IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.2431 of 2016
And
Crl.M.P.Nos.1297 and 1298 of 2016

1.Babu
2.Raghavan
3.Kathiravan ... Petitioners

Vs.

1.The State rep. by
Inspector of Police,
Nemili Police Station
Arakkonam Taluk,
Vellore District.

2.Mrs.Vijaya Vedayyah ... Respondents

Prayer :
Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the all relevant records relating to S.T.C.No.1740 of 2015 on the file of the learned Judicial Magistrate, Arakkonam and quash the entire proceedings against the petitioners.

For Petitioners: Mr.D.B.R.Prabhu

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

Mr.P.Krishnan for R2

ORDER

The petitioner has come forward with this petition seeking a direction to call for the relevant records relating to S.T.C.No.1740 of 2015 on the file of the learned Judicial Magistrate, Arakkonam and quash the entire proceedings against the petitioners.

2.Heard the learned counsel appearing for the petitioners, the learned Additional Public Prosecutor as well as the learned counsel appearing for the second respondent.

3.The case in brief is that originally the property belonged to one Kullappa Reddy. He had two sons. One is Subramani and the other is Raghavan/ second accused. Subramani has sold the property to the defacto complainant. Now the defacto complainant has made construction. She has given complaint as against the petitioners for the alleged occurrence said to have taken place on 30.01.2015 and a case in Crime No.32 of 2015 has been registered for the offence punishable under Sections 447, 294(b), 506(i) IPC. Investigation has been done and charge sheet has been levied which is taken on the file of the learned Judicial Magistrate, Arakkonam as S.T.C.No.1740 of 2015.

4.The learned counsel appearing for the petitioners would submit that the second petitioner is none other than the brother of Subramani son of Kullappa Reddy. Subramani filed suit in O.S.No.53 of 2008 against the first petitioner's wife and the second petitioner for declaration of Title over the property and for permanent injunction and Chitra, the first petitioner's wife filed another suit in O.S.No.283 of 2011 for declaration of Title over the property and for permanent injunction and it is pending. He further submitted that once civil suit is pending, entire proceedings has to be quashed. He also relied upon the judgments reported in 1992 Supp (1) Supreme Court Cases 335 (State of Haryana and others vs. Bhajan Lal and others), (1988) 1 SCC 692 (Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others) and (1977) 2 SCC 699 (State of Karnataka vs. L.Muniswamy and others) and would state that since the civil dispute is pending, there is no necessity for proceeding with criminal case and it is only mere abuse of process of Court. Hence, he prayed to quash the entire proceedings against the petitioners.

5.Resisting the same, the learned counsel appearing for the second respondent would submit that the property has been purchased in the name of Subramani. He is the owner of the property. He is at Malaysia and during his stay at Malaysia, the second petitioner Raghavan has concocted the document as if Subramani has executed the Power of Attorney in his favour and sold the property in favour of one Chitra, who is none other than his daughter and on coming to know this, Subramani gave complaint and it was held that the document was forged and patta which stood in the name of Raghavan and Chitra was cancelled and patta has been issued to Subramani and he sold the property to the defacto complainant and on the basis of the sale deed, she made construction of a school.

6.The learned counsel appearing for the second respondent further submitted that on 30.01.2015 at 10 a.m., when the defacto complainant was in the place, accused 1 to 3 has trespassed into the property and also un-loaded the granite stones. It was also immediately questioned. They made criminal intimidation and abused the defacto complainant with filthy language. Hence, case has been registered, investigation has been done, charge sheet has been filed. So there is no reason for quashing the proceeding and he prayed for the dismissal of the petition.

7.Considering the rival submissions made on either side and on perusal of the typed set of papers, admittedly, the property has been owned by Subramani, property stands in the name of Subramani. He sold the property in favour of the defacto complainant. It is also according to the learned counsel appearing for the defacto complainant that Raghavan has sold the property on the basis of the Power of Attorney alleged to be executed by this Subramani in favour of one Chitra who is none other than the wife of the first accused/ first petitioner. They filed suit for declaration of Title. It is well settled dictum of the Hon'ble Apex Court that merely because civil suit is pending, it is not the reason for exonerating the accused from the criminal liability and if any criminal offence has been made out that can be proceeded further.

8.Now, this Court has to consider the decisions relied by the learned counsel appearing for the petitioners namely,

(i)The decision reported in 1992 Supp (1) Supreme Court Cases 335 (State of Haryana and others vs. Bhajan Lal and others), the relevant portion of which is extracted hereunder:

> "102.In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1)Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2)Where the allegations in the first information report and other materials, if

any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3)Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4)Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5)Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6)Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7)Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

That citation is not applicable to the facts of this case because in that they have given seven grounds as to the circumstances in which FIR can be quashed, but here on the basis of case registered, investigation has been done and charge sheet has been levied.

(ii)The decision reported in (1988) 1 SCC 692 (Madhavrao Jiwajirao Scindia and others vs. Sambhajirao Chandrojirao Angre and others), the relevant portion of which is extracted hereunder:

"7.The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be

> applied by the court is as to whether the uncontroverted allegations as made proma facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.
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> 8.Mr.Jethmalani has submitted, as we have already noted, that a case of breach of trust is both a civil wrong and a criminal offence. There would be certain situations where it would predominantly be a civil wrong and may or may not amount to criminal offence. We are of the view that this case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting. Several decisions were cited before us in support of the respective stands taken by counsel for the parties. It is unnecessary to refer to them. In course of hearing of the appeals, Dr.Singhvi made it clear that Madhavi does not claim any interest in the tenancy. In the setting of the matter we are inclined to hold that the criminal case should not be continued."

That citation is not applicable to the facts of this case because in that it was specifically mentioned that a case of breach of trust is both a civil wrong and a criminal offence, but here, the accused has trespassed into the property of the person who purchased the property and made criminal intimidation and also abused using filthy language in open place.

(iii)Paragraph no.7 of the decision reported in (1977) 2 SCC 699 (State of Karnataka vs. L.Muniswamy and others), wherein it is stated that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court, but here the occurrence is said to have been taken place on 30.01.2015, the accused entered into the property of the lawful owner and abused using filthy language and made criminal intimidation.

9.In such circumstances, I am of the view that the ingredients of the offence has been prima facie made out. So there is no need to quash the proceeding merely because a civil suit in O.S.No.283 of 2011 has been filed by the first petitioner's wife Chitra and Chitra is also not a party here. Hence, this petition deserves to be dismissed.

10.Accordingly, this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Civil Judge,
(Judicial Division), Arakkonam.

2. The Sub Judge, Ranipet.

3. The Chief Judicial Magistrate,
Vellore District.

4.The Inspector of Police,
Nemili Police Station
Arakkonam Taluk,
Vellore District.

5.The Public Prosecutor
High Court, Madras.

+1cc to Mr.Prabhu, Advocate, S.R.No.18947
+1cc to Mr.P. Krishnan, Advocate, S.R.No.18488

VGI(CO)
EU(11/04/2016)

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