

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-01-2015

Coram

THE HONOURABLE MR. JUSTICE R.S. RAMANATHAN

Crl.O.P. No. 1713 of 2015

and

M.P. Nos. 1 and 2 of 2015

1. K. Jayakannan
2. J. Selvambal
3. J. AgniSelvaraju
4. P. Vadivel

... Petitioners/Accused

Versus

V. Gandhi

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the entire records in S.T.C. No. 2405 of 2014 on the file of Judicial Magistrate, Thirukovilur and quash the charge and proceedings.

For Petitioners :

Mr. J. Venkataraman

ORDER

The petitioners have filed this petition praying to quash the private complaint filed by the respondent against them in S.T.C. No. 2405 of 2014 on the file of the learned Judicial Magistrate, Thirukovilur, Villupuram District.

2. The respondent has filed the private complaint against the petitioners for having committed the alleged offence punishable under Sections 447, 334 and 506 (ii) of Indian Penal Code (in short IPC). In the private complaint the respondent prayed for initiating appropriate action against the petitioners on the basis of the allegations made in the private complaint and the sworn statement of the respondent as well as the other witnesses such as Balaji, Mohan, Muthukumaran, Anbazhagan, Thirumurugan and others.

3. It is submitted by the learned counsel for the petitioners that the second petitioner is the wife and third petitioner is the son of the first petitioner. The first petitioner is the owner of the land comprised in Survey No. 23/2D for which patta was also issued in his favour vide Patta No.81. For the purpose of irrigating the agricultural lands, the first petitioner is drawing water from

the well situate in the land in Survey No.23/2C for which also patta has been granted in his favour vide Patta No.355. According to the learned counsel for the petitioners, earlier, the father of the first petitioner filed O.S. No. 420 of 1999 on the file of the learned II Additional District Munsif Court, Thirukovilur against the respondent herein and obtained an order of permanent injunction. There are also two other civil suits pending with respect to the aforesaid properties, one filed by the respondent herein in O.S. No. 303 of 2013 and the other filed by the petitioners 1 and 2 herein in O.S. No. 18 of 2014 for declaration and permanent injunction which are pending on the file of the learned Principal District Munsif Court, Thirukovilur. According to the learned counsel for the petitioners, in the suit filed by the first petitioner in O.S. No. 18 of 2014, an order of injunction was granted restraining the respondent from interfering with the right of the petitioners to use the common well in Survey No.23/2C. Therefore, according to the learned counsel for the petitioners, the petitioners are the owners of the property in question and they are having assertable right over the same over which the respondent has no manner of right. Therefore, it is submitted by the learned counsel for the petitioners that the alleged trespass by the petitioners in to their own land does not arise. It is also stated that the petitioners have presently raised sugar cane crop in the lands in question and to substantiate the same they have also produced documentary evidence. The alleged complaint has been given by the respondent only to harass the petitioners and there is no case made out of such complaint. In such circumstances, according to the learned counsel for the petitioners, the learned Judicial Magistrate, Thirukovilur erred in taking cognisance of the complaint and proceeding with the case.

4. I heard the learned counsel for the petitioners and perused the materials placed on record. Admittedly, there is a dispute as regards ownership of the lands in question between the petitioners and the respondent. There are also civil suits filed by the petitioners as well as the respondent and they are pending before the Civil Courts. Whether the petitioners are having a right over the disputed land or the respondent is having such right can be decided only during the course of trial in the civil cases. As regards the criminal proceedings launched by the respondent, whether the allegations made in the complaint are established in a manner known to law or not can be decided only during the course of trial. The learned Judicial Magistrate has only pointed out that a prima facie case is made out against the petitioners for proceeding with the case. Such a conclusion arrived at by the learned Judicial Magistrate is on the basis of the complaint and the sworn statement of the petitioner and others. The validity or otherwise of such statement can be gone into by the learned Judicial Magistrate only at the time of trial. In such circumstances, I do not find any reason to interfere with the proceedings pending before the learned Judicial Magistrate, Thirukovilur.

In the result, the Criminal Original Petition is dismissed.
Consequently, connected miscellaneous petitions are closed.

rsh

-s/d-
Deputy Registrar(J)
Dt:13/2/2015

True Copy

Sub-Assistant Registrar

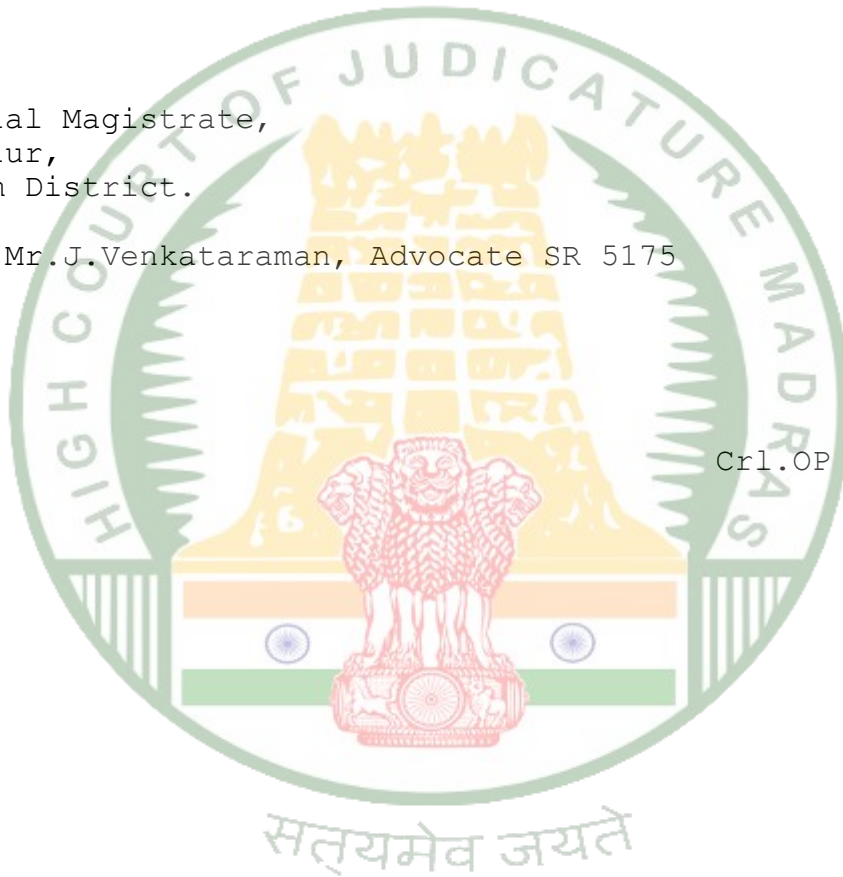
To

The Judicial Magistrate,
Thirukovilur,
Villupuram District.

+ 1 cc to Mr.J.Venkataraman, Advocate SR 5175

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