



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.12.2016
CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

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Crl.O.P.(MD) No.13624 of 2015
and
M.P(MD)No.1 of 2015

Pushba Arthur : Petitioner/1st Accused
-Vs-

1. The State of Tamil Nadu,
Rep. by the Inspector of Police,
Vadasery Police Station,
Kanyakumari District. : 1st respondent/Complainant

2.Jeyaselvan : 2nd Respondent/Defacto
Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the FIR in Crime No.1177 of 2014 on the file of the 1st respondent in so far as the petitioner/A1 is concerned and quash the same.

For Petitioner : Mr.N.Rajaraman
for Mr.Geegan S Bel

For 1st Respondent : Mr.K.Anbarasan
Govt. Advocate (Crl.Side)

For 2nd Respondent : Mr.K.Saravanan

O R D E R

This petition is filed to quash the FIR in Crime No.1177 of 2014 on the file of the 1st respondent.

2.The case of the prosecution is that the petitioner/A1 is the landlady and the 2nd respondent/de-facto complainant is the tenant, on a monthly rent of Rs.18,000/- and periodically, the rent was enhanced and the present rent is Rs.24,000/-. While so, the petitioner insisted the 2nd respondent to vacate the premises within a period of three months and on 15.12.2014, when the 2nd respondent attended the snooker centre/demised premises, the lock put up by the tenant was replaced and a new lock was fixed by the accused. When, it was questioned, the accused abused him in filthy language. For which, he lodged a complaint to the first respondent police. Thereafter, on 17.12.2014, the 2nd respondent/de-facto



complainant was informed by his staff namely Alageswaran Pillai that all the sports articles in the premises were removed and the accused have caused damage to the properties, for which a case stands registered in Crime No.1177 of 2014 under Sections 427, 294 (b), 506(i), 447 and 379 IPC.

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3.The learned counsel appearing for the petitioner would submit that the 2nd respondent/de-facto complainant was inducted as a tenant in the demised premises and the tenant has committed default in paying the rent from April 2013, so the landlady has filed a petition for eviction in RCOP No.13 of 2016 and the arrears of rent as on date comes to Rs.15,00,000/-. It is further submitted that the petitioner was assaulted by the 2nd respondent, for which a case was registered in Crime No.869 of 2015 and this FIR is motivated one and it is liable to be quashed, in view of the judgment of the Hon'ble Supreme Court reported in Bajanlal's case.

4.Per contra, the learned counsel appearing for the 2nd respondent would submit that the 2nd respondent is a tenant and he is in possession of the property and he has been paying the rent regularly to the landlady the petitioner herein, though the petitioner has alleged that the tenant has committed default in paying the rent from April 2013, however, in the notice dated 21.10.2014, she has not stated anything about the default in paying the rent. Subsequently, in the complaint also, she has not stated about the default in the payment of rent. The learned counsel would further submit that even if the tenant has committed default in paying the rent, that cannot be a ground to quash the FIR.

5.It is further submitted by the learned counsel for the 2nd respondent that the 2nd respondent/tenant has also filed a suit O.S.No.351 of 2014 before the Principal District Munsif, Nagercoil against the petitioner for permanent injunction and the civil court has also granted an order of interim injunction. So, the quash petition filed by the petitioner is liable to be dismissed.

6.Heard the learned Government Advocate (Criminal side) appearing for the 1st respondent and perused the materials available on record.

7.In the typed set filed by the petitioner, a copy of the RCOP petition was enclosed, in which, it is alleged that the 2nd respondent was inducted as a tenant in the month of October 2009 on a monthly rent of Rs.15,000/- and it was subsequently increased to Rs.16,000/- and Rs.18,000/- and the present rent is Rs.20,000/-. The cheque issued for payment of rent for the month of March 2013 rent was dishonoured, for which the landlady filed a private complaint. It is also stated that the tenant is a chronic defaulter and the arrears of rent comes to Rs.15,00,000/-.



8.It is further seen that the criminal case in Crime No.869 of 2015 has been registered against the 2nd respondent for the offence under Sections 147, 448, 294(b), 323, 506(ii) and Section 4 of TNPWH Act, 2002. According to the petitioner, she is a senior citizen aged about 65 years and her husband and one son are working in Kuwait and her another son is in USA. The 2nd respondent with an intention to extract money from the petitioner, lodged a false complaint against her and therefore, it is an abuse of process of law.

9.The Hon'ble Apex court in the decision reported in AIR 1992 SUPREME COURT 604 [State of Haryana vs. Bhajan Lal] has held that if the complaint is lodged with a mala fide intention and in a vindictive manner, the case is liable to be quashed, which is extracted below:-

"108.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 F.I.R. 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;

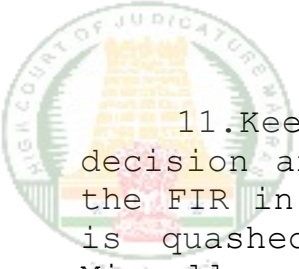
4. Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

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 mala fide 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.

10. It is an admitted fact that the 2nd respondent is paying the monthly through cheque. Though the tenant has contended that he has been paying the rent regularly, however, he has not produced the statement accounts for the payment of rent. As rightly contended by the learned counsel for the 2nd respondent, the payment of rent cannot be a ground to quash the FIR. However, it is the specific case of the petitioner that the complaint is motivated one and the tenant, who has agreed to vacate the premises, has given this false complaint with an ulterior motive.



11.Keeping in mind the principles laid down in the above decision and the facts of this case, this petition is allowed and the FIR in Crime No.1177 of 2014 on the file of the 1st respondent, is quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

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Sd/
Assistant Registrar(CS II)

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Sub Assistant Registrar

To,

1. The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AAM-SV MMS/03.3.2017/5P-3C

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