

(2010) 11 MAD CK 0229**Madras High Court****Case No:** Criminal O.P. No. 13768 of 2010 and M.P. No"s. 1 and 3 of 2010

V. Palanisamy and Johni Basha @
Johni

APPELLANT

N. Velusamy

Vs**RESPONDENT****Date of Decision:** Nov. 9, 2010**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 294B, 323, 506

Citation: (2010) 4 APLJ 261**Hon'ble Judges:** C.T. Selvam, J**Bench:** Single Bench**Advocate:** B. Sriramulu, SC for V.P. Sengottuvel, for the Appellant; H. Rajasekar, for the Respondent**Final Decision:** Allowed**Judgement****@JUDGMENTTAG-ORDER**

C.T. Selvam, J.

This petition seeks quash of proceedings in C.C. No. 78 of 2010 on the file of the Judicial Magistrate No. I, Tiruppur in so far as the Petitioners are concerned.

2. The Petitioners are the accused 1 & 3 in the case. The case arises out of a private complaint wherein the Respondent/ complainant informed of an occurrence at about 6.00 p.m on 24.04.2009 when the first Petitioner/ first accused, who was his employer for about a period of five years (i.e. from 2000 to September 2005) and two others working under him, on seeing the Respondent/ complainant approaching on the opposite direction in a two-wheeler got off the car, obstructed the Respondent/ complainant, abused him in foul language, pushed him down and thereafter the first accused kicked at the Respondent/ complainant's hip and stomach while the other two accused repeatedly kicked him. In the complaint, it has been informed that the complainant had been working as a Supervisor under the

first accused who was the owner of a concern by name J.V. Tapes for a period of five years from 2000, that he was suddenly removed from employment and asked to vacate the premises occupied by him. On his assertion that he would vacate upon payment of Provident Fund and Gratuity he was set upon by the employees of the first accused at about 3.30 p.m on 16.09.2005, beaten and threatened of death. He had preferred a complaint with the Tirupur North Police Station, which had been registered in Cr. No. 2015/2005 on 18.09.2005 and for offences under Sections 294B, 323 and 506(ii) IPC. It is the Respondent/ complainant's case that it was in relation to such case that he had visited the police station and was returning therefrom when the accused set upon him in the manner above stated and warned him against pursuing the same. No action had been taken on his complaint by the local police and his representation to the higher officials, had not met any response and therefore it had become necessary to move the present complaint case.

3. The Respondent/ complainant would inform that no action had been taken on the earlier complaint of the year 2005 and also on the present complaint since the first accused was a highly influential person and as the office of the Superintendent of Police, Central Crime Branch was housed in premises belonging to him. On examination of the complainant and two others, the lower court was pleased to take cognizance.

4. Sri.B. Sriramulu, learned senior counsel appearing for the Petitioner would inform that the present complaint was an act of vendetta. The disgruntled past employee/complainant had misappropriated wages due to the farm workers in March 2005 and when questioned, had failed to return to work. Consequently, he came to vacate the employer's premises in September 2005. Due investigation had been conducted on the earlier complaint registered in Cr. No. 2015/2005 and on finding no truth therein, the investigating agency had filed a final report on 05.10.2005 informing the case to be one of mistake of fact. He would state that when the said complaint had been closed after due investigation, the complainant was seeking to malafidely prosecute the Petitioners on very similar allegations by preferring a false complaint. He would submit that even though the incident is alleged to have taken place on 24.04.2009, the complaint had been preferred only on 30.04.2009. Such delay as also the contradictory sworn statements of the complainant on 30.07.2009 and of 2 others on 24.08.2009 are emphasized to support the submission of the foisting of a false case. Learned senior counsel would state that the non-mention of the name of the hospital in which the complainant had taken treatment and that the very same abusive words which were informed in the complaint of the year 2005 are said to have been uttered, would indicate the falsity of the complaint.

5. Learned senior counsel placed reliance on the following judgments, to inform that issue of process and requiring accused persons to face trial was a matter which had grave consequences for the accused and thus due care and caution had to be taken by the Magistrates before issuing summons and where the proceedings have

malafidely been initiated, the same ought to be brought to an end.

1 [Punjab National Bank and others Vs. Surendra Prasad Sinha](#) ;

2 [State of Haryana and others Vs. Ch. Bhajan Lal and others](#) ;

3 [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#) ;

4 [Hridaya Ranjan Pd. Verma and Others Vs. State of Bihar and Another](#),

5 [Alpic Finance Ltd. Vs. P. Sadasivan and Another](#) ;

6 [S.W. Palanitkar and others Vs. State of Bihar and another](#) ;

7 All Cargo Movers (I) Pvt. Ltd. and Ors. v. Dhanesh Badarmal Jain and Anr., (2007) 14 SCC 776;

8 [V.Y. Jose and Another Vs. State of Gujarat and Another](#) ; and

9 [Shakson Belthissor Vs. State of Kerala and Another](#) .

6. Learned Counsel for the Respondent would state that the reference to the complaint of the year 2005 was only to explain the motive behind the attack on the complainant on 24.04.2009. The complaint reflected a *prima facie* case which found support in the sworn statements recorded. Reliance is placed on the decisions reported in CDJ 2010 SC 284, K. Neelaveni v. State to submit that when such is the case, the truthfulness or otherwise of the allegations could not be considered at this stage and would be a matter for trial.

7. I have considered the rival submissions.

8. In [Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others](#) , the Apex Court has held,

28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is *prima facie* committed by all or any of the accused.

In State of Haryana and others Vs. Ch. Bhajan Lal and others , one of the illustrative cases, wherein powers of quash is to be exercised is informed as,

(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.

In Punjab National Bank and others Vs. Surendra Prasad Sinha , it has been observed that it is also salutary to note that judicial process should not be an instrument of oppression or needless harassment. At the stage of issue in process the court would be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of a private complainant to act with vendetta and needlessly harass persons. In Dalip Singh Vs. State of U.P. and Others , the Apex Court cautions us against the new creed of litigants who do not have any respect for truth and who shamelessly resort to falsehood and unethical means for achieving their goals. Paragraphs 1 & 2 of the said judgment are hereunder reproduced.

1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahimsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.

9. The above are cited to impress that even if the complaint on the face of it disclosed commission of offences, it would be necessary for this Court to interfere if it has reason to believe that the complaint is false and an action in malafides. As informed by the Apex Court, to avoid harm to an innocent, new rules may be evolved by Court. In the instant case, we find that the very complaint allegedly preferred to the investigating agency on 30.04.2009 informs of knowledge of the

complainant of the closure of his earlier complaint registered in Cr. No. 2015/2005 as a mistake of fact two years prior thereto. It would be most unreasonable to accept the story of the complainant that he had been to the police station on 24.04.2009 to enquire regarding his earlier complaint of the year 2005. On closure of investigation on his earlier complaint two years back, his remedy would be not at the doors of the police station but through process of Court. Taking into consideration the same, as also the fact of delay in filing the complaint, that none who allegedly treated him are shown as witnesses and the totality of the circumstances, this Court would consider it necessary to quash the proceedings.

10. Accordingly, the entire proceedings in C.C. No. 78 of 2010 on the file of the Judicial Magistrate No. I, Tiruppur stands quashed and the benefit of this order also shall flow in favour of the accused not before this Court. This Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.