



Crl.O.P.No.3390 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.03.2023

Pronounced on : .04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.3390 of 2021

and

Crl.M.P.No.1968 of 2021

1.V.Krishnan

2.K.Kalarani

3.Surendra Mohan

...Petitioners

Vs.

1.State by Sub-Inspector of Police

District Crime Branch, Salem.

2.Murugaraj

...Respondents



Crl.O.P.No.3390 of 2021

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the original records in Cr.No.09 of 2020 pending on the file of District Crime Branch Salem, quash the same.

For Petitioners : Mr.K.P.Ananatha Krishna

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : Mr.Kalayanaraman

ORDER

The petition has been filed to quash an FIR in Crime No.9 of 2020 registered for the offences under Sections 409, 506 (i) I.P.C.

2.It is alleged in the complaint that the petitioners are known to the second respondent/de-facto complainant; that the first petitioner entered into a lease with the second respondent on 19.02.2012 in respect of the land and building belonging to the second respondent herein; that the petitioners promised to deliver the property in “*as is where is*” condition after the expiry of the lease period; that the lease was originally granted for a period of six years from 19.02.2012; that on the



expiry of lease period, the second respondent/de-facto complainant found that the petitioners had damaged the building and other electrical equipments; that when the defacto complainant asked the petitioners to rectify the same, they had promised to repair and rectify the damages to the building and the electrical equipments; that based on the said representation, the defacto complainant/second respondent renewed the lease for the further period of the eleven months from 25.07.2018; that from 01.05.2019, the petitioners did not pay rent to the premises; that when the second respondent met them on 25.05.2019 the petitioners promised to vacate the premises and promised to hand over the premises in the same condition as it was when handed over to them; that on 05.11.2019 the respondent inspected the premises and found that the electrical panels, cable wires, expensive switches and bulbs to the value of Rs.30,00,000/- (Rupees Thirty Lakhs only) were missing; that the petitioners had damaged the premises and the estimated loss on account of the said damages worked out to Rs.60,00,000- (Rupees Sixty Lakhs Only); that the petitioners promised to rectify all the defects and they did not do so; that on 20.03.2020, the second respondent met the first and second petitioners/A1 and A2 again and asked as to when they would rectify the same, the first and second petitioners had abused them in filthy language; that they stated



they can talk only through the third petitioner, who had introduced the petitioners to the second respondent. The aforesaid complaint was lodged on 08.06.2020 and the First Information Report was registered on 24.08.2020.

3.Mr.K.P.Ananthakrishna, the learned counsel for the petitioners submitted that:-

(i) the Lease Agreement was entered into between the first petitioner and the second respondent/de-facto complainant. The second petitioner is the wife of the first petitioner. The third petitioner (A3) mediated between the petitioners (A1 and A2) and the second respondent/defacto complainant at the beginning of lease. Hence, the learned counsel for the petitioners submitted that the second and the third petitioners had nothing to do with the alleged offences, even if all the allegations are accepted to be true.

(ii) the reading of the allegations would show that a Landlord Tenant dispute is sought to be projected as a case of Criminal Breach of Trust and Criminal Intimidation. The primary grievance of the second respondent is that the premises was damaged, and hence, the petitioners had caused huge loss to the



second respondent. This would not constitute the offence of Criminal Breach of Trust. Further, the allegations with regard to misappropriation of electrical equipments, cable wires and switches for a value of Rs.30,00,000/- (Rupees Thirty Lakhs only) is an afterthought. It is alleged that the said second respondent came to know of the missing of these equipments as early as on 05.11.2019. The impugned complaint was given only on 08.06.2020 belatedly as an afterthought to somehow give a criminal colour to the civil dispute.

4.Mr.Kalayanaraman, the learned counsel for the second respondent/de-facto complainant would submit that the premises was given on lease on 19.02.2012. However, certain electrical equipments such as electrical panels, cable wires, switches and bulbs which were entrusted to the petitioners were dishonestly misappropriated by the petitioners. The allegation in the complaint discloses that these properties were entrusted and misappropriated by the petitioners. Hence, the learned counsel for the de-facto complainant/second respondent submitted that quash petition which has been filed to scuttle the investigation at the nascent stage and has to be dismissed.



5.Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the first respondent/complainant also reiterated the submissions of the second respondent/defacto complainant and stated that the FIR cannot be quashed at the initial stage itself. Hence, he prayed for dismissal of the quash petition.

6. Admittedly, the first petitioner had entered into a Lease Agreement with the respondent in respect of the premises belonging to the second respondent. The second petitioner who is the wife of the first petitioner is sought to be implicated only on the basis of an alleged threat made by her along with her husband/first petitioner herein on 20.03.2020. Besides that, the allegation against her is she along with her husband had jointly taken the premises on lease and promised that she would return the premises in the same condition as it was taken by them, at the beginning of the lease. The allegation with regard to threat is very vague and there is nothing in the impugned complaint to show that there was any real threat by the first and second petitioners. Further, the alleged threat said to have been taken place in 20.03.2020. The impugned complaint was filed only in 08.06.2020. Hence, the allegation of criminal intimidation is not made out against the first and second petitioners. Further as against the third petitioner, the only



allegation is that he had mediated between the first, second petitioners and the second respondent; and that he made a representation that he would ensure that the first and second petitioners would keep up their promise of handing over the property in the same condition. Apart from the above allegations, there is nothing in the impugned FIR to implicate the third petitioner. The above allegations, even if accepted to be true would not amount to offence under Section 409 of I.P.C. There was no property admittedly entrusted to him. Hence, the proceedings against the second and the third petitioners are liable to be quashed.

7. As regards the first petitioner, the allegation is that as a tenant, he was entrusted with certain electrical equipments along with the premises and that he had misappropriated the same. The offence alleged in the First Information Report is 409 I.P.C. In order to attract the offence under Section 409 I.P.C., the entrustment must be made to a Public Servant, Banker, Merchant, Broker, Attorney or Agent. The Lessee of the premises would not fall under any of the above class of persons. Hence, the offence under Section 409 of IPC is not made out. Even with regard to Section 406 I.P.C., it has to be seen, whether the allegations of entrustment and misappropriation has been made out in the instant



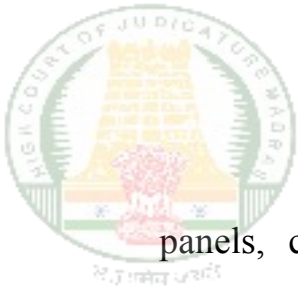
case. In the Lease Agreement, there is no reference with regard to the entrustment of any particular equipment to the first petitioner. The relevant portion is extracted hereunder :

“11.The Lessor hereby permits the lessee to use the Borewell and other water sources in the mill. The power charges required for supplying the same shall be borne by the Lessee.

12.The scheduled property shall not be sublet by the Lessee.

13.On expiry of the lease or earlier determination thereto Lessee shall deliver peaceful possession to the Lessor "as is where is" and the condition of the Factory building and its attachments like Motor, Electrical items etc, which are separately given in Schedule II shall be handed over in the same manner as remains on entering this agreement.”

The Schedule-II referred to in the said clause is not found in the Agreement. In any case, it is the case of the second respondent/de-facto complainant that he came to know of missing of the electrical panels, cable wires and other equipments even as early as on 05.11.2019. Apart from making a general statement that certain



Crl.O.P.No.3390 of 2021

panels, cable wires and expensive switches were missing, which had been allegedly entrusted to the petitioners, at the time of granting of lease, there is nothing to show that any particular property was specifically entrusted in order to constitute the offence of Criminal Breach of Trust. Even, assuming that they were entrusted, there is no reason why the complaint was filed seven months later. On a reading of the FIR, it is clear that the Landlord Tenant dispute is sought to be given a criminal colour. In order to constitute the offence of Criminal Breach of Trust, there must be a specific allegation as to the exact property that was entrusted and as to how the accused had misappropriated the same. The vague allegations such as wires, switches and panels have been removed cannot be the basis for invoking the Criminal Law. Even assuming that the petitioners had taken away these electrical equipments, it is for the respondent to resort to the Civil Proceedings and establish the same in the said Proceedings. The disputes with regard to accounting between the Landlord and Tenant cannot be summarily decided in a Criminal Proceeding. As stated earlier, the allegation with regard to Criminal Intimidation is vague, there is nothing to suggest that there was any real threat. Besides that the complaint was lodged three months after the alleged threat.



Crl.O.P.No.3390 of 2021

8. Further the tendency of the second respondent/de-facto complainant to implicate the second petitioner/wife of the first petitioner herein and the third petitioner who had allegedly mediated and promised to ensure the handing over of premises by the first petitioner would show that the second respondent's complaint is not bonafide. The FIR in any case does not disclose any cognizable offences.

9. For all the above reasons, this impugned FIR is liable to be quashed.
Hence, quashed.

10. Accordingly, the Criminal Original Petition is allowed.
Consequently, the connected Miscellaneous Petition is closed.

.04.2023

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Crl.O.P.No.3390 of 2021

To

WEB COPY

1.The Sub-Inspector of Police,
District Crime Branch,
Salem.

2.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



WEB COPY



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SUNDER MOHAN. J,
dk

Pre Delivery Order in
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