

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

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

CRL.O.P.No.24818 of 2012

and

M.P.No.1 of 2012

1.P.Muthu

2.P.Krishnamurthy

... Petitioners

Vs

1. The State, rep. by
Inspector of Police
Central Crime Branch-II, Chennai,
(Anti Land Grabbing Cell)
Crime No.10 of 2012
Chennai.

2. A.K.Nagooran

... Respondents

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records relating to the FIR in Crime No.10 of 2012 on the file of the 1st respondent Police, quash the same by allowing this Criminal Original Petition as against the petitioners for the offence under Sections 468, 471, 387, 448, 506(i) read with 34 IPC.

For Petitioners : Mr.N.Manokaran

For Respondents : Mr.P.Govindarajan(for R1)
Addl. Public Prosecutor

Mr.G.V.Sridharan (for R2)

ORDER

The petitioners have filed this petition to call for the records in Crime No.10 of 2012 on the file of Central Crime Branch-II (Anti Land Grabbing Cell), Chennai for the offence under Sections 468, 471, 387, 448, 506(i) read with Section 34

I.P.C., and quash the same.

2. The 2nd respondent lodged a complaint against the petitioners before the 1st respondent alleging that they have created documents and criminally intimidated them in the guise of claiming ownership over the property measuring an extent of 27 cents in Survey No.27/47, Pammal Village.

3. The case of the prosecution is that the complainant had inherited an extent of 27 cents in S.F.No.27/47, Pammal village and he appointed one Ganesan Maniyan, Partner of Vijay Associates as his power of attorney holder for the purpose of developing the land. The said power agent started construction after getting necessary permission and approval from the Chennai Metropolitan Development Authority and Pammal Town Panchayat. While so, the petitioners started disputing the ownership of the complainant and they have filed a petition before the Revenue Divisional Officer, Chengalpattu to cancel the patta. By the proceedings dated 28.5.2008, the Revenue Divisional Officer, cancelled the patta. Aggrieved by the cancellation of patta, the 2nd respondent filed an appeal before the District Revenue Officer, Kancheepuram and by the order dated 16.11.2009, the appeal was allowed in favour of the 2nd respondent. Even thereafter, the petitioners were preventing workers from proceeding with the construction and disconnected the electricity. The petitioners have taken away the construction materials worth Rs.10.00 lakhs and for that a complaint was lodged before the Sankar Nagar Police Station and the same was received in C.S.R.No.324 of 2009 and C.S.R.No.100 of 2010. The petitioners have not vacated the property and they have also threatened the complainant with dire consequences.

4. According to the petitioners, they have not committed any offence as alleged by the prosecution and the complainant/ 2nd respondent was never in possession of the subject matter of the property. Suppressing the materials facts i.e., pendency of suit and cross-suit filed by both parties, the petitioners have conveniently lodged the complaint with an ulterior motive to grab the property. According to the petitioners, a pure civil dispute has been given a criminal colour and in fact, the petitioners are co-sharers in the property in question.

5. I heard Mr.N.Manokaran, learned counsel for the petitioners, Mr.P.Govindarajan, learned Additional Public Prosecutor for the first respondent and Mr.G.V.Sridharan, learned counsel for the 2nd respondent and also perused the materials available on record.

6. The learned counsel for the petitioners submitted that the complaint/FIR does not disclose any criminal offence, much

less any offence either under Sections 447, 448, 468, 471, 506 (ii) read with 34 I.P.C. or any other penal provisions of law and the present case is a case purely civil dispute, for which the remedy lies before a Civil Court. He would submit that implicating a person as an accused in a criminal case is a serious matter and complaint cannot be registered merely on the basis of suspicion. In support, the learned counsel for the petitioners relied upon the decision in *Thermax Limited and others v. K.M.Johny and others*, reported in (2011) 13 SCC 412. In the Judgment it is held as follows:

"34.The principles enunciated from the abovequoted decisions clearly show that for proceeding under Section 156(3) of the Code, the complaint must disclose relevant material ingredients of Sections 405, 406, 420 read with Section 34 IPC. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to a criminal proceeding.

35.Dr.A.M.Singhvi, learned Senior Counsel for the appellant-accused, contended that not only material facts were suppressed from the Magistrate but the previous three complaints to various police authorities and their closure reports were kept away from the Magistrate so as to mislead the court. It is seen from the materials placed that three complaints containing similar allegations have been investigated previously and all were closed as the alleged claim was found to be of civil nature. In those circumstances, it did not lie for Respondent 1 complainant to approach the Magistrate with the same subject complaint. Inasmuch as the dispute arose out of a contract and a constituted remedy is only before a civil court, the Magistrate ought to have appreciated that Respondent 1 was attempting to use the machinery of the criminal courts for private gains and for exerting unjust, undue and unwarranted pressure on the appellants in order to fulfil his illegal demands and extract undeserving monetary gains from them.

37.It is settled law that the essential ingredient for an offence under Section 420, which we have already extracted, is that there has to be dishonest intention to deceive another person. We have already quoted the relevant allegations in the complaint and perusal of the same clearly shows that no such dishonest intention can be seen or even inferred inasmuch as the entire dispute pertains to contractual obligations between the parties. Since

the very ingredients of Section 420 are not attracted, the prosecution initiated is wholly untenable. Even if we admit that allegations in the complaint do make out a dispute, still it ought to be considered that the same is merely a breach of contract and the same cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. Inasmuch as there are number of documents to show that appellant Company had acted in terms of the agreement and in a bona fide manner, it cannot be said that the act of the appellant Company amounts to a breach of contract."

7. Per contra, the learned counsel for the 2nd respondent submitted that the 2nd respondent inherited an extent of 27 cents in S.F.No.27/47 situated at Pammal Village and he had appointed one Ganesan Manian as his power of attorney for developing the land. When the power agent started construction after getting requisite approvals from the competent authorities, the petitioners were giving troubles and in fact they have prevented the workers from proceeding with the construction activities claiming that they are the owners of the property in question and the petitioners have also taken away construction materials worth Rs.10 lakhs, which necessitated the 2nd respondent to lodge a complaint. As there is no bona fide in this petition, the learned counsel prayed for dismissal of the petition.

8. The learned Additional Public Prosecutor appearing for the 1st respondent submitted that based on the complaint lodged by the 2nd respondent, they are acting and quashing of the complaint does not warrant in this case.

9. At the out set, it is to be noted that in respect of Survey No.27/47, the petitioners have filed O.S.No.410 of 2008 on the file of the District Munsif Court, Alanthur for declaration and permanent injunction against the 2nd respondent/complainant and his power agent Ganesan Manian and also Government officials. After filing of the suit O.S.No.410 of 2008 by the petitioners, the 2nd respondent, his mother K.Durgambal and their power agent Ganesan Manian have filed suit being O.S.No.470 of 2009 for permanent injunction against the petitioners and both the suits are said to be pending between the parties.

10. It is also to be noted that challenging the proceedings of the District Revenue Officer, Kancheepuram, setting aside the order of the Revenue Divisional Officer, Chengalpattu, the 1st petitioner filed W.P.No.3988 of 2010 before this Court. By an order dated 26.2.2010, this Court granted

interim order and thereafter, by an order dated 20.12.2010, the writ petition came to be disposed of, by observing as under:

"5. Admittedly, the suit filed by the petitioner is pending for consideration in O.S.No.410 of 2008 on the file of the District Munsif Court, Tambaram. The fourth respondent is also a party in the said suit. It is a well settled principle of law that the patta is not a document of title. It is also a settled principle of law that the proceedings concluded by the Authorities by deciding the patta shall not interfere with the Article 226 of the Constitution of India and the petitioner can work out his right before the competent civil court. Therefore, it is open to the petitioner to raise all his plea before the District Munsif Court, Alanthur. The District Munsif Court, Alanthur is directed to dispose of the said suit within a period of six months from the date of receipt of a copy of the order, without being influenced by the order of this Hon'ble Court as well as the proceedings of the respondents, on merits and in accordance with law. The writ petition is disposed of accordingly."

11. It is seen that earlier the 2nd respondent lodged a complaint before Sankar Nagar Police Station alleging that the petitioners have caused mischief on 16.7.2009 and the said complaint was enquired and closed by the said police as civil in nature. Again, the 2nd respondent lodged a complaint before Shankar Nagar Police Station, which was also enquired and closed by the police as civil in nature. Thus, it is clear that suppressing the material facts, the complainant had again lodged a complaint before the 1st respondent. Moreover, the complainant has not disclosed the date of alleged occurrence.

12. In *Thermax Limited and others v. K.M.Johny and others*, supra, the Hon'ble Supreme Court held thus:

"34. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as a criminal proceeding."

13. 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."

14. 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.

15. In the case on hand, civil proceedings are pending between the parties. In such view of the matter, this Court is of the view that the petitioners should not be made to face the rigmarole of the criminal prosecution, more so, as there was a stay of operation of the further proceedings in Crime No.10 of 2012. 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 petitioners.

16. 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 petitioners 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.

17. In such view of the matter, this criminal original petition is allowed and the FIR in Crime No.10 of 2012 on the file of the 1st respondent police is quashed as far as the petitioners are concerned. Consequently, connected miscellaneous petition is closed.

Sd/- जयते

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

vs

To

1. The Inspector of Police,
Central Crime Branch-II, Chennai,

(Anti Land Grabbing Cell),
Chennai.
Crime No.10 of 2012

2. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate SR.No.68653

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M.P.No.1 of 2012

GMV (22/10/2018)



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