

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.07.2015

Delivered on : 20.07.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.No.19563 of 2014
and M.P.Nos.1,2 of 2014

1.Kalidoss
2.Suresh Solomon
3.Balraj

... Petitioners

Versus

1.State of Tamil Nadu rep by its
Superintendent of Police,
CBCID, Government Estate,
Chennai.

2.The Inspector of Police,
H8, Tiruvottiyur Police Station,
Tiruvottiyur, Chennai-19.

3.O.V.Nambiar

... Respondents

Criminal Original petition filed under Section 482 of the Criminal Procedure Code praying to call for the entire records comprised in Crime No.578 of 2014 now pending on the file of the Superintendent of Police, CBCID Government Estate, Chennai and quash the same.

For Petitioners : Mr.K.Chandrasekaran
for Mr.K.S.Vaithianathan

For Respondents : Mr.C.Emalias, APP [for R1, R2]
: Mr.N.Chandrasekaran
for Mr.B.Rabumanohar [for R3]

O R D E R

This petition has been filed to quash the proceedings in Crime No.578 of 2014 pending on the file of the 1st respondent.

2. Heard the learned counsel for petitioners; the learned Additional Public Prosecutor appearing for respondents 1 and 2; the learned counsel appearing for the 3rd respondent and perused the

materials placed on record.

3. On a complaint lodged by one O.V.Nambiar, the respondent Police registered a case in Crime No.578 of 2014 on 06.04.2014 under Section 147, 148, 448, 427, 506[ii] IPC against Kalidoss and two others, challenging which, the accused are before this Court for quashing the FIR.

4. The respondent Police have filed a counter, wherein, in paragraph No.7 to 11 and 14, it is stated as follows:

"7.It is submitted that, on 06.04.2014, a mob consisting of over 100 persons under the leadership of Kalidoss, Solomon, Palraj, (3rd petitioner/accused A-3) co-owners of the property under dispute, along with some advocates created a free pathway to their property from the roadside damaging the front side compound wall and a portion of the defacto complainant's factory, using bull dozers. In this connection, based on the complaint of Tr.O.V.Nambiar, a case was registered by H.8 Thiruvottriyur P.S. in Cr.No.578/2014 u/s.147,148,448,427,506(ii) IPC on 06.04.2014 at 11.30 hrs. Subsequently the section was altered into 147,148,448,427,506(ii) IPC and 3 of TNPPDL Act. During the course of investigation, accused Prakash, Kalanidhi, Muthukumar and Ezhumalai were arrested on 26.04.2014 and remanded to judicial custody. Kalidoss, Suresh Soloman and Palraj obtained anticipatory bail.

8.It is submitted that, during the course of investigation by the H.8 Thiruvottriyur PS the defacto complainant filed a petition in CrI.O.P.No.11989 of 2014 before the Honorable High Court of Madras praying to transfer the case in FIR.No.578/2014 to be investigated by the Superintendent of Police, CBCID and to file a final report. This matter came up for hearing on 08.05.2014 and ordered to transfer the case to CBCID.

9.It is submitted that, as per the instructions of the Honorable High Court of Madras, the CD File in H.8 Thiruvottriyur P.S. Cr.No.578/2014 u/s.148,448,427,506 (ii) IPC r/w.3 of TNPPDL Act was received and a crime number was re-assigned on 27.08.2014 in CBCID Metro wing as Cr.No.04/2014 u/s.148,448,427,506(ii) IPC r/w.3 of TNPPDL Act and took up investigated.

10.It is submitted that, in this connection the defacto complainant O.V.Nambiar and Tr.Jayram Veliyath, Director of the Chemical Construction Company were examined on 08.09.2014. Copies of related documents were collected. On 17.09.2014 I.O., visited the SOC and examined 8 other witnesses and recorded their statements.

11.It is submitted that, meanwhile IO came to know that, a petition seeking stay has been filed by accused before the Honourable High Court of Madras. When verified

with court records it was found that stay has been granted on 25.07.2014 even before the case came to CBCID investigation. ...

14. It is submitted that, preliminary investigation reveals that the petitioners/accused jointly with other accused committed the offence of criminal trespass on 06.04.2014 at about 05.45 am unlawfully entered into the Chemical Construction Company which is run by the defacto complainant and demolished the factory shed due to property dispute. The investigation is in initial stage."

5. Mr.K.Chandrasekaran, learned counsel appearing for the accused submitted that the entire complaint, which forms the basis for the FIR is a contrived one, inasmuch as the defacto complainant has been singing the same song in all previous litigations. Learned counsel painstakingly took me through the orders passed by this Court in various Writ Petitions and submitted sardonically that the same compound wall cannot be demolished over and over again.

6. At the first blush, Mr.Chandrasekaran's argument did look attractive, but on a closer scrutiny of the facts obtaining in this case, it is seen that the property in question was owned by one Gundu Abdul Shukoor who had leased out a portion of the property to the defacto complainant for running a factory. The accused herein purchased the property from Gundu Abdul Shukoor on 27.05.2009 and sold a portion of the property to Basheer Ali on 24.11.2010. Thus, after purchasing the property, it is obvious that the accused have been doing everything within their means to illegally dispossess the defacto complainant there from. The defacto complainant is running a factory in the name of Chemical Construction Company Pvt. Ltd. in the leased out portion, which appears to be an eyesore to the accused herein.

7. Mr.K.Chandrasekaran, learned counsel appearing for the accused relied upon the following judgments of the Supreme Court to drive home the point that repeated complaints would amount to forum shopping which should not be encouraged.

- i. Iridium India Telecom Ltd. Vs Motorola Incorporated and Others [2011] 1 SCC 74.
- ii. Udyami Evam Khadi Gramodyog Welfare Sanstha and Another Vs State of Uttar Pradesh and Others [2008] 1 SCC 560.
- iii. Tamilnad Mercantile Bank Shareholders Welfare Association [2] Vs S.C.Sekar and Others [2009] 2 SCC 784.

8. This Court has no quarrel with the proposition laid down therein. But, in this case, the defacto complainant has not done any forum shopping as alleged by the accused. On the other hand,

it is the accused who has been repeatedly laying siege to the

property like Mohammed of Ghajini attacking India relentlessly. The accused herein have been attacking the defacto complainant frequently, so as to tire him out and disposses him from the property. Only under those circumstances, every time when an attack occurred, he was forced to go to the Police seeking protection.

9. It may be necessary to observe that, the Court has transferred the case from the file of the local Police to the CBCID, perhaps taking into account the plight and vulnerability of the defacto complainant. The complaint in this case does not pass muster the law laid down by the Supreme Court in State of Haryana Vs Bhajan Lal 1992 Supp [1] SCC 335 for quashing an FIR.

10. In the result, this quash petition is dismissed and the Inspector of Police, H8, Tiruvottiyur Police Station is directed to provide sufficient security for the defacto complainant to peacefully possess the property until evicted by legal means. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

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To

1.The Superintendent of Police,
CBCID, Government Estate,
Chennai.

2.The Inspector of Police,
H8, Tiruvottiyur Police Station,
Tiruvottiyur, Chennai-19.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.B.Rabu Manohar,Advocate SR.No.36391

CRL.O.P.No.19563 of 2014

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