police Station. Though the investigation was entrusted to the Sooramangalam Police Station, a

Charge Sheet has been filed by the Hasthampatti Police Station before the learned Judicial Magistrate. Assailing the charge sheet, Respondent No. 1 filed Criminal O.P. No. 13211 of 2003 before the High Court. By order dated 11th July, 2003, the High Court directed the Commissioner of Police to take steps to withdraw the Charge Sheet filed by Hasthampatti Police and directed the Sooramangalam Police to file a final report after investigation of the case. Accordingly, the Sooramangalam Police filed its final report before the learned Judicial Magistrate making out a case against the accused for the offences punishable under Sections 147, 342, 395 and 450, IPC.

7. The 1st respondent being aggrieved by the report of the Sooramangalam Police, preferred Criminal O.P. No. 8345 of 2004 before the High Court under Section 482, Cr.P.C. The High Court, initially tried to find out an amicable settlement between the parties by appointing Mr. T.C. Vijayaraghavan, as an Arbitrator. On 4th March, 2009, learned Arbitrator furnished his report to the High Court observing that despite complainant and her husband's willingness for an amicable settlement the accused—Respondent No. 1 was not ready. Thereafter, the High Court by the impugned order allowed the Crl.O.P. of the Respondent No. 1 and quashed the final report

furnished by the Sooramangalam Police against him on the ground that the account books taken away by the accused—respondent no. 1 from the residence of the complainant after giving due receipt to the Assistant of the husband of the complainant and statements of some of the witnesses examined under Section 161, Cr.P.C. were only hearsay statements. Therefore, the High Court formed the view that nothing has been established against Respondent No. 1. The High Court also held that the issue, who is due to whom is for the Civil Court to decide. However, the High Court directed the Judicial Magistrate to proceed with the case as against other accused in accordance with law. Against this order of the High Court, the appellant filed the present appeal seeking restoration of criminal proceedings against Respondent No.1.

8. On 10th January, 2004 this Court issued notice. Despite service of notice, Respondent No. 1 did not prefer to enter appearance, once, this Court by order dated 1st September, 2014 directed the Registry to appoint an Amicus Curiae to deal with the case on behalf of Respondent No. 1.

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9. We have heard learned counsel for the appellant, learned amicus for the Respondent No. 1 and the standing counsel for the State.

10. Learned counsel appearing for the appellant submitted that a *prima facie* case is made out against the accused—Respondent No.1 on the basis of allegations made in the Complaint and the High Court committed a serious error in quashing the final report against Respondent No. 1 without assigning any valid reason, that too when the matter was ripe for trial. The final report of the police was prepared after recording the statements of witnesses and thorough investigation. The statements of witnesses under Section 161, Cr.P.C. are consistent as to the occurrence of events on 19th September, 1996 and they clearly make commission of cognizable offences against the accused. The accused had forcibly taken away the documents from the office of the appellant's husband under threat. The motive of the accused party for taking away the documents and account books was to prevent institution of civil action by the husband of the appellant against Respondent No. 1. The High Court erred in holding that the 1st respondent had only taken away his own documents after due acknowledgement, but the fact remains that

the 'acknowledgement' allegedly written by Mr. Bhaskar, Assistant of the appellant's husband, was not genuine and it was procured under threat and coercion. Mr. Bhaskar deposed in clear terms that the said receipt/acknowledgement was taken from him by force under threat.

11. Learned counsel further submitted that the High Court failed to consider the fact that the seizure mahazar dated 18th April, 2002 revealed that apart from the account books / documents pertaining to the 1st Respondent, files belonging to various other clients of appellant's husband were also recovered from the possession of the accused. The judgment of the High Court quashing final report against prime accused while directing continuation of trial against other accused is not justified for the simple reason that the others are only co-accused who acted only on the behest of Respondent No. 1. Learned counsel also submitted that against Respondent No. 1 several FIRs were registered in various parts of Tamil Nadu, Bangalore and Jharkhand. Even the High Court failed to appreciate the report of Mr. T.C. Vijayaraghavan, learned Arbitrator appointed by the High Court wherein it was clearly mentioned that "prima-facie the claim of Mrs. Soundaram appears to be genuine and

more probable". Thus, the facts remain that the Respondent No. 1 owed Rs.36,87,933/- to the appellant's husband and the High Court ought not to have quashed the criminal proceedings against Respondent No. 1 in exercise of the power vested under Section 482, Cr.P.C.

12. On the other hand, learned Amicus appearing for the

Respondent No.1 tried to support the judgment of the High Court and submitted that nowhere in the complaint the presence of Respondent

No.1 was mentioned. The amount if any owed by the accused to the husband of the appellant was also not clear from the records, as it was shown as Rs.18 lakhs in the complaint and in the deposition of the appellant's husband, it was mentioned as Rs.36,87,933/-.

Learned counsel finally submitted that the High Court has rightly

quashed the criminal proceedings against the Respondent No. 1 as no case is made out against him.

13. Having heard learned counsel for the parties and upon perusal of the material on record, we find that undisputedly there were some business transactions between the accused and the husband of the appellant which ultimately led to enmity between them. The statement of Mr. R. Bhaskar, Assistant of the husband of the appellant also

supports the allegations leveled against the Respondent No.1. He deposed that Respondent No. 1 had threatened him and said that they were taking the files and account books so that the Auditor (husband of the appellant) cannot file a case against him for the money borrowed by him. He also deposed that he had written the list of books on the letter pad of Rajalakshmi Enterprises under threat and coercion by the accused party. The seizure mahazar shows that on 18th April, 2002 about 51 documents were recovered from the home of one of the accused. From the statements of prosecution witnesses and the final report furnished by the Sooramangalam Police Station, it is clear that Respondent No. 1, along with several co-accused entered the premises of the appellant and ransacked. Apart from that, it is evident from the learned Arbitrator's report that the accused owed some amount to the appellant's husband. It was also made clear by the learned Arbitrator that the appellant and her husband were ready for an amicable settlement but the accused (Respondent No. 1) was not ready.

14. It is well settled by this Court in catena of cases that the power under section 482 Cr.P.C. has to be exercised sparingly and cautiously to prevent the abuse of process of any Court and to secure

the ends of justice [See State of Haryana Vs. Bhajanlal 1992(1) SCC (Supp.) 335. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should refrain from giving a prima facie decision unless there are compelling circumstances to do so. Taking the allegations and the complaint as they were, without adding or subtracting anything, if no offence was made out, only then the High Court would be justified in quashing the proceedings in the exercise of its power under section 482, Cr.P.C. [See Municipal Corpn. of Delhi Vs. Ram Kishan Rohtagi (1983) 1 SCC 1]. An investigation should not be shut out at the threshold if the allegations have some substance [See Vinod Raghuvanshi Vs. Ajay Arora (2013) 10 SCC 581].

15. An overall perusal of the materials placed before us makes out a prima facie case against the accused which requires to be decided by conducting a proper trial. At this stage the High Court cannot analyse and meticulously consider the evidence and anticipate whether it will end up in conviction or acquittal. This is not the stage to decide whether there is any truth in the allegations made but to form an opinion whether on the basis of the allegation a cognizable offence or offences alleged has been prima facie made out. The guilt

or otherwise of the accused can be proved only after conducting a full fledged trial. In the circumstances, in our opinion, it is not proper for the High Court to interfere with the proceedings and quash the final report submitted by the police.

16. On the other hand we do not think that the High Court was right in opining that the dispute between the parties is civil in nature. This

is a case where serious allegations were made against the accused party. Just because the allegations involve the factum of recovery of

money it cannot be concluded that the complaint is purely civil in nature when the other serious allegations prima facie attract the penal provisions. In our considered opinion High Court seriously misdirected itself in coming to a conclusion that it is for the Competent Civil Court to decide the said appeal. We are unable to

agree with the view taken by the learned Single Judge of the High Court. In our opinion, in the background and circumstances of this case the High Court should not have exercised the power under Section 482, Cr.P.C. which resulted in miscarriage of justice.

17. For the reasons stated above, without expressing any opinion on the merits of the case, we set aside the impugned order passed by the High Court and restore the criminal proceedings against

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Respondent No.1. We direct the learned Judicial Magistrate to expedite the trial and conclude it as early as possible, without being influenced by any observations made by this Court while considering the legality of the order impugned.

18. The appeal stands allowed accordingly.

RP Desai

.....J.
(RANJANA PRAKASH DESAI)

N.V.

.....J.
(N.V. RAMANA)

NEW DELHI,
OCTOBER 17, 2014

