

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.6444 of 2018
and
Crl.MP.No.3293 of 2018

K.Shakila Banu

...Petitioner

vs.

1. The Inspector of Police
(Crime)
North Beach Police Station
Chennai.

2. Bilal

...Respondents

Criminal Original Petition filed under Section 482, Cr.P.C. to call for the records in Crime No.1276 of 2016 on the file of the Inspector of Police, North Beach Police Station, Chennai-600 001 and quash the proceedings insofar as it relates to the petitioner herein pending against the petitioner herein.

For petitioner : Mr.S.Senthil Kumar

For Respondents: Mrs.Kritika Kamal.P.
Government Advocate (Crl. Side) for R1
Mr.V.Sairam, for R2

O R D E R

This Criminal Original Petition has been filed to call for the records in Crime No.1276 of 2016 on the file of the Inspector of Police, North Beach Police Station, Chennai-600 001 and quash the proceedings insofar as it relates to the petitioner herein.

2. Today, Mr.V.Palani, HC 17957, B1 North Beach Police Station, Chennai, is present before this Court.

3. On the complaint lodged by one Bilal, the second respondent herein, the first respondent police have registered a case in Crime No.1216 of 2017 on 04.10.2017 for the offences under Sections 294-B, 380, 447, 448, 420 and 506(ii) IPC against Abdul Azees (A1) and Shakila Banu (A2). This quash petition has

been filed by Shakila Banu (A2), to quash the FIR on the ground that the entire transaction is civil in nature.

4. Heard the learned counsel for the petitioner/accused No.2, learned Government Advocate (Crl. Side) for the first respondent-State and the learned counsel for the de facto complainant/second respondent.

5. On a reading of the FIR, it is seen that the de facto complainant is a practising lawyer and that he had taken a portion of the property in dispute on lease from Abdul Azees (A1) and had paid Rs.5 lakhs as lease amount; that it is alleged by the de facto complainant that Abdul Azees (A1) has sold the property to Shakila Banu (A2) and that he was evicted from the property and the sum of Rs.5 lakhs was not returned to him. In this regard, Bilal filed Crl.MP.No.618 of 2017 before the XVI Metropolitan Magistrate, George Town Court, Chennai, under Section 156(3) Cr.P.C for police investigation. The XVI Metropolitan Magistrate, George Town Court, Chennai, by order dated 16.03.2017, has dismissed the complaint, aggrieved by which, Bilal filed Crl.OP.No.7473 of 2017, which has been dismissed by this Court on 18.04.2017, by holding as follows:

"3. Learned counsel for petitioner has submitted that, even at the time, when the petitioner was lessee of the property, the accused had effected sale thereof to another party, who had paid a huge advance. The accused has sold the property without the knowledge of the petitioner, and when return of the advance sum was sought, the same has not been paid. It is the contention of learned counsel for petitioner that, even at the time of his entering upon the lease and paying the advance, intention of the accused was to deceive the complainant/petitioner.

4. This Court is unable to accept the contentions of learned counsel for petitioner, for the case predominantly reflects civil facets."

6. Suppressing this, another complaint has been filed by Bilal, based on which, the present FIR in Crime No.1216 of 2017 has been registered by the police.

7. The learned Government Advocate (Crl. Side) submitted that Abdul Azees (A1) filed a petition for anticipatory bail, in which the sum of Rs.5 lakhs was handed over to Bilal, by way of demand draft, which the learned counsel for the de facto complainant/second respondent conceded.

8. The learned counsel for the petitioner vehemently submitted that the FIR discloses the commission of a cognizable offence inasmuch as Bilal was evicted from the premises during the pendency of the injunction orders and therefore, a full fledged police investigation is necessary. He contended that the allegations in CrI.MP.No.618 of 2017 was only against Abdul Azees (A1) and not against Shakila Banu (A2).

9. It is seen that Shakila Banu (A2) came into the picture as a subsequent purchaser of the property and thus, she is in a better position than Abdul Azees (A1).

10. In the opinion of this Court, if the injunction order has been violated by the accused, the remedy is before the Civil Court and not by way of criminal complaint of this nature. Admittedly, Bilal is not an ordinary person. He is an advocate and as such, he must be aware of nuances of law. He has filed a petition under Section 156(3) Cr.P.C which has been dismissed by the Magistrate, against which he has approached this Court and this Court has refused to interfere with the Magistrate's order, by holding that the entire transaction is a civil one.

11. Under such circumstances, this Court is of the view that the present FIR is an abuse process of law and therefore, this petition is allowed and the FIR in Crime No.1216 of 2017 is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police
(Crime), North Beach Police Station
Chennai.
2. The Public Prosecutor
High Court, Madras-104.

+1cc to Mr.S.Senthil Kumar for M/s.Star Asso.,S.R.No.42622

CrI.O.P. No.6444 of 2018

RSK(CO)
CS/16/07/18