

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2018
Pronounced on : 12.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17559 of 2011
and
M.P.Nos.1 of 2011

1.Selvaraj,
S/o.P.Sadayappan.

2.S.Senthil Nathan,
S/o.Selvaraj.

3.Valliyammal,
W/o.Selvaraj.

4.Saraswathi,
D/o.Selvaraj.

5.Ranjini Radha,
D/o.Selvaraj.

..Petitioners/Accused Nos.1 to 5

/Vs./

K.Seeni Mohamed,
S/o.Kader Meera Kani.

..Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in C.C.No.431 of 2010 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai quash the same.

For Petitioners : Mr.M.L.Ramesh

For Respondent : Mr.Dalit Tiger C.Ponnusamy

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O R D E R

The petitioners, who are accused in a private complaint filed by the respondent for the offence under Sections 327, 430, 448, 452 and 506 (ii) of the Indian Penal Code r/w Section 3 of the Tamil Nadu Prevention of Public Property Damages Act in C.C.No.431 of 2010, which is pending trial on the file of the XVI Metropolitan Magistrate Court, George Town have filed the above quash petition.

2.The first petitioner is the father, second petitioner is the son, third petitioner is the wife, fourth petitioner is the daughter and the fifth petitioner is another daughter of the first petitioner.

3.The petitioners are the owners of the second floor. The respondent is the owner of the third floor of a property situated at Old Jail Road Lane, Seven Wells, Rajan Buildings, Chennai - 600 001. The petitioner had purchased the second floor together with undivided share of the property on 10.02.2006 from thereon he has been in possession and enjoyment of the said property with his family members. The respondent had purchased the third floor on 02.02.2009, when he purchased the property the constructed area of the third floor was 600 sq.ft. along with the undivided share of the said property.

4.According to the respondent since the build up area was not sufficient for the residence of the members of his family, the respondent constructed an additional portion to an extent of 500 sq.ft. for which the Corporation authorities had issued a notice dated 11.02.2010. The respondent had sent a reply on 05.04.2010. Without considering the reply sent by the respondent, a demolition notice was issued by the Corporation authorities on 08.04.2010, against which the respondent had filed a W.P.No.7846 of 2010 before this Court and this Court by order dated 16.04.2010 had quashed the demolition notice, since the demolition notice was in violation of principles of natural justice and the Corporation Officials are at liberty to proceed against the respondent on merits after affording opportunities of hearing and considering the reply of the respondent dated 05.04.2010. The first petitioner had filed a W.P.No.7475 of 2010 against the officials of the Corporation and this Court by order dated 29.04.2010 to demolish the illegal construction put up by the respondent in the third floor of the said property.

5.The contention of the learned counsel for the petitioners is that there are dwelling unit in the said property. The respondent, who is keeping the third floor of the apartment had started putting up a construction in the terrace without obtaining any kind of permission from the Corporation authorities. The terrace portion is a common area, as such the respondent is not entitled to put up any construction in the said area. The High Court referring to the order dated 16.04.2010 in W.P.No.7846 of 2010 had passed an order in W.P.No.7475 of 2010 on 29.04.2010 that the first petitioner to be given an opportunity of hearing before the disposal of the matter in W.P.No.7846 of 2010. Further, this Court had also directed Status quo to be maintained during the pendency of the proceedings of the Corporation authorities and further, directed the respondent not to make any further construction till the disposal of the matter by the Corporation authorities. The first petitioner had filed a

Contempt Petition before this Court vide Cont.P.No.959 of 2010 against the Corporation Officials and this Court by order dated 27.08.2010 had dismissed the Contempt Petition on the ground that it was pre-mature.

6.It is submitted that the respondent had filed a Civil Suit in O.S.No.3489 of 2010 against the first and second petitioners before the XIII Assistant Judge, City Civil Court, Chennai. By Judgment dated 31.08.2010 the XIII Assistant Judge, City Civil Court, Chennai had granted a permanent injunction against the petitioner Nos.1 and 2 for not to interfere or disturb the peaceful possession and enjoyment of the suit property including putting up construction in the open space at the third floor of the said property.

7.This Court feels that the above narration of the case will give on better understanding of the private complaint which is pending trial before the Lower Court. It is an admitted case that the petitioner have purchased the second floor of the said property on 10.02.2006. It is also an admitted case of the respondent is that the respondent had purchased the property on 02.02.2009 of the third floor which is of only 600 sq.ft.

8.It is the admitted case of the respondent is that due to want of sufficient space for his family members, the respondent had constructed an additional portion to an extent of 500 sq.ft., which was objected by the first petitioner and who had sensitized the Corporation authorities about the unauthorised illegal construction carried on by the respondent and also fearing the stability of the old building.

9.Further, the first petitioner is also entitled to the open space of the third floor and there have been prolonged and protracted litigations between the first petitioner and the respondent and there have been animosity between them.

10.On perusal of the complaint, it is seen that though, complaint refers to W.P.No.7475 of 2010 and the order of Status quo the respondent conveniently have not mentioned about the finding of the High Court that no further construction to be made by the respondent/complainant. Likewise in the complaint there is a mention of O.S.No.3846 of 2010 in which the Sub Court passed an Injunction order restraining the first and second petitioner not to interfere or or disturb the peaceful possession and enjoyment of the suit property including putting up construction in the open space at the third floor of the said property.

11.It is to be noted that the authorities have not been arrayed as parties in the Civil Suit. It is to be noted that during the pendency of the Civil Suit there were proceedings for the suit property with the Corporation authorities. Further, in the complaint except for the bald averments that

the petitioners herein have with mala fide intention causing heavy loss to the respondent/complainant and his family members by causing damage to the complainant's property with the help of the henchmen", for which the respondent had preferred a complaint before the Inspector of Police, N3 Police Station, Muthialpet, Chennai - 600 001 on 20.10.2010. Though, C.S.R.No.116/2010 was issued no case was registered.

12. Thereafter, the respondent have moved this Court in CrI.O.P.No.25468 of 2010, this Court by order dated 11.11.2010 had recorded the closure of the complaint of the respondent for the reason "Civil in nature" and made clear that it was left open to the respondent to file appropriate complaint, if he so desire. Based on the same, the respondent had filed the above Criminal complaint.

13. The contention of the petitioners is that the entire family members of the first petitioner have been arrayed as accused by the respondent to spite vengeance, since the first petitioner was taking steps to stall the un-authorised construction, taking steps through the Corporation authorities to demolish the un-authorised construction put up by the respondent which had caused the respondent to rope in the entire family members and against him.

14. Further, he referred to the various proceedings mentioned above. Further, it is submitted that on going through the entire complaint, it could be seen that there is no specific averments and any over tact attributed against the petitioners and this case has been filed to brook the vengeance.

15. Further, the learned counsel for the petitioners relied upon the following citations:

1. In the case of Moosa Ahmed Vs. The Inspector of Police, Central Crime Branch, Team No.IV, Egmore, Chennai - 600 008 reported in 2010 (2) CTC 153;

2. In the case of R.P.Kapur Vs. State of Punjab reported in AIR 1960 SC 866(1); and

3. In the case of Vadivel and others Vs. Dr.V.D.Karthikeyan reported in (2011) 1 MLJ (Cri) 737.

16. Per contra, the learned counsel for the respondent/complainant had vehemently opposed the contention of the petitioners, relying upon the High Court orders and such Court orders are in the typed set of papers and he had contented that the complainant to put up an additional construction was necessitated to fulfill the family members need. Further, he had grown-up daughters and daughter-in-law.

He had made representation to the Corporation authorities, the authorities failed to act on the representation had issued the demolition notice, against which he had to approach this Court by way of a Writ Petition. The first petitioner had also filed a Writ Petition, which facts have been elaborated above.

17.As far as going through the complaint in detail, this Court finds that apart from making reference of this Court orders and Civil Court finding and except for a bald and sweeping allegation against the petitioner and on the uncontroverted allegations in the complaint do not disclose the commission of any offence and make out the case against the petitioners. There is no details with regard to the date, time, manner and the role played by each of the petitioners in commission of the offences as alleged in the complaint.

18.In view of the above, this Court finds that the complaint has been initiated by the respondent/complainant, wherein it is seen that the proceeding is manifestly attended with mala fide, and it is maliciously instituted with an ulterior motive for wrecking vengeance with a view to spite them due to private and personal grudge.

19.In view of the above, this Criminal Original Petition stands allowed and the proceedings against petitioners/accused Nos.1 to 5 in C.C.No.431 of 2010 on the file of the XVI Metropolitan Magistrate Court, George Town, Chennai is quashed. Consequently, the connected Miscellaneous Petition is closed.
ah

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The XVI Metropolitan Magistrate,
George Town, Chennai

2.The Public Prosecutor, High Court, Madras.

+1cc to Mr.M.L.Ramesh, Advocate S.R.No.71440

KR/13/11/18

CrI.O.P.No.17559 of 2011