

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2016

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.24436 of 2016
and
Crl.M.P.Nos.11673 & 11674 of 2016

1.S.Neducheziyan
2.T.Mani @ Subramani
3.K.Karuna @ Karunanithi
4.M.Rajendran ... Petitioners

Vs.

1.State rep. by
The Sub-Inspector of Police,
Vettaikaranirruppu Police Station,
Vedaranyam Taluk,
Nagapattinam District.
2.K.Jegadeesa Thevar ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in S.C.No.170 of 2015 on the file of the learned Additional District and Sessions Judge and Chief Judicial Magistrate, Nagapattinam and to quash the same.

For Petitioners :Mr.Pa.Kadirvel

For Respondent-1 :Mr.C.Emalias
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed by the petitioners, praying to quash the case proceedings in S.C.No.170 of 2015 on the file of the learned Additional District and Sessions Judge and Chief Judicial Magistrate, Nagapattinam.

2.Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record.

3.The learned Additional Public Prosecutor on instructions would submit that based on the complaint lodged by one Jegadeesan, the respondent police had registered a case in Cr.No.42 of 2014 for the offences under Sections 323, 436 and 506(ii) IPC against the petitioners herein. He submitted that the Respondent police have also registered a case in Cr.No.43 of 2014 under Section 436 of IPC based on the complaint given by the fourth petitioner herein/Rajendran against Jegadeesan and Arivazhagan. He further submitted that investigation in both the cases were pursued and the case in Cr.No.43 of 2014 has been closed as mistake of fact and a closure report has been filed before the learned Judicial Magistrate, Vedaranyam and aggrieved over the same, the de-facto complainant has also filed the protest application. He also submitted that investigation in Cr.No.42 of 2014 was completed and charge sheet was filed against the petitioners/accused herein for the offences under Sections 323, 436 and 506(ii) of IPC and the same is pending in S.C.No.170 of 2015 before the learned learned Additional District and Sessions Judge and Chief Judicial Magistrate, Nagapattinam. Challenging the same, the accused are before this Court.

4.The learned counsel for the petitioners submitted that the property in question, absolutely belongs to the temple and the petitioners are the persons who are the administrators of the temple and that since Jegadeesan encroached the said property, the petitioners herein filed a suit and succeeded the same, which has also been confirmed by this Court also in Second Appeal. Therefore, he contended that the entire case of the prosecution in S.C.No.170 of 2015 is an abuse process of law as the Civil Court has negatived the plea of Jegadeesan. The learned counsel for the petitioners also drew the attention of this Court that this is a case in counter and contended that provisions under 588(A) of the Police standing Order should be followed in this case. सत्यमेव जयते

5.The allegations in S.C.No.170 of 2015 is as to whether Jegadeesan was attacked and sustained injury in the alleged occurrence and whether his hut was set on fire. A Criminal Court cannot decide the possession of property. On reading of the report and statements recorded by the police, it is seen that Jegadeesan had sustained injuries during the alleged occurrence and there are also materials to show that the hut was set on fire. Even if Jegadeesan is an illegal occupant of the land, the accused have no right to assault him and set fire to his hut.

6.It appears that police had registered two FIRs namely, Cr.No.42 and 43 of 2014 and Cr.No.43 of 2014 was closed as mistake of facts for which the petitioner has also filed objections. As regards the present case on hand, there are sufficient materials for the prosecution to proceed with the trial and therefore, the same cannot be quashed. Accordingly, the Criminal Original Petition is dismissed. However, it is made clear that the outcome of this quash petition shall not in anyway prejudice the defence of the petitioners before the trial Court. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

DP
To

- 1.The Additional District and Sessions Judge
and Chief Judicial Magistrate, Nagapattinam.
- 2.The Sub-Inspector of Police,
Vettaikaranirruppu Police Station,
Vedaranyam Taluk,
Nagapattinam District.
- 3.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.PA.Kadirvel, Advocate Sr.63636

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