

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.OP.No.2881 of 2015
and M.P.No.1 of 2015

R.Eswaran Petitioner/Accused

Vs

1.The State of Tamil Nadu
rep.by the Inspector of Police,
Central Crime Branch,
Tirupur District.

2.Periya Nachimuthu Respondents/Complainant,
Defacto Complainant.

Prayer:- Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the FIR in Crime No.23 of 2009 dated 31.08.2009 pending on the file of the 1st respondent.

For Petitioner :Mr.S.Sithirai Anandam

For Respondents :Mr.C.Emalias
Additional Public Prosecutor for R1

Mr.A.Ramesh, Sr.counsel for
Mr.V.Balamurugan for R2

ORDER

This petition has been filed to quash the FIR in Crime No.23 of 2009 dated 31.08.2009 pending on the file of the 1st respondent.

2.Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor for the 1st respondent and the learned counsel for the 2nd respondent and perused the materials placed on record.

3.It is the case of the defacto complainant that the petitioner/accused had created a forged Will dated 03.01.1953 on the strength of which he filed a Suit in OS No.335 of 2006 and obtained a Decree against the actual owners. On a complaint lodged by the defacto complainant, the 1st respondent police registered a case in Crime No.23 of 2009 on 31.08.2009 for offences under

Sections 468, 471 and 420 IPC against the petitioner/accused herein, challenging which, the petitioner/accused has filed this quash petition.

4.Mr.S.Sithirai Anandam, learned counsel for the petitioner/accused submitted that earlier, the defacto complainant had filed two suits in O.S.Nos.14 of 2009 and 152 of 2009 for setting aside the Decree in O.S.No.335 of 2006 and those suits were dismissed and therefore, the plea of the defacto complainant is that the Will was fabricated, cannot now be adjudicated in a criminal prosecution.

5.Be that as it may, the learned Additional Public Prosecutor, on instructions from the 1st respondent police, submitted that the investigation in Crime No.23 of 2009 was completed and final report has been filed on 18.06.2015 before the learned Judicial Magistrate No.II, Tirupur.

6.That apart, the 1st respondent police have filed a counter, wherein in Para 14, they have stated as follows:

"14.During the investigation in the said case in CCB, Cr.No.23 of 2009 and from the year 2009, the petitioner was dodging by stating one reason or other and was avoiding to produce the original Will. The petitioner has produced only the xerox copy of the said Will. The said xerox copy of the forged Will is produced here with for kind perusal of this Hon'ble Court. The Will is apparently a forged one, the Will was alleged to be executed in the year 1953. The Will starts with the words that "in the year 1953, Nilagiri Coimbatore Registration District, Tirupur Taluk ...". It is pertinent to note that Tirupur Taluk was not formed in 1953 and in the year 1953, it is only Palladam Taluk."

Just because two suits filed by the defacto complainant was dismissed by this Court, it will not mean that the offence alleged against the petitioner/accused stood condoned or effaced. The gravamen of the allegation of the petitioner/accused is that they have fabricated the Will and the police have collected enough materials set out in Para 14 as stated above, to show that the Will had not come into existence in the year 1953. Though the FIR was registered in the year 2009, the police were not able to proceed with the investigation, as they were not able to secure the original Will from the petitioner/accused. It is seen that during the pendency of this quash application, the petitioner/accused filed CrIOP No.3602 of 2015 for a direction to the police not to harass him. In that application, for the first time, the petitioner/accused has taken a stand that the original Will dated 03.01.1953, was handed over to the Advocate and had got lost. This version of the petitioner/accused does not cut ice and it clearly shows that there is something seriously wrong in the Will.

7.In view of existence of sufficient materials against the petitioner/accused and in the light of the fact that the final report has already been filed, this petition is devoid of merits and accordingly, this Criminal Original Petition is dismissed. The learned Judicial Magistrate No.II, Tirupur, is directed to take the final report in Crime No.23 of 2009 on its file and proceed with the same expeditiously in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

mps

To

1.The Judicial Magistrate No.II,
Tirupur.

2.The Inspector of Police,
Central Crime Branch,
Tirupur District.

3.The Public Prosecutor,
High Court, Chennai.

+1 cc to Mr.S.Sithirai Anandam, Advocate, sr.37880.

+1 cc to Mr.V.Balamurugan, Advocate, sr.38185.

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br(co)
kra(10/08)

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