



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.09.2017

CORAM

WEB COPY

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C (MD) No.601 of 2016

and

Crl.MP (MD) No.7937 of 2016

1.K.P.Poopaal Asan
2.K.P.Jeyapaul Asan
3.Johnsisu Mary
4.P.Jegatheeswari

... Revision Petitioners/
Petitioners/Accused 1 to 4

Vs.

1. State rep.by
The Sub Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.

2. Stanley Baburaj
(R2 impleaded vide order dated
22.11.2016)

... Respondents/Respondents

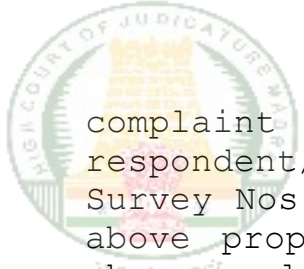
Prayer : Criminal Revision Case filed under Section 397 and 401 Cr.P.C. to call for the records and set aside the order made in Crl.M.P.No.7767 of 2013 dated 27.07.2016 on the file of the Judicial Magistrate, Padmanabhapuram.

For Petitioner	: Mr.C.Sankar Ganesh
For R - 1	: Mr.C.Mayilvahana Rajendran Additional Public Prosecutor
For R - 2	: No appearance

ORDER

Challenging the order, dismissing the petitioners' application to discharge them from the charges, this Criminal Revision Case has been filed.

2.The petitioners are the accused in C.C.No.139 of 2007 on the file of the Judicial Magistrate, Padmanabhapuram for the offence under Sections 447, 427, 294(b) and 506(ii) IPC. The above



complaint has been filed on the ground that the second respondent/defacto complainant is the owner of the property in Survey Nos.134/3, 148 11-B to a total extent of 25 ¼ cents. In the above property, some coconut trees are standing and the accused who are claiming right over the property, trespassed into the land and cut down six coconut trees, when the defacto complainant questioned them, they abused him with filthy language. Hence, the complaint has been given. The first respondent police, after investigation, filed final report for the above said offence. Thereafter, the petitioners filed the petition to discharge them from the charges. The Court below dismissed the same. Challenging, the order of dismissal, the present Criminal Revision Case has been filed.

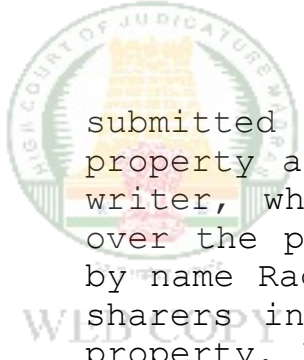
3.I have heard Mr.C.Sankar Ganesh, learned counsel appearing for the petitioners and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the first respondent.

4.The learned counsel appearing for the petitioners would contend that the petitioners are the exclusive owners of the above mentioned property as per the decree passed in the partition suit in O.S.No.250 of 1960, on the file of the Judicial Magistrate, Padmanabhapuram and the property has been allotted to the petitioners' predecessor share and the defacto complainant has purchased the property from some other persons, who have no right over the property. Since the above disputed property is the exclusive property of the petitioners, no offence is made out, as alleged by the defacto complainant. Apart from that, based on the complaint given by the petitioners against the defacto complainant, a case is pending in S.C.No.98 of 2011 on the file of the Mahila Court, Nagercoil. The charge sheet filed in the above case, clearly reveals that the petitioners are the exclusive owners of the property, hence no *prima facie* case is made out to frame charges against them.

5.The learned Additional Public Prosecutor appearing for the first respondent submitted that based on the complaint given by the defacto complainant, investigation has been conducted and the investigation clearly reveals that the petitioners trespassed into the property belongs to the defacto complainant and they have cut down six coconut trees and also abused the defacto complainant with filthy language and since the material reveals *prima facie* case, final report has been filed. The Court below, considering the entire materials, dismissed the petitioners' application and there is no reason to interfere with the order of the Court below.

6.I have considered the rival submissions made on either side and perused the records carefully.

7.The learned counsel appearing for the petitioners



submitted that the petitioners are the exclusive owners of the property and he has also relied upon the statement of a document writer, wherein he has stated that the accused are having right over the property. Even from the statement of the document writer by name Ragavan, it is only seen that the petitioners are the co-sharers in the property and they are not absolute owners of the property. Even though the petitioners relied upon the judgment of the civil Court, it is not form part of the investigation and the Court cannot look into those documents at this stage. A perusal of the materials, I find *prima facie* case is made out to proceed against the complaint and the Court below also considering the entire materials, has rightly dismissed the petitioners' application. I find no illegality or irregularity in the order passed by the Court below.

8. In fine, this Criminal Revision Case is dismissed. Since the case is pending from the year 2007, the Judicial Magistrate, Padmanabhapuram is directed to proceed with the trial and dispose of C.C.No.139 of 2007 within a period of six months from the date of receipt of a copy of this order. Consequently, CrI.MP(MD) No.7937 of 2016 is closed.

Sd/-
Assistant Registrar (AD-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Padmanabhapuram.
2. The Sub Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.C.SANKAR PRAKASH, ADVOCATE IN SR No. 78419

MJ

TE/KK/SAR-II : 27/09/2017 : 3P/5C

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