

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.5214 of 2011
and
M.P.Nos.1 and 2 of 2011

1.Kaliaperumal

2.Mick Dhandapani Petitioners

vs.

1.The State Rep. by Inspector of Police,
Mudaliarpet Police Station,
State of Puducherry.
(Crime No.88/2010)

2.Arulmary Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.17 of 2011, on the file of the learned Judicial Magistrate, No.I, Pudhucherry, State of Puducherry and quash the Criminal Proceeding.

For Petitioners : Mr.E.Kannadasan

For Respondents : Mr.A.Tamilvanan (for R1)
Government Advocate (Pondicherry)

No Appearance (for R2)

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JUDGMENT

This petition is filed to call for the records in C.C.No.17 of 2011, on the file of the learned Judicial Magistrate, No.I, Pudhucherry and quash the same as illegal.

2.The case of the petitioners is that the 1st petitioner and 2nd petitioner are arrayed as the 3rd and 7th accused in the above C.C.No.17 of 2011, on the file of the leaned Judicial Magistrate, No.I, Pudhucherry.

3.The further case of the petitioner is that the 2nd petitioner is a French Citizen resident of Pudhucherry, owning a house property in Pudhucherry. The 2nd respondent/ complainant's husband namely Benny, who none but relative of the petitioners was entrusted to look after house property in the event of the petitioner's visit to France in the year 2009. For the same, the 2nd petitioner executed a limited purpose Registered General Power of Attorney dated 28.01.2009 authenticating the said Benny to maintain the house property, to pay all Taxes, Charges payable to Government and to defend any civil dispute in respect of the house property.

4.However, on 2nd petitioner's return from France in the year 2010 it was found that in the guise of Power deed, the said Benny by playing fraud has got executed a Deed of Sale in favour of his wife. The 2nd petitioner being a French Citizen, he did not know to Read or Write Tamil and making use of the same the said Benny managed to receive the Document executed, since it was represented as if it was a General Power deed. It was further found that the said Benny on the strength of the fraudulent sale deed has executed a registered sale Deed dated 19.08.2009 in respect of the above property in the name of his wife Arulmary the complainant herein.

5.Thereupon, the 2nd petitioner made a complaint before the concerned Police to take action over the fraud committed on him, but the same was not fruitful out of the influential status of the accused/ the 2nd respondent and her husband Benny.

6.Whereas to the Contrary a false complaint dated 20.03.2010 was lodged by the 2nd respondent, as if on the said date at about 10.30 A.M the petitioners forming unlawful assembly with common object has criminally trespassed into the 2nd respondent's house/ the subject house property and put her in fear of injury and induced her to deliver the house property, further as if the house hold articles were damaged and the 2nd respondent was threatened with dire consequence of life. Based upon the said false complaint the 1st respondent has registered a case in Cr.No.88 of 2010 under Sections 143, 448, 384, 427, 294, 506(ii)

r/w 149 of I.P.C. and the corresponding Charge sheet was laid in C.C.No.17 of 2011 on the file of the learned Judicial Magistrate, No.I, Pudhucherry. The above complaint is utter false and the charge sheet filed is liable to be quashed as illegal.

7. Therefore, invoking the inherent Jurisdiction of this Court under Section 482 Cr.P.C., the petitioners are before this Court seeking to quash the Charge sheet filed in C.C.No.17 of 2011 on the file of the learned Judicial Magistrate, No.I, Pudhucherry.

8. The 2nd petitioner's complaint was not taken for consideration by the 1st respondent Police. The 2nd petitioner has filed a private complaint before the learned Chief Judicial Magistrate No.1 at Puducherry in CrI.M.P.No.2975 of 2010 against the 2nd respondent Arulmary/complainant in this case and her husband Benny and one Anthuvan @ Arputharaj for the offences under Sections 211, 406, 420, 423, 500, 506(ii) r/w Section 200 of Cr.P.C. Therefore, the present complaint filed by the 2nd petitioner, on the file of the learned Judicial Magistrate No.I, Puducherry, is totally false, and the petitioner has prayed for quashing the charge sheet in respect of these petitioners.

9. I heard Mr.E.Kannadasan, learned counsel appearing for the petitioners and Mr.A.Tamilvanan, learned Government Advocate (Pondicherry) appearing for the 1st respondent, there was no representation made by the 2nd respondent or by a counsel on her behalf and perused the entire records.

10. It is admitted fact that the property belongs to the original owner and Mr.Mick Dhandapani, who is the joint owner of the property and he has also executed power of attorney in favour of one Mr.Benny. Though the complaint has been given by Mick Dhandapani on 02.03.2010, no action has been taken by the 1st respondent Police, whereas the complaint given by the 2nd respondent was taken into file and F.I.R. was registered, later on charge sheet has been filed on 19.01.2011, which was taken on file in C.C.No.17 of 2011.

11. Admittedly, the charge sheet filed for the charges under Sections 143, 448, 384, 427, 294, 506(ii) of IPC r/w Section 149 of IPC and the charges filed by the 1st respondent Police as follows:

"That on 20.03.2010 at 10.30 hrs at No.5, Govinda Chettiar Thottam, Vandrapet, Puducherry, the accused persons noted in the Col.No.11 of this charge sheet had formed themselves into unlawful assembly with common object and criminally trespassed into the complainant's house and put the complainant in fear of injury and induced the complainant to deliver the valuable property (complainant's house) to accused No.7. Further they damaged the house hold articles and used unparliamentary words and also threatened the complainant with dire consequence of life due to property dispute.

Thus the accused persons appears to have committed an offences punishable under Sections 143, 448, 384, 427, 294, 506(ii) IPC r/w 149 IPC.

Hence, the Charge."

12.Though the complaint has been lodged by the 2nd respondent/ defacto complainant by narrating that all the accused were joint together threatened the defacto complainant with Thadi.

13.On fair reading of the above charges, I could not able to understand that what is the charges and how the charge sheet has been filed by the 1st respondent/ Police, and except it is stated in one Paragraph and there is no details in respect of the charges. If each charge is properly explained and what is the offences should made out against the each accused which should be properly explained in the charge sheet. But, if this Court is gone through the charge sheet, there is no explanation in respect of charges made against each accused. The very investigation made by the 1st respondent Police has not at all explained in detail with each charge. The charge sheet must be indicate for the each offences, but admittedly, in this case, there are totally seven accused. If this Court looked into the charges, it has not been described in a proper manner.

14.When the charge sheet was filed by the 1st respondent / Police, the learned Magistrate without properly noticing the said charges, how he has taken the charge sheet on file. The learned Magistrate Court must have gone through the charges and the details of the offences committed by each accused should be

narrated in the charges. But it was totally lack on the part of the 1st respondent/ Police in respect of the charges. When the 1st respondent Police has filed the charge sheet against seven persons, it is the bounden duty of the 1st respondent / Police to properly narrated the offences and its commitment by each accused, but one paragraph charge sheet it has been mentioned that all the charges were committed by all the accused. There is total lack on the part of the Police for improper investigation, the charge sheet has been filed without giving full particulars, in respect of each charge against each accused, when the offences mentioned under Sections 143, 448, 384, 427, 294, 506 (ii) IPC r/w 149 of IPC which are all grave in nature which cannot be simplicity in the charge sheet. Therefore, merely because of implicating of seven accused in this case, the 1st respondent/Police cannot say that all the offences have been committed by all the accused.

15.It is my absolute view that the 1st respondent Police lack on the proper investigation in this case and in respect of filing the charge sheet. Apart from this, the learned Judicial Magistrate also absolutely lack on the judicial view but simply taken the charge sheet on file by numbering it in C.C.No.17 of 2011 which cannot be permitted to proceed in this case. Therefore, the charge sheet filed against these petitioners, who are the accused Nos.3 and 7 ought not to be proceed further.

16.Apart from that when a private complaint is pending against this defacto complainant and her husband Mr.Benny, who is the power agent of the 2nd petitioner, it is made clear that this complaint and subsequent charge sheet in C.C.No.17 of 2011 is absolutely foisted against this petitioner. It is made clear that in the charge sheet there is no mentioning about the specific overtact against these petitioners but it simply stated that all the accused were committed the offences.

17.Therefore, both the petitioners, who are accused Nos.3 and 7 have made out a case, warranting interference in the case in C.C.No.17 of 2011 and accordingly, it is liable to be quashed.

18.In the result:

(a) this Criminal Original Petition is allowed;

(b) the charge sheet filed in C.C.No.17 of 2011 on the file of the learned Judicial Magistrate No.1, Pudhucherry, is quashed in respect of these petitioners/accused Nos.3 and 7. Consequently, connected miscellaneous petitions are closed.

sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

vs

To

1 The Judicial Magistrate No.I, Puducherry

2 The Inspector of Police,
Mudaliarpur Police Station,
State of Puducherry.

3 The Public Prosecutor [Pondicherry]
High Court, Madras

+ 1 cc to Government Pleader [Pondicherry] sr.72235

+ 1 cc to Mr.E.Kannadasan, Advocate sr.71516

Pre-Delivery Judgment in
CrI.O.P No.5214 of 2011
and
M.P.Nos.1 and 2 of 2011

VS[CO]
RR 17/11/2017

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