

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. Nos.6657 and 7507 of 2011

and

M.P. Nos.1 and 1 of 2011

1 Vasantha

2 Malliga

3 Kasthuri

4 G.R. Velu

5 Mari

6 Ekambaram

7 Mani

Petitioner in Crl.O.P. No.6657 of 2011

P. Jawahar

Petitioner in Crl.O.P. No.7507 of 2011

vs.

K. Bangaru

Respondent in both the Crl.O.Ps.

Criminal Original Petitions filed under Section 482, Cr.P.C. seeking to call for the records relating to the criminal proceedings made in C.C. No.3840 of 2010 on the file of the Chief Metropolitan Magistrate, Egmore at Chennai and quash the same.

For petitioners in
Crl.O.P. No.6657/2011

Mr. S. Shankar

For petitioner in
Crl.O.P. No.7507/2011

Mr. B. Ganesha Moorthy

For respondent
in both the OPs

Mr. R. Sivaraman

COMMON ORDER

These Criminal Original Petitions have been filed seeking to call for the records relating to the criminal proceedings made in C.C. No.3840 of 2010 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

2 For the sake of convenience, the parties are referred to by their name.

3 Bangaru, the respondent herein, filed a private complaint in C.C.No.3840 of 2010 before the Chief Metropolitan Magistrate, Egmore, against one Issac Paulraj and 8 others, challenging which, Vasantha (A3), Malliga (A4), Kasthuri (A5), Velu (A6), Mari (A7), Egambaram (A8) and Mani (A9) have filed CrI.O.P. No.6657 of 2011 and Jawahar (A2) has filed CrI.O.P. No.7507 of 2011.

4 It is the case of Bangaru that she is the owner of the property which is a hut and that she had let out the same on rent to three tenants, viz., Vasantha (A3), Malliga (A4) and Kasthuri (A5); the said trio vacated the hut about six months prior to 11.02.2010; that after having vacated the hut, they once again took forcible possession of the hut on 27.02.2010 with the help of Issac Paulraj (A1), Assistant Commissioner of Police and Jawahar (A2), Inspector of Police, El Mylapore P.S.

5 According to the learned counsel for the petitioners in CrI.O.P. No.6657 of 2011, Vasantha (A3), Malliga (A4) and Kasthuri (A5) were living in the hut and they had never vacated the hut; Bangaru quarelled with Vasantha (A3), on account of which, Vasantha (A3) lodged a complaint against Bangaru, based on which, a case in Crime No.259 of 2010 was registered against Bangaru for offences under Sections 448, 420 and 506 (i) IPC and as a counter blast, Bangaru has lodged the present prosecution against police officials and the occupants of the hut.

6 Per contra, the learned counsel for Bangaru (complainant) submitted that in the complaint filed before the Magistrate, there are sufficient materials for the trial to proceed. He further submitted that the hut in question was purchased by Bangaru on 14.07.1980 and in support of that, he produced an unregistered document dated 14.07.1980 executed in a 50 paisa stamp paper.

7 Heard the learned counsel for the respective parties.

8 In the considered opinion of this Court, for the purchase of a property, registration is compulsory under Section

17 of the Registration Act and merely a document purported to be unregistered in a 50 paisa non-judicial stamp paper, cannot be pressed into service to claim ownership.

9 Further, Bangaru filed a complaint against Vasantha (A3), Malliga (A4) and Kasthuri (A5) and since the police did not register an FIR based on Bangaru's complaint, she filed CrI.O.P. No.5421 of 2010 before this Court and in the said case, on 17.03.2010, this Court passed the following order:

"3. The learned Additional Public Prosecutor submits that on the complaint given by the rival party, a case has been registered in Cr.No.259 of 2010 for the offence punishable under Sections 448, 420 and 506(i) IPC and it is pending investigation and the petitioner has also obtained anticipatory bail. He further submits that on the complaint given by the petitioner, a petition enquiry has been conducted and ultimately, it has been concluded that the allegation is as false.

4 Recording the above submission, this petition is closed. However, the petitioner is at liberty, if so advised, to file a private complaint against the proposed accused before the appropriate forum."

10 From the above, it is patent that the complaint given by Bangaru was enquired into by the police and was closed as the allegations were found to be false.

11 On a reading of the present private complaint, it is seen that, in one breath, Bangaru says that the accused had demolished her newly constructed building and in another breath, she takes a contradictory stand that the tenants were put back into possession on the same day.

12 On a conspectus of the facts obtaining in this case, it is seen that the dispute is entirely civil in nature between Bangaru on the one side and Vasantha (A3), Malliga (A4) and Kasthuri (A5), on the other side. The complaint also does not disclose commission of the alleged offences. Issac Paulraj, Assistant Commissioner of Police and Jawahar, Inspector of Police, E-1, Mylapore P.S. have been made accused 1 and 2 respectively and the only allegation against them is that they had not taken any action on the earlier complaint dated 27.10.2010 given by Bangaru.

13 The learned counsel for Vasantha (A3), Mallika (A4) and Kasthuri (A5) and others submitted that the said accused had never vacated the hut as alleged by Bangaru and that only to have them vacated, Bangaru has set the criminal law into motion.

Given the factual matrix as summated above, this Court is of the considered view that the prosecution in C.C. No.3840 of 2010 is an abuse of process of law and therefore, both the Criminal Original Petitions are allowed and the prosecution in C.C. No.3840 of 2010 is quashed as against all the accused, including those who have not approached this Court. It is made clear that whatever observations made in this order, are only for the limited purpose of quashing these quash petitions. It is also made clear that it is always open to Bangaru to work out her remedy in the manner known to law before the appropriate Civil Court. Connected M.Ps. are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Chief Metropolitan Magistrate
Egmore
Chennai
- 2 The Public Prosecutor
Madras High Court
Chennai 600 104

+1cc to Mr.S. Shankar, Advocate, S.R.No.66588
+1cc to Mr.B. Ganesha Moorthy, Advocate, S.R.No.66191

cp(CO)
md(14/12/2016)

WEB COPY

CrI.O.P. Nos.6657 and 7507 of 2011