

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2017

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

CrI.O.P.No.795 of 2014

and

MP No.1 of 2014

1.P.Dhatha Gounder
2.K.Ramachandran
3.V.Rathinam
4.R.Sakthi
5.S.Kumaresan
6.S.Saravanan
7.Sivalingam
8.Mrs.Rajalakshmi
9.C.Kumaresan
10.K.Sivalingam
11.C.Renu
12.N.Gobalakrishnan
13.N.Thirumalai
14.V.Thirupathy
15.Emg

... Petitioners/Accused No.1 to 15

-Vs-

Jayavel

... Respondent/Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in C.C.No.169 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Uthangarai, for the offences under sections 147, 427 and 506(i) IPC and quash the same as against the petitioners.

For Petitioners : Mr.A.Ramesh
Senior counsel for
Mr.V.Vijayakumar

For Respondent : Mr.S.V.Karthikeyan

O R D E R

This petition is filed to quash the proceedings in C.C.No.169 of 2013 pending on the file of the District Munsif-cum-Judicial Magistrate, Uthangarai.

2.The respondent filed a private complaint before the Judicial Magistrate, Uthangarai against 29 persons alleging that he along with his family members had been in possession of the land in Survey Nos.25/1 and 25/2 of Sunnalampatty village, since 1980 and about 10 years ago, there was an oral partition in their family, in which he was allotted two acres. While so, about two years before, one Kumaresan, a Ward Councillor of Uthangari Panchayat came with 10 others threatened him to vacate the land. Again, on 09.11.2010 at about 08.00 a.m., the 29 accused with 10 unknown persons came to the land with lethal weapons and caused damage to the house and well situated in the property. In this regard, a complaint was given on 10.11.2010 before the Inspector of Police, Uthangarai. Since no action was taken, he lodged a complaint before the Superintendent of Police, Krishnagiri on 18.12.2010.

3.The respondent has further alleged that the learned Judicial Magistrate referred the complaint to the Uthangarai police under section 156 of Cr.P.C. Pursuant to the order, a case in Crime No.372 of 2012 was registered by the Uthangarai Police under sections 147, 148, 386, 387, 403, 417, 427 and 506 (ii) IPC, on 26.10.2012. After investigation, the police filed a closure report on 19.11.2012. Aggrieved by the report, the respondent filed a protest petition and also examined five witnesses in support of his case. Based on the evidence, the learned Judicial Magistrate taken the case on file, for the offences under sections 147, 427 and 506(i) IPC against 15 accused, out of 29 accused. Challenging the same, the petitioners have come forward with the present quash petition.

4.Heard Mr.A.Ramesh, learned Senior counsel for the petitioners and Mr.S.V.Karthikeyan, learned counsel for the respondent and perused the materials available on record.

5.The learned Senior counsel for the petitioners submitted that the private complaint filed by the respondent before the trial court is an abuse of process of law and when the civil court has given a finding that the father of the petitioners was not in possession of the property, a complaint cannot be given alleging that the accused trespassed into the property and caused damages.

6.It is further contended that though the private complaint was filed against 29 persons, the learned Judicial Magistrate in a cryptic order has taken the case on file only against the 15 accused. The learned Senior counsel, by placing reliance on the decision of the Hon'ble Supreme Court, in the case of Pepsi Foods Ltd., Vs. Special Judicial Magistrate and others [1998]5 SCC 749] contended that the Judicial Magistrate before taking

cognizance has to scrutinize the evidence on record and give reasons to come to a prima facie conclusion to take cognizance against the accused and that the private complaint was filed after two years with an ulterior motive without any explanation. Hence, it is liable to be quashed.

7. On the other hand, the learned counsel for the respondent would submit that the plaintiff in O.S.No.128 of 2002 though lost his case before the trial court and the first appellate court, the second appeal in S.A.No.149 of 2011 preferred challenging the judgment and decree of the courts below is still pending and therefore, at this juncture, the court cannot come to the conclusion, based on the findings given by the courts below.

8. The learned counsel further submitted that the occurrence had taken place on 09.11.2010, the very next day a complaint was given to the Uthangarai Police station and a further complaint was given to the Superintendent of Police, Krishnagiri, on 18.12.2010, since the Inspector of Police, Uthangarai did not take any action and in the meanwhile, the respondent was also falsely implicated in a murder case and after acquittal, the private complaint was filed.

9. The allegation in the private complaint is that on 09.11.2010 at 8.00 a.m., the accused along with other accused formed an unlawful assembly, trespassed into the land of the complainant, caused damage and also threatened him.

10. It is not in dispute that one Kolantha Gounder, the father of the respondent instituted a suit in O.S.No.128 of 2002 before the District Munsif-cum-Judicial Magistrate, Uthangarai against one Rajalakshmi contending that her father Vadivel Mudhaliar had entered into an agreement of sale on 29.05.1980 to sell the property in dispute for a sale consideration of Rs.40,000/- and on the date of agreement, he paid Rs.39,000/- towards advance and agreed to pay the balance sale consideration of Rs.1,000/- within a period of 2-1/2 years and he was put in possession of the property. On 15.11.2002, an unsuccessful attempt was made to evict him.

11. The defendant contested the suit, disputing and denying the agreement of sale and possession of the property with the plaintiff. The trial court, after considering the oral and documentary evidence dismissed the suit by observing that the plaintiff has not produced any evidence to prove his possession. The Principal District Judge, Krishnagiri, in A.S.No.39 of 2009 confirmed the findings of the trial court by judgment and decree, dated 01.02.2011. Thereafter, the private complaint came to be filed on 18.07.2012.

12.It is seen that though the respondent contends that he lodged a complaint for the incident on 10.11.2010 before the Inspector of Police, Uthangarai and for their inaction, he preferred a complaint to the Superintendent of Police, on 18.12.2010, but no materials have been placed to substantiate his case. Even in the private complaint, perusal of the list of documents reveals that he preferred a complaint to the Superintendent of Police as well as to the Secretary, Home Department, Chennai only on 29.06.2012.

13.It is not in dispute that in the civil litigation arose between the same parties in O.S.No.128 of 2002, the learned District Munsif, after perusing the entire evidence has given a specific finding that the said Kolantha Gounder/plaintiff was not in possession of the property, pursuant to the agreement of sale, dated 29.05.1980 as alleged and it is a forged one. The trial court had also taken into consideration the proceedings initiated under Patta Passbook Act, by which the patta issued in favour of the plaintiff was cancelled by the Revenue Divisional Officer and the finding was confirmed by the District Revenue Officer in revision under Ex.A36. The Appellate Court, while dismissing the appeal, has held that the trial court has elaborately discussed the oral and documentary evidence and came to the correct conclusion and there is no chance for interference.

14.The Hon'ble Apex in similar facts in the judgment reported (2008)12 SCC 531 (Gorige Pentaiah vs. State of A.P.) held as follows:-

"11.On careful consideration of the prayer made in the second suit, it becomes abundantly clear that Respondent 3 was not even in possession of the suit property on the date of incident and this fact has not been disputed by the learned counsel appearing for the State of Andhra Pradesh. When Respondent 3 was not even in possession of the land in question, the allegation made in the complaint, that the appellant demolished the wall on 14-6-2004, could not arise. The allegations are totally baseless and without any foundation. On the face of it, it looks that the criminal complaint filed by Respondent 3 was totally false and frivolous. The complaint was filed with an oblique motive. In this view of the matter, charges under Sections 427 and 447 are also wholly illegal and unsustainable in law. In our considered view, in a case of this

nature, the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the complaint.

15. In the judgment reported in (1998)5 SCC 749 (Pepsi Foods Ltd., vs. Special Judicial Magistrate and others, the Hon'ble Apex Court, held as follows:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

16. It is to be noted that the complainant having lost his case before the civil court, filed the private complaint and the police after proper investigation filed the closure report. In the case on hand, undisputable, the private complaint came to be filed against 29 persons, but the Judicial Magistrate, while taking cognizance against 15 accused has not assigned any reason. More-over, the findings of the civil court cannot be ignored on the ground of pendency of the second appeal.

17. It is settled law that judicial and quasi-judicial authorities shall give reasons for arriving conclusions/findings and the absence of the reasons has rendered the finding unsustainable. It is appropriate to refer the decision reported in (2008)3 SCC 172 [Vishu Dev Sharma vs. State of Uttar Pradesh and others], wherein the Hon'ble Apex Court has observed as follows:-

"8."11.Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court's judgment not sustainable.

12.Even in respect of administrative orders Lord Denning, M.R. in Breen v. Amalgamated Engg. Union (1971)2 WLR 742 observed: (All ER p. 1154h) 'The giving of reasons is one of the fundamentals of good administration.' In Alexander Machinery (Dudley) Ltd. v. Crabtree [1974 ICR 120 (NIRC)] it was observed: 'Failure to give reasons amounts to denial of justice. Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at.' Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The 'inscrutable face of the sphinx' is ordinarily incongruous with a judicial or quasi-judicial performance."

9. "3. ... This Court in State of Orissa v. Dhaniram Luhar [(2004)5 SCC 568)] has while reiterating the view expressed in the earlier cases for the past two decades emphasised the necessity, duty and obligation of the High Court to record reasons in disposing of such cases. The hallmark of a judgment/order and exercise of judicial power by a judicial forum is to disclose the reasons for its

decision and giving of reasons has been always insisted upon as one of the fundamentals of sound administration justice-delivery system, to make known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of principles of natural justice. ... Any judicial power has to be judiciously exercised and the mere fact that discretion is vested with the court/forum to exercise the same either way does not constitute any licence to exercise it at whims or fancies and arbitrarily as used to be conveyed by the well-known saying: 'varying according to the Chancellor's foot'. Arbitrariness has been always held to be the anathema of judicial exercise of any power, all the more so when such orders are amenable to challenge further before higher forums. ... Such ritualistic observations and summary disposal which has the effect of, at times, ... cannot be said to be a proper and judicial manner of disposing of judiciously the claim before courts. The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind....

18. In the judgment reported in *Rajeswar Tiwari v. Nanda Kishore Roy*, (2010) 8 SCC 442, the Hon'ble Apex court has held as follows:-

"30. The contours of the power under Section 482 CrPC have been explained in a series of decisions by this Court. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* (1976)3 SCC 736, it was held that the Magistrate while issuing process against the accused should satisfy himself as to whether the allegations in the complaint, if proved, would ultimately end in the conviction of the accused. It was held that the order of the Magistrate issuing process against the accused could be quashed under the following circumstances: (SCC p. 741, para 5)

"(1) where the allegations made in the complaint or the statements of the witnesses recorded in support of the same taken at their

face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused;

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused;

(3) where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible; and

(4) where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like."

31. In *State of Haryana v. Bhajan Lal* [1992 Supp.(1) SCC 335], a question came up for consideration as to whether quashing of the FIR filed against the respondent Bhajan Lal for the offences under Sections 161 and 165 IPC and Section 5(2) of the Prevention of Corruption Act was proper and legal. Reversing the order passed by the High Court, this Court explained the circumstances under which such power could be exercised. Apart from reiterating the earlier norms laid down by this Court, it was further explained that such power could be exercised where allegation 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. No doubt, at the stage of quashing an FIR or complaint the High Court is not justified in embarking upon an inquiry as to the probability, reliability or genuineness of the allegation made therein.

32. In *Sardar Trilok Singh v. Satya Deo Tripathi* [(1979)4 SCC 396] when the financier seized the truck in question due to default in payment of instalment, buyer of the vehicle

launched criminal prosecution, this Court held it as an abuse of process of the court since the dispute was essentially of a civil nature and quashed the entire proceedings.

33. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636] , this Court has held: (SCC p. 643, para 8)

"8. Jurisdiction under Section 482 of the Code has to be exercised with great care. In exercise of its jurisdiction the High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

19. Keeping in view of the above facts that the private complaint came to be filed after lapse of 2 years of the alleged occurrence, that too after the competent civil Courts have concurrently held that the father of the complainant was not in possession of the property in dispute and the learned Judicial Magistrate had taken cognizance against the petitioners by a cryptic order, this court is of the considered opinion that the complaint is an abuse of process of law and it is liable to be quashed in the light of the decisions referred supra.

20. In that view, the criminal original petition is allowed and the complaint in C.C.No.169 of 2013 on the file of the District Munsif-cum-Judicial Magistrate, Uthangarai, is hereby quashed. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rns/er

To

1.The District Munsif-cum-Judicial Magistrate,
Uthangarai

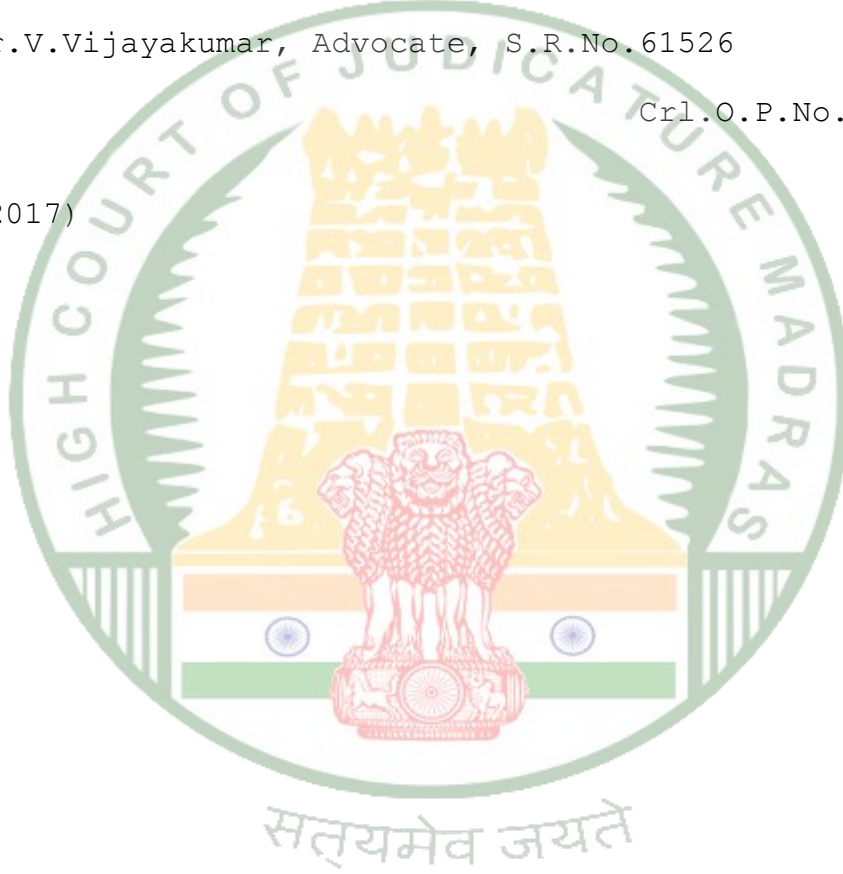
2.The chief Judicial Magistrate,
Krishnagiri.

3.The Inspector of Police,
Uthangarai,
Krishnagiri District.

+1cc to Mr.V.Vijayakumar, Advocate, S.R.No.61526

Cr1.O.P.No.795 of 2014

GJ(CO)
CA(06/11/2017)



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