

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.23273 of 2009 and
M.P.No.1 of 2009

D.J.Adithya

.. Petitioner/accused

Vs

1. The State, rep. by
Inspector of Police,
B-4 Race Course Road Police Station,
Coimbatore.
2. Subhiksha Trading Services,
rep. By Legal Executive, Balachander,
1095, Avinashi Road,
Pappanaickenpalayam,
Coimbatore. ..Respondents/complainant/Defactocomplainant

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.65 of 2009 on the file of the learned Judicial Magistrate III, Coimbatore and quash the same.

For Petitioner : Mr.G.Karthikeyan

For Respondents : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)
for 1st respondent
R2 - Unserved
(No Appearance)

WEB ORDER COPY

The petitioner has filed this petition to call for the records in C.C.No.65 of 2009 on the file of the learned Judicial Magistrate III, Coimbatore, and quash the same.

2. The facts in a nutshell are as under: It is the case of the prosecution that one Balachandar, who is the complainant, is having a Supermarket, Pharmacy and Mobile

Shop in the name of the "M/s.Subiksha Trading Services Private Limited", which was owned by the petitioner/accused. The petitioner/accused is stated to have asked the second respondent to vacate the premises. It is alleged that on 01.03.2007, at about 9 am, the second respondent went to his shop and found that his name board of the shop measuring 20' x 20', worth about Rs.25,000/-, was missing and it is the case of the second respondent that the petitioner had committed theft of it.

3. On the basis of the said allegation, a complaint was lodged and the same was registered as Crime No.332 of 2009 on the file of B4, Race Course Police Station, Coimbatore, under Section 379 of the Indian Penal Code. It is stated that the Investigation Officer, on examination of witnesses and recording their statements, seized the name board from the petitioner/accused in the presence of witnesses. Thereafter, on 17.03.2008, the petitioner was arrested and remanded to judicial custody and the seized name board was produced before the Chief Judicial magistrate Court III, Coimbatore, under Form 95.

4. It is stated that on completion of the investigation, the then Inspector of Police laid the charge sheet on 10.07.2008 and submitted the same to the Chief Judicial Magistrate Court III, Coimbatore. The same was taken on file as C.C.No.65 of 2009, dated 27.07.2009.

5. Seeking quashment of the said criminal proceedings, the present criminal original petition is filed.

6. It is the contention of the learned counsel for the petitioner that the second respondent, who is his tenant, committed wilful default in payment of rent and in this regard several proceedings for recovery of rent, etc., have already been initiated by the petitioner and in order to wreak vengeance, with a mala fide intention, the second respondent instituted criminal proceedings against the petitioner. To fortify the said plea, it is submitted that the petitioner had filed three suits against the second respondent for injunction from subletting; for injunction from putting the property to different usage; and for injunction restraining them from carrying on modification. Further, a RCOP is also stated to have been filed by the petitioner for eviction of the second respondent.

7. It is further contended that when the alleged occurrence of theft is said to have taken place on 01.03.2007, it was reported to the Magistrate only on 06.10.2007, nearly after 7 months, and FIR was lodged by

the complainant only on 17.03.2008 and there is no explanation whatsoever for the inordinate delay in filing of the complaint by the second respondent.

8. The learned counsel for the petitioner also relied on a decision of the Hon'ble Supreme Court in State of Haryana vs. Bhajan Lal, reported in 1992 Suppl. (1) SCC 335, wherein it has been held that 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, and submitted that the case levelled against the petitioner is maliciously instituted with ulterior motive and, therefore, the same should be quashed.

9. Per contra, the learned Government Advocate (Criminal Side) contended that all the mandatory provisions have been complied by the respondent police during the course of investigation and inasmuch as the case is pending trial trial, there is no necessity to quash the criminal case at this stage.

10. I heard Mr.G.Karthikeyan, learned counsel for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing on behalf of the first respondent.

11. At the outset, it is to be noted that by virtue of the order of interim stay dated 28.08.2008 passed by this Court in Cr.O.P.No.19074 of 2008 (which petition was subsequently dismissed as withdrawn on 20.01.2011) and in view of the order of interim stay dated 27.10.2009 passed in Crl.M.P.No.1 of 2009 in this petition, there is no progress in the trial as on date, even after lapse of almost 10 years.

12. It is beyond any cavil that the petitioner is the owner and the second respondent is the tenant.

13. It is seen from the records that the second respondent filed O.S.No.290 of 2007 against the petitioner and two others seeking to restrain the petitioner and two others from interfering with the second respondent's peaceful possession and enjoyment of the suit property.

The petitioner also has filed a suit O.S.No.292 of 2008 against the second respondent. The petitioner had also filed R.C.O.P.No.36 of 2007 under Section 4 of the Tamil Nadu Buildings (Lease and Rent Control) Act. Therefore, pendency of civil litigation between the parties is not in dispute.

14. One aspect which can be deduced from the above pending civil litigations is that it is only because of these cases and counter cases, though the alleged incident in the case on hand took place as early as 01.03.2007, at about 9 am, it was reported to the Magistrate only on 06.10.2007, nearly after 7 months, and FIR was lodged by the complainant only on 17.03.2008. The second respondent has been sleeping over the issue all along. There is no valid or justifiable reason adduced by the second respondent justifying the delay. In cases where there is a delay in lodging an FIR, the Court has to look for a plausible explanation for such delay. In the absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases, the Court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party (Vide Kishan Singh (dead) through LRs. v. Gurpal Singh and others, (2010) 8 SCC 775). The long unexplained delay in filing the complaint also proves that the complainant has invoked jurisdiction of Criminal Court only with a view to harass and persecute the accused.

15. The animosity and sour relationship of both the sides are evident by the case and counter case lodged by either of the sides before the civil Court. In the case of State of Haryana vs. Bhajan Lal, reported in 1992 Suppl. (1) SCC 335, one of the guidelines which enumerated, when inherent power under Section 482 Criminal Procedure Code can be invoked, is quoted hereunder:-

"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."

16. In the case of Inder Mohan Goswami vs. State of Uttaranchal, reported in (2007) 12 SCC 1, it was observed that the court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

17. In the case on hand, apart from the unexplained delay, civil proceedings are pending between the parties.

In such view of the matter, this Court is of the view that the petitioner should not be made to face the rigmarole of the criminal prosecution, more so, as there was a stay of operation of the criminal proceedings right from its registration and till date there is no trial conducted. Moreover, this Court is prima facie of the view that the criminal prosecution is used as an instrument of harassment for seeking private vendetta with an ulterior motive to pressurise the petitioner.

18. Considering the overall aspects of the matter, this Court is of the opinion that impugned complaint is maliciously filed with oblique motive to pressurize the petitioner in the civil proceedings and the same is nothing but sheer and clear abuse and misuse of process of law and court. In my considered view, this is a fit case to exercise extraordinary powers under section 482 of the Code of Criminal Procedure and to quash and criminal proceedings.

In such view of the matter, this criminal original petition is allowed and the proceedings in C.C.No.65 of 2009 on the file of the learned Judicial Magistrate III, Coimbatore, are quashed.

Sd/-
Assistant Registrar(CS)
//True Copy//
Sub Assistant Registra

vs

To

The Judicial Magistrate No.III, Coimbatore.

2.The inspector of Police,
B4 Race course Road Police station
Coimbatore

3.The Public Prosecutor,
High court
madras

+1 cc to Mr.G.Karthikeyan Advocate SR.NO. 23486

CRL.OP.No.23273 of 2009

nmi
ASK(28/08/2018)