



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2017

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CRL. OP.(MD)Nos.6839 & 6840 of 2017

and

CRL.MP(MD)Nos.4572 & 4573 of 2017

- 1.Asmathullah
- 2.Jeyakumar
- 3.Singam
- 4.Mangalanathadurai
- 5.Jegan Prasath
- 6.Ramadurai Pandiyan
- 7.Satham Ussain
- 8.Ramar
- 9.Tharikul Ajish

..Petitioners/Accused No. 1 to 9 in
Crl.OP(MD).No.6839 of 2017

Kumaran Sethupathi

..Petitioner/Accused No.10 in
Crl.OP(MD).No.6840 of 2017

Vs.

- 1.The State rep its
Inspector of Police,
Bazaar Police Station,
Ramanathapuram District.

.. 1st Respondent/ Complainant

- 2.N.S.Asanaliyar.

.. 2nd Respondent/De-facto Complainant
.. Respondents in both petitions

Prayer:- Petitions filed under Section 482 of Criminal Procedure Code, praying to call for records relating to the proceedings in Crime No.273 of 2017 dated 27.05.2017 on the file of the 1st respondent police and quash the same.

For Petitioners

: Mr.G.R.Swaminathan

For R1

: Mr.K.Anbarasan

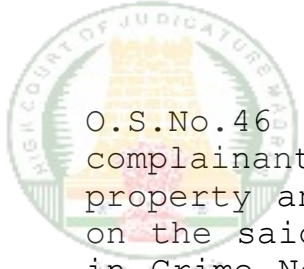
Government Advocate (Crl.Side)

COMMON ORDER

These petitions have been filed to quash the case in Crime No.273 of 2017 on the file of the respondent police.

2. Today, Mr.S.Paulraj, Special Sub Inspector of Police, Bazaar Police Station, Ramanathapuram District is present before this Court.

3. It appears that there are several disputes between the petitioners and the de-facto complainant with regard to the subject matter of the property in connection with which, a case in earlier crime No.692 of 2016 is pending investigation, apart from a suit in



O.S.No.46 of 2015. While, so, it is now alleged by the defacto complainant that on 27.05.2017, 9 named accused had come to the suit property and caused certain damages at the instance of A10. Based on the said complaint, the respondent police have registered a case in Crime No.273/2017 on 27.05.2017 under Sections 147, 294(b), 447, 448, 109, 506(i), 379 (NH) of I.P.C. and Section 3 of Tamil Nadu Public Properties (Prevention of Damage & Loss) Act, 1992 against 10 accused. Challenging which, these quash applications have been filed.

4. Heard Mr.G.R.Swaminathan, learned counsel for the petitioners/Accused and the learned Government Advocate (Crl. Side) for the first respondent.

5. Mr.G.R.Swaminathan, contended that Kumaran Sethupathy (A10) had sold the suit property during April 2015 to A1 and others and therefore, he has no interest in the said property, on account of which, he could not have instigated A1 to A9 to involve in the alleged incident. He also contended that the de-facto complainant has not spoken to the presence of A10 in the scene of occurrence.

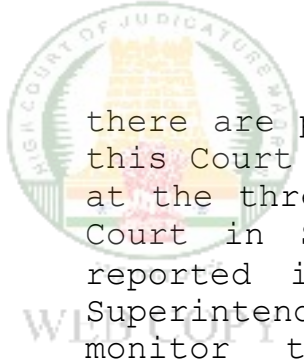
6. Mr.G.R.Swaminathan further submitted that the suit that has been filed in O.S.No.46/2015 by the de-facto complainant has been returned for want of pecuniary jurisdiction. Therefore, the present case is clearly an abuse of process of law warranting interference of this Court.

7. Per contra, the learned Government Advocate refuted the allegations.

8. This Court gave its anxious consideration to the rival submissions.

9. The averments in the FIR can be divided into two parts, namely, the incidents that had occurred prior to 27.05.2017 and the incident that had occurred on 27.05.2017. As regards the incident that had occurred prior to 27.05.2017, which has been referred to by the de-facto complainant, this Court cannot look into those aspects, because that provide the alleged motive for the alleged occurrence on 27.05.2017. That apart, there is already a case in Crime No.692/2016 pending investigation and the suit in O.S.No.42/2015 is still alive, though the plaint only has been returned to the plaintiff. However, as regards the incident that had taken place on 27.05.2017, it is clearly alleged in the FIR that A1 to A9 had set up henchmen and demolished the compound wall with JCB and other equipments. It is further averred in the FIR that it was done at the instigation of A10. While dealing with the quash applications, this Court cannot go into the disputed questions of fact and give a finding.

10. The fact that A10 had sold the property wayback in the year 2015 to A1 etc., that was canvassed by Mr.G.R.Swaminathan, requires to be enquired into by the police during investigation. Thus, when



there are prima facie materials for a regular police investigation, this Court is of the view that it is not a fit case to quash the FIR at the threshold, in the light of the law laid down by the Supreme Court in **State of Haryana and others v. Bhajan Lal** and others reported in **1992 Supp (1) SCC 335**. However, the Assistant Superintendent of Police, Ramanathapuram is directed to closely monitor the investigation in Crime No.273/2017 and during investigation, if it is found that A10 was in no way connected with the alleged incident on 27.05.2017, it is needless to state that further prosecution against him shall be dropped.

10. Accordingly, these petitions are dismissed with the above direction. Consequently, connection Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Inspector of Police,
Bazaar Police Station,
Ramanathapuram District.

2.The Assistant Superintendent of police,
Ramanathapuram.

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

+2cc to M/s. T.ANTONY ARUL RAJ Advocate in SR. No.59519,59521

+1cc to M/s. N.ANANTHA PADMANABAN Advocate in SR. No.59032

LS/RR

JS/SKN.RSK/SAR.4/16.6.2017/3P-7C

CRL. OP.(MD)Nos.6839 and 6840 of 2017
and Crl.M.P.Nos.4572 & 4573 of 2017
08.06.2017