

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2015

DELIVERED ON : 16.06.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Cr1.OP No.14199 of 2015
and M.P.No.1 of 2015

Shahabudeen

.. Petitioner/Accused 2.

Vs

1.The State rep by
The Deputy Commissioner of Police cum
Executive Magistrate
Ambattur District
Avadi, Chennai 600 054.

2.The Inspector of Police
Law and Order
T 14, Mangadu Police Station
Chennai 600 122.

.. Respondents/Complainant.

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the FIR in Cr.No.532 of 2014 dated 28.04.2014 on the file of the 2nd respondent and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner Mr.Mohamed Ehiya

For Respondents Mr.C.Emalias, Addl.Public Prosecutor

ORDER

This petition has been filed for quashing the case in T-14 Mangadu Police Station Crime No.532 of 2014 on the ground that the FIR has been registered for an offence under Section 107 Cr.P.C.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. On a reading of the FIR it is seen that, it is a suo motu case that has been registered by the Inspector of Police T-14 Mangadu Police Station. It is stated in the FIR that Hajrath Syed Voliyllah Darga and Masjith Trust has been functioning from 1995 and that, the Trust owns lands in that area which have been plotted out and given to poor people for rent. In the year 2008, the persons to whom the lands were given for rent, appear to have formed a Welfare

Association and they have been creating problems for the Trustees. In this regard, a quarrel ensued on 16.09.2013 and one Mohammed Moosa died, in connection with which, a case in Cr.No.1766 of 2013 under Section 174 Cr.P.C. later altered to 304(ii) was registered by the Police. Thereafter, on 26.04.2015 there was a quarrel between one Ahmed and Gulam Dhasthagir, in which, Ahmed appears to have assaulted Gulam Dhasthagir with his helmet, which resulted in the death of Gulam Dhasthagir and in connection with which a case in Cr.No.516 of 2014 was registered by the Police, against Ahmed. It is further stated in the complaint that, 17 named persons who are supporters of Ahmed are creating law and order problem in that area and therefore, the respondent police registered the aforesaid FIR under Section 107 Cr.P.C and has referred the matter to the Executive Magistrate for taking appropriate action.

4. The learned counsel for the petitioner submitted that an FIR under Section 107 Cr.P.C. cannot be registered. It is true that Section 107 Cr.P.C. is not a penal provision nor is it a cognizable offence. In this case, the respondent police are not charging the petitioner for any cognizable offence, but have prepared a report for the Executive Magistrate to initiate proceedings under Section 107 Cr.P.C. for the purpose of maintaining law and order in that area. It is a practice in the State of Tamil Nadu for the police to use the FIR form for such purposes, and this Court cannot be oblivious to it. For example, when a person goes missing, a missing FIR will be registered on the basis of the complaint given by the relative of the missing person. Similarly, when an unidentified body is found, an FIR under Section 174 Cr.P.C. is registered. These practises cannot be said to be totally illegal, though it may be unacceptable to a legal puritan. The usage of the FIR book by the police for recording their belief that, there is a likelihood of breach of peace and for placing a report for the Executive Magistrate to take suitable action under Section 107 Cr.P.C cannot be a reason to quash the very FIR.

5. The next contention of the learned counsel for the petitioner is that the provisions of Section 107 Cr.P.C. cannot be invoked in matters relating to a dispute between tenant and landlord. In support of this contention, the learned counsel relied upon the judgment of the Delhi High Court in Asha Pant v. State and others [unreported]

"19. This Court had very recently in Sushma Arora v. State (Order dated 15th February, 2008 in CrI. M.C. 35281 of 2006) held that the decision of this Court in Ram Prakash v. State ought to have been followed by the SEM in that case, which was really a dispute between a landlord and tenant. This Court has cautioned the SEMs against using their powers under Section 107 CrPC in such a situation."

This Court has no quarrel with the above proposition, inasmuch as Section 107 Cr.P.C. cannot be invoked for private disputes. In this case, it is not a landlord tenant dispute simplicitor. The Trust has given lands to various persons and those persons have formed an association, through which they are wanting to claim certain rights. In that process, there has been quarrel earlier between two fractions leading to two deaths as stated above. Under such circumstances, the local Station House Officer was of the opinion that, peace can be restored in the area, if proceedings under Section 107 Cr.P.C is initiated by the Executive Magistrate. Therefore, the action taken by the respondent cannot be faulted.

In the result, the petition is devoid of merits and the same stands dismissed. Consequently, connected miscellaneous petition is closed.

gms

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

- 1.The Deputy Commissioner of Police cum
Executive Magistrate, Ambattur District
Avadi, Chennai 600 054.
- 2.The Inspector of Police
Law and Order, T 14, Mangadu Police Station
Chennai 600 122.
- 3.The Public Prosecutor
High Court, Madras.

+ 1 cc to M/s.Mohamed Ehiya, Advocate SR 29244

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