

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 24.09.2018  
Pronounced on : 28.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.28254 of 2010  
and M.P.Nos.1 & 2 of 2010

1.Mrs.Priya Chandrakumar,  
W/o.Mr.S.Chandrakumar.

2.Mrs.S.Sundarammal,  
W/o.Mr.Sakthivel. .... Petitioners/Accused Nos.2 & 3

Vs.

1.State Represented by  
The Inspector of Police,  
R3 Ashok Nagar Police Station,  
Ashok Nagar,  
Chennai - 600 083. .... Respondent/Complainant

2.Mr.P.Ravikumar,  
S/o.G.Palani. .... Respondent/Defacto-  
Complainant

(R2 is impleaded as per the order  
of the Hon'ble Court dated  
06.01.2011 made in M.P.No.1 of 2011  
in Crl.O.P.No.28254 of 2010)

PRAYER: Criminal Original Petition is filed under Section 482  
of the Code of Criminal Procedure, to call for the records in  
C.C.No.6785 of 2010 on the file of the XVII Metropolitan  
Magistrate Court, Saidapet, Chennai and quash the same.

For Petitioners: Mr.B.Natarajan

For R1 : Ms.V.Saratha Devi,  
Government Advocate [Crl. Side]

For R2 : Mr.N.Sreenivasalu

O R D E R

The petitioners, who are accused Nos.2 and 3 in  
C.C.No.6785 of 2010 pending trial on the file of the XVII  
Metropolitan Magistrate Court, Saidapet, Chennai had filed the  
above quash petition.

2.The contention of the learned counsel for the petitioners is that the first respondent had registered a case for the offences under Sections 341, 384(b), 323, 324, 506(ii) r/w 34 of the Indian Penal Code against the petitioners and two others.

3.The first petitioner is the wife of the fourth accused, second petitioner is the mother of the fourth accused.

4.The gist of the prosecution is that the second respondent had preferred a complaint to the XVII Metropolitan Magistrate, Saidapet, Chennai forwarded under Section 156(3) of the Code of Criminal Procedure to the first respondent. Based on which, the above case has been registered and on completion of investigation, the first respondent filed charge sheet against four accused and the same was taken on file as C.C.No.6785 of 2010.

5.The case of the prosecution is that the second respondent is the owner of the first floor portion of the premises at No.11/2, 1<sup>st</sup> floor, Subramania Nagar Main Road, Kodambakkam, Chennai - 600 024. When he went to the said portion on 25.01.2010 at about 6.20 p.m. the first accused namely Pradheeban attacked him with a wooden log on his legs using abusive language. The first petitioner is said to have used abusive language and threatened him with dire consequences. The second petitioner splashed boiling water on him and further threatened that next time it would be acid. The fourth accused came there with a knife and stabbed the second respondent.

6.Because of the above said assault, the second respondent sustained cut injury in his hands and had approached the first respondent with bleeding injury, referred to the Government Peripheral Hospital, K.K.Nagar, Chennai, where he had taken treatment vide Accident Register No.1074878. The first respondent on the complaint issued CSR No.11/CSR/R3/10, thereafter, failed to take action. The second respondent approached the XVII Metropolitan Magistrate Court, Saidapet, Chennai, who had forwarded the complaint to the first respondent under Section 156 (3) of the Code of Criminal Procedure. Thereafter, the case in Cr.No.160 of 2010 was registered by the first respondent, on completion of the investigation filed final report. In the charge sheet, there are 10 witnesses cited, who have been examined in this case and after thorough investigation charge sheet has been filed against the petitioners and other accused.

7.The defacto complainant/second respondent adding to the submissions of the learned Government Advocate supporting the charge sheet filed by the first respondent. Further, submits that the fourth accused, who is the first petitioner's husband and second petitioner's son had mortgaged the property to the

second respondent, where the accused are residing by way of a registered Mortgage Deed on 11.06.2004 and had executed a registered Power of Attorney. Since, the petitioners failed to make the payment and discharge the mortgage, the second respondent/mortgagee had sold the property to his brother P.Rajasekaran on 27.04.2006.

8. Being aware of the same and suppressing these facts the fourth accused i.e. the husband of the first petitioner had settled the said property to the first petitioner on 05.02.2007 and had cancelled the Power of Attorney given to the second respondent/defacto complainant/mortgagee on 16.02.2007. Thus, there arose dispute between them. For this reason, the accused had joined together in assaulting the defacto complainant/second respondent and prayed that the quash petition to be dismissed.

9. On the contrary, the learned counsel for the petitioners submits that the petitioners are ladies, the first petitioner being the wife of the fourth accused, who is employed in a bank and the second petitioner is the mother of the fourth accused, is more than 70 years as of the year 2010. It is an admitted fact that there are civil disputes pending between the husband of the first petitioner and second respondent. This case has been foisted to spite vengeance and to use it as a tool to throw away the accused family from the premises at No.11/2, 1<sup>st</sup> floor, Subramania Nagar Main Road, Kodambakkam, Chennai - 600 024. Further, submits that the mortgage amount has been repaid by the fourth accused i.e. the husband of the first petitioner, despite receipt of the amount the defacto complainant/second respondent with an ulterior motive have not taken steps to cancel the mortgage.

10. It is an admitted case that there is dispute over the mortgage and the second respondent attempt to take forcible possession of the property by all means, was resisted by the first petitioner and her family members. Hence, the petitioners have been implicated in the above case.

11. Be it as may, on perusal of the Accident Register No.1074878 issued by the Government Peripheral Hospital, K.K.Nagar, Chennai on 25.01.2010. It is found that the second respondent/defacto complainant had sustained "Linear abrasion in the left arm and the horizontal abrasion in the left side chest, pain in the chest". There is no mention of any boil injury or any other injury corresponding to the averments made in the complaint, which creates serious doubt in the manner the alleged occurrence had taken place.

12. Taking the complaint and the statements as a whole, it could be seen that no over tact could be attributed towards the petitioners. At the most, it could be stated that there was a threat by the first petitioner. It is an empty thread

without culmination to action would not amount to a criminal act. As regard to the second petitioner, she is of 70 years of age, it is highly improbable for a person of that age would be running with boiling hot water. Further, there is no materials to corroborate the same.

13.It is seen that there is another criminal case in C.C.No.10488 of 2008 on the file of the XI Metropolitan Magistrate Court, Saidapet, Chennai, wherein the first petitioner and her husband have been arrayed as A1 and A2 on the complaint given by one P.Rajasekaran, brother of the second respondent/defacto complainant herein on 01.08.2007. That case is with regard to the dispute of mortgage and cancellation of Power of Attorney over the same property. In view of the above facts and on perusal of the statements and records, this Court feels that the continuance of the above case against the petitioners is nothing but abuse of process of law.

14.In view of the above, this Criminal Original Petition is allowed and the case as against the petitioners/A2 and A3 in C.C.No.6785 of 2010 on the file of the XVII Metropolitan Magistrate Court, Saidapet, Chennai is quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

ah

To

1.The XVII Metropolitan Magistrate,  
Saidapet, Chennai - 600 015.

2.The Inspector of Police,  
R3 Ashok Nagar Police Station,  
Ashok Nagar,  
Chennai - 600 083.

3.The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.N.Sreenivasalu, Advocate SR.No.67561  
+1cc to M/s.B.Natarajan, Advocate SR.No.67635

RSI (CO)  
sm:26.10.2018

Cr1.O.P.No.28254 of 2010