

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Crl.O.P.No.1023 of 2016
and Crl.M.P.No.458 of 2016

S.Daivasigamani .. Petitioner/Accused 2

Vs

Tajudeen Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 Cr.P.C., praying to call for the records pertaining to C.C.No.165 of 2015 pending on the file of learned Judicial Magistrate No.1, Coimbatore and quash the same.

For Petitioner : Mr.A.P.Sathyamurthy

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

O R D E R

The present criminal original petition has been filed praying to call for the records pertaining to C.C.No.165 of 2015 pending on the file of learned Judicial Magistrate No.1, Coimbatore and quash the same.

2. The petitioner is the accused No.2 in C.C.No.165 of 2015. The respondent is the complainant, filed a private complaint under Section 200 Cr.P.C. r/w 190 Cr.P.C. against the petitioner and two others for the alleged offences punishable under Sections 120(b), 417, 420, 447, 464, 466, 468, 471 IPC.

3. The allegations made in the complaint are as follows:

The defacto complainant is the tenant of the first accused building and doing real estate business. He did not open his real estate office for more than two weeks on the account of Diwali and Moharam festival. Therafter on 7.11.2014, when he opened the office, to his shock and surprise, all the documents and goods were found missing. He preferred a complaint before the B-2 Police Station on the same day. The Sub Inspector of police enquired the matter, wherein, 1st accused admitted that he

only committed the theft, but the 3rd accused who is the friend of first accused demanded money and threatened to vacate the office premises without getting advance amount of Rs.50,000/-, which was not accepted by the complainant. Thereafter, as the complaint lodged by the complainant was not registered, he approached this Court by filing Crl.O.P.No.1330 of 2015. Thereafter, without knowledge of the complainant and on the instigation of 1st and 3rd accused, 2nd accused registered FIR on 20.3.2015 in Crime No.201 of 2015 under Section 294(b) and 506 (i) IPC against the 1st and 3rd accused, showing the complainant as the informant. But the 2nd accused failed to register a case based on the complaint dated 7.11.2014 preferred by the complainant. Hence, the respondent filed a private complaint before the learned Magistrate.

4. According to the petitioner, he is the Inspector of Police joined B-2 Police Station (L & O), Coimbatore on 8.2.2015. While he was working in police station, on 20.3.2015, the complainant came to the police station and preferred a complaint against 1st and 3rd accused. Based on the said complaint, he registered a case in Crime No.201 of 2015 under Sections 294(b) and 506(i) IPC and thereafter, he failed to appear for interrogation and to co-operate the investigation and hence, he filed a final report as referred charge sheet in RCS No.10 of 2015 dated 30.3.2015 before the concerned Court. On earlier occasion, the petitioner was not in charge of the station. The complaint lodged on earlier occasion, i.e. 7.11.2014 by the complainant came to be closed by the then Inspector, Balamurali Sundaram after conducting an enquiry, wherein, he came to the conclusion that there was a owner and tenant dispute. The complainant was full aware of this fact. However, suppressing this fact, he approached the learned Magistrate and filed the present private complaint.

5. The learned counsel appearing for the petitioner would submit that the learned Magistrate has entertained the complaint though basic ingredients for the alleged offence were not made out and the petitioner has discharged his official duty and enquired the complaint of the petitioner in accordance with law, however, the petitioner with ill motive, falsely implicated the petitioner as an accused though there was no allegation against him. Hence, the learned counsel sought for dismissal of the petition.

6. According to the respondent/defacto complainant, though he lodged the complaint on 7.11.2014, no action was taken on the said complaint by the petitioner being the Inspector of Police, however, a case came to be registered based on the complaint dated 19.3.2015, which according to the petitioner, he had not preferred the same. Therefore, in his complaint, the respondent has specifically made an allegation against the petitioner that

he conspired with the other accused and prepared the FIR. Therefore, it is incorrect to state that there is no allegation against the petitioner. However, the veracity of the allegation is the subject matter of the trial. Therefore, I am of the view that at this stage, it is not appropriate to quash the proceedings.

7. Accordingly, this Criminal Original Petition is dismissed. The petitioner is at liberty to file a petition to dispense with his presence before the learned Judicial Magistrate No.1, Coimbatore, who in turn, is directed to consider the same and pass orders. Consequently, connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.1,
Coimbatore.
- 2.-Do- Thro' The Chief Judicial Magistrate,
Coimbatore.

+1cc to Mr.A.P.Sathyamurthy, Advocate, S.R.No.2480

Crl.O.P.No.1023 of 2016

sr(CO)
srg(23/02/2016)

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