

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2018

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

CRL. O.P.NO.15390 of 2011
and
M.P.Nos.1 & 2 of 2011

1. J.A.Arumainathan
2. J.A.Inbanathan
3. Karuniam Selvakumari
4. Marthal Selvakumari
5. Epsiba Selvakumari
6. Nathan PaulrajPetitioners/Accused

vs.

State represented by
Inspector of Police,
E2 Royapettai Police Station,
Chennai 600 014Respondent/Complainant

Prayer: Criminal OP is filed under Section 482 of Cr.P.C,
praying this Hon'ble Court to call for the records in
C.C.No.10071 of 1010 pending on the file of 18th Metropolitan
Court and quash the same as illegal.

For Petitioner : Mr.G.A.Thiyagarajan

For Respondents : Mr.T.Shunmuga Rajeswaran
Government Advocate
(Criminal side) for R1
Mr.K.V.Babu for R2

ORDER

This petition has been filed by the petitioners to quash the proceedings pending on the file of the XVIII Metropolitan Magistrate, Saidapet. The petitioners are facing the proceedings before the Trial Court for the offence punishable under Sections 448 and 506(1) IPC.

2. Today, when the matter was taken up for hearing, the counsel for the petitioners had sought the attention of this Court to the complaint as well as the final report and pointed out that, even according to the complaint, it is only an attempt to trespass into the property, as such, the offence under

Section 448 would not attract. Even in the final report, the averment is only an attempt to trespass, as such, the final report filed under Section 448 of IPC is not made out. Therefore, the counsel prays for allowing the present petition.

3. The defacto complainant, though is not a party to the present petition, has appeared through a Counsel, namely, Mr.K.V.Babu. The learned Counsel brought to the notice of this Court the counter complaint lodged by the second petitioner, which was registered in CSR.No.23 of 2010, wherein, the second petitioner herein has taken a ground that at the very same place and time of occurrence, they were present there and they have been assaulted by the complainant.

4. The counsel for the defacto complainant has also referred to the orders passed by the Division Bench of this Court in W.A.No.1260 of 2010 dated 30.09.2010, wherein the Division Bench has given a clear finding that the complainant was in the possession of the property at the relevant point of time. It is also the case of the defacto complainant that he obtained an injunction order not to disturb his possession in the Civil Court.

5. The counsel for the petitioners has contended that as against the orders of the civil court, they have preferred an appeal and therefore, finality has not been reached in the civil proceeding.

6. Be that as it may, the issue arising before this court is that, on the date of occurrence, whether the petitioners were present in the place of occurrence and whether they have entered into the premises, which is in the possession of the complainant and they have ever committed an offence under Section 448 and 506(1) of IPC.

7. Since the second petitioner himself has admitted the fact that he was present at the place of occurrence and he was assaulted by the complainant and also lodged a counter complaint in CSR No.23 of 2010, this Court is of the view that it is a matter for evidence and the same cannot be quashed at the threshold. Therefore, this Court, without expressing anything on the merits of the case, directs the petitioners to raise all the grounds before the trial court and the trial Court shall consider the same, in the manner known to law. It is also open to the petitioners to file necessary application to amend the charges, if they are so advised. It is open to the learned Magistrate to decide the application, if any, filed by the petitioners.

8. While disposing the petition, the counsel for the petitioners has sought the indulgence of this Court to dispense with the personal appearance of the petitioners 5 and 6. Considering their age, the appearance of petitioners 5 & 6 before the trial Court is dispensed with, provided, an undertaking affidavit is filed by them ensuring their appearance as and when required by the concerned court.

9. With the above direction, this petition is disposed of. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

bga

To

1. The XVIII Metropolitan Magistrate
Saidapet, Chennai.
2. The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
3. Inspector of Police,
E2 Royapettai Police Station
Chennai 600 014.
4. The Public Prosecutor
High Court, Madras

+1cc to Mr.G.A.Thiyagarajan, Advocate SR.No.83252

+1cc to Mr.K.V.Babu, Advocate SR.No.83273

WEB COPY

CRL. O.P.NO.15390 of 2011
and
M.P.Nos.1 & 2 of 2011

NRJK (CO)
GMY (18/07/2019)