



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.03.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

WEB COPY

Criminal Original Petition (MD) No.4526 of 2016 and
Crl.M.P.(MD).Nos.2248 and 2249 of 2016

- 1.Thangavel
- 2.Paapayee
- 3.Balasundaram
- 4.Jegadeesan
- 5.Rajamani
- 6.Sakthi
- 7.Mariappan

... Petitioners/Accused 1 to 7
vs.

- 1.State Rep. by
The Inspector of Police,
Karur Town Police Station,
Karur District.
(Crime No.471 of 2014)

... 1st Respondent/Complainant

- 2.P.Elango

... 2nd Respondent/Defacto complainant

PRAYER: This petition is filed under Section 482 Cr.P.C to call for the records pertaining to the case in P.R.C.No.10 of 2016 pending before the learned Judicial Magistrate No.1, Karur and quash the same.

For Petitioners :Mr.K.N.Govardhanan

For Respondents :Ms.S.Prabha for R1

Government Advocate (Criminal Side)

ORDER

Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) for the first respondent.

2. It is the case of the defacto complainant that on a complaint lodged by the first petitioner, the respondent police registered a case in Crime No.1236 of 2011 against the defacto complainant and arrested and put him in jail from 11.12.2011 till 17.12.2011. After his release on bail, when the defacto complainant came to his property, he was shocked to find his property without staircase and the rooms in the 1st floor have been completely demolished. Since the police did not take any serious action on the complaint given by the defacto complainant, he filed a private complaint before the jurisdictional Magistrate and on the Magistrate under Section 156 Cr.P.C. the respondent police registered a case in Cr.No.471 of 2014 for the offences under Section 424, 426, 447 and 120(B) IPC and r/w 34 IPC



and Section 3 of TNPPDL Act, 1992 against the petitioners herein and the same was taken on file in PRC No.10 of 2016 by the learned Judicial Magistrate No.I, Karur. Challenging the same, the petitioners are before this Court.

3. Learned counsel for the petitioners submits that there is no eyewitness to the said incident and even the date of incident has not been furnished by the defacto complainant in his complaint.

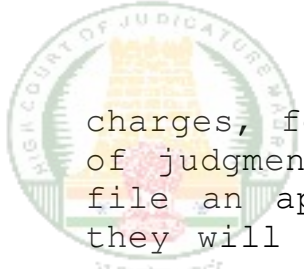
4. Admittedly, the defacto complainant was in jail from 11.12.2011 to 17.12.2011 and when he was in jail, this opportunity was utilised by the accused to remove the staircase and demolish the rooms. Therefore, non furnishing of dates, i.e. on which date the incident took place, is not fatal to the facts and circumstance of the present case.

5. Learned counsel for the petitioners submitted that there is delay in lodging complaint. Delay in lodging complaint is not a ground for quashing final report. It is a question of fact to be appreciated by the Trial Court, and opportunity should be given to the defacto complainant to explain the delay which may convince or may not convince the Trial Court.

6. The learned counsel further submitted that there are no eyewitness to the incident. In the opinion of this Court, a crime can be proved through circumstantial evidence and it is not necessary that there should be eyewitness in all cases. Learned counsel for the petitioners submitted that provision of Section 424 IPC will not be attracted. A reading of Section 424 IPC shows that if any person fraudulently removes any property of himself or any other person, he shall be punished with imprisonments as stated therein. It is the allegation of the defacto complainant that after his release from the jail, when he came to his property, he found that the staircase of his property was removed. Therefore, it cannot be stated there is no prima facie material for the prosecution to proceed against the petitioners.

7. In the result, the criminal original petition is devoid of merits and the same is accordingly dismissed. The above observations is only for the purpose of deciding the present application and the Trial Court shall proceed with the case and decide the same on merits and in accordance with, without being influenced by the observations made in this order.

8. At this juncture, learned counsel for the petitioners submits that the 1st petitioner/Thangavel, 2nd petitioner/Paapayee and the 7th petitioner/Mariappan are senior citizens and their presence may be dispensed with. Since offence under TNPPDL act has been committed, this Court directs the petitioners 1, 2 and 7 to appear before the Trial Court for collecting the final report and other papers under Section 207 Cr.P.C., at the time of framing



charges, for questioning under Section 313 Cr.P.C. and on the day of judgment. On all other dates, if the petitioners 1, 2 and 7 file an application under Section 317 Cr.P.C., undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses in their absence without adopting dilatory tactics, the Trial Court may liberally consider and entertain the same. If the petitioners 1, 2 and 7 adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence.

9. The petitioners 1, 2 and 7 are further directed to furnish a bond under Section 88 Cr.P.C. with two sureties for Rs.10,000/- (Rupees Ten Thousand only) each to the satisfaction of the learned Judicial Magistrate No.I, Karur. Consequently, all other connected miscellaneous petitions are closed.

Sd/
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

jikr

To

1.The Judicial Magistrate No.I,
Karur.

2.The Inspector of Police,
Karur Town Police Station,
Karur District.

3.The Additional public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CN/skn-sk/24.03.2016/3P-4C

Cr1.O.P(MD).No.4526 of 2016 and
Cr1.M.P.(MD).Nos.2248 and 2249 of 2016

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