

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :29.11.2017

PRONOUNCED ON :18.12.2017

Crl.OP No.7398 of 2011

and

M.P.No.1 of 2011

1.M.Munusamy

2.M.Govindaraj

3.M.Parameswari

4.M.Chinnasamy ..Petitioners/Accused 1 to 4

....Vs....

1. State represented by  
The Inspector of Police,  
Athiyamankottai Police Station,  
Dharmapuri District.

2. P.Arumugam ... Respondents/Complainants

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records and quash the complaint dated nil in P.R.C.No.16 of 2007 pending on the file of Judicial Magistrate No.II, Dharmapuri District.

For Petitioners :Mr.M.Selvam

For R1 :Mr.P.Muthukumar

For R2 :Mr.D.Anandakrishnan

for M/s.V.Chandrakanthan

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records and quash the complaint dated nil in P.R.C.No.16 of 2007 pending on the file of Judicial Magistrate No.II, Dharmapuri District.

2. Originally, a private complaint has been filed against 15 accused and after taking evidence, it appears that the Magistrate have taken cognizances only against the A1 to A4 and refused to take cognizance in respect of other accused and

hence, the petitioners are arrayed as A1 and A4, challenging, taking the cognizances of the cases by the Judicial Magistrate No.II, Dharmapuri District.

3. The case of the petitioner is that the petitioners have been accused of committing offences under Section 147,148,149,427,506(ii),436 and 307 I.P.C along with 15 others in P.R.C.No.16 of 2007 pending committal on the file of the learned Judicial Magistrate No.II, Dharmapuri.

4. The case of the complainant is that on 17.08.2004 at around 11.am when he was with his wife Muniammal and son Sivakumar, the accused 1 to 4 trespassed into his property with crowbar, spade and knife and abetted other accused to cut down the trees and to lay road by driving the tractor. When the complainant along with his wife and son questioned the accused for doing so, the accused 1,2 and 3 tried to attack the complainant, his son and his wife respectively. At that time, Dharmapuri Tahsildar Taluk along with his staff A.13 and Munusamy came there, who summoned the Athiyamankottai Police in spite of complainant's requests. All the accused bet the complainant and his family with stones and sticks in front of the Tahsildar. But the complainant, his wife and his son taken to Adhiyamankottai Police Station and kept in custody.

5. The accused with the help of the Tahsildar had cut and destroyed 18 coconut trees, 5 tamarind trees and a variety of other trees, worth about Rs.30,000/- and set the house into flames, accused 1,2 and 4 fled from the scene on seeing the complainant. The complainant's complaint dated 18.08.2004, 20.08.2004 and 7.9.2004 in C.S.R.Nos.244,248 and 271 respectively were not acted upon by the Adhiyaman Police. Aggrieved by the same, the complainant filed a private complaint dated nil before the learned Judicial Magistrate No.II, Dharmapuri for offences under Sections 147,148,149,427,506(ii), 436 and 307 I.P.C. The learned Magistrate after recording statements of witnesses P.W.1,2&3 has registered a case in P.R.C.No.16 of 2007 pending committal proceedings.

6. The learned counsel for the petitioner has submitted that the complainant has mutually differed from the facts averred in his complaint while deposing before the learned Magistrate by altering the very nature of allegations. P.Ws.2 and 4 who are not even present in the scene of occurrence. According to the complainant, who has deposed before the Magistrate that he had witnessed the crime in person. The complaint as recorded is bereft of specific details to pin down the petitioners for alleged offences.

7. Per contra, the second respondent who is the private complainant before the trial Court would submit that since police have failed to take a repeated complaint, he moved the private complaint after recording the statement of P.W.1 on 5.1.2005, P.W.2 on 19.07.2005 and P.W.3 on 19.07.2005, the learned Magistrate has taken cognizances as against the petitioners 1 to 4 namely, the accused as A1 to A4 and in respect of others cognizances were not taken and made submission in support of the order passed in C.M.P.No.3473 of 2004 wherein P.R.C.No.16 of 2007 was ordered to be taken against the present petitioners only.

8. The point that needs to be addressed in this case is that whether the petitioners are entitled for quashment of the P.R.C.No.16 of 2007?

9. The main contentions of the petitioners herein are that there is a previous enmity in respect of a civil dispute and there is a material contradiction between the version of petitioners and P.W.2 and P.W.3 and petitioners were not at all present at the scene of occurrence. It is seen that the second respondent herein moved the C.M.P.No.2473 of 2004 before the Judicial Magistrate No.II, Dharmapuri for alleged offence under Sections 147,148,427,506(ii),436 and 307 of I.P.C against A1 to A4, the petitioners herein along with 15 others.

10. Based upon the oral evidence and the photos produced before the trial Court, the learned Judicial Magistrate thought it fit that only as against A1 to A4 materials are available to take cognizance and in respect of others, there was no material and accordingly ordered to take cognizance as against the petitioners herein only for alleged offence under Sections 436,427 and 506(ii) I.P.C.

11. It is seen from the statement of witnesses that was recorded during the enquiry under Section 200 Cr.P.C before the learned Magistrate and other materials placed before him he has not committed any irregularity in taking cognizance in respect of the alleged offence under Sections 436,427 and 506(ii) I.P.C since there are positive materials for the offence alleged to have been committed.

12. After going through the statement and other connected records, I am of the considered view that it is a matter for trial wherein the points raised by the petitioners herein have to be adjudicated and to be elicited during the cross examination of the prosecution witnesses.

13. In view of the factual position and having regard to the stand taken by the petitioners herein are question of fact and

that can be gone into only during the time of the trial and hence, I do not find any positive materials for exercising the powers under Section 482 Cr.P.C for quashing the P.R.C.No.16 of 2007.

14. In this view of the matter, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II, Dharmapuri District.
2. The Public Prosecutor,  
High Court, Madras.

+1cc to M/s.V.Chandrakanthan, Advocate, S.R.No.90124

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EV(CO)  
CS/24/01/18



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