

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2018
Pronounced on : 26.10.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.8710 of 2010

and

M.P.No.1 of 2010

1.Nazarene Begum,
D/o.Kamarunnissa.

2.S.Shaji Paul,
S/o.Christudoss. Petitioners/Accused

Vs.

1.The State rep. by,
Inspector of Police,
Shankar Nagar Police Station S-6,
Pammal, Chennai - 75. Respondent/Complainant

2.B.Hanifa,
S/o.Fakrudeen. Respondent/Defacto-
Complainant

[Impleaded as per order in
CrI.M.P.No.9175 of 2018 in
CrI.O.P.No.8710 of 2010 dated
12.07.2018.]

PRAYER: Criminal Original Petition is filed under
Section 482 of the Code of Criminal Procedure, to call
for the records in C.C.No.784 of 2007 on the file of the
Judicial Magistrate Court at Tambaram and to quash the
proceedings as against the accused/petitioners.

For Petitioners : Mr.A.Thamizharasan
For Respondent : Mrs.V.Saratha Devi
Government Advocate [CrI. Side]

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O R D E R

The petitioners herein are the Accused Nos.2 and 3 in C.C.No.784 of 2007 pending on the file of the Judicial Magistrate Court, Tambaram for the offences under Sections 448, 427 and 506(ii) of the Indian Penal Code. Based on the complaint given by the defacto-complainant/2nd respondent, the Charge sheet has been filed by the 1st respondent.

2.The gist of the prosecution case is that, on 01.07.2007 at about 3.30 p.m at No.58, Nagalkeni, Chromepet, Chennai-44, the 2nd respondent was running Bismilla Biryani, the Petitioner/accused had trespassed into the shop damaged the properties worth of Rs.100/- and had threatened the 2nd respondent not to continue the business in the shop. The 1st respondent, on receipt of the complaint from the defacto-complainant/2nd respondent had examined witnesses namely L.W.1 to L.W.7 and filed charge sheet.

3.The learned counsel for the petitioners submits that, the 1st petitioner is the wife of the 2nd petitioner and the 2nd petitioner is the Practicing Advocate, Senior citizen appears in various Courts. The 2nd petitioner had appeared in the suit filed by the 1st accused one Govindan owner of the property filed a suit in O.S.No.1039 of 1996 and had obtained permanent injunction in the suit property for his peaceful possession and enjoyment. Further, it is admitted that, the 2nd respondent/defacto complainant is running a fast food biryani shop at a small portion belonging to the 1st accused Govindan. There is Civil dispute between them and taking advantage of the advanced age of the owner of the property, the 2nd respondent/defacto complainant had given the false complaint to usurp his property, created trouble without paying rent to the said Govindan, for which the 2nd petitioner representing the said Govindan had filed eviction suit in O.S.No.79 of 2006 before the learned District Munsif, Alandur. The learned District Munsif, Alandur by judgment dated 12.03.2007 had ordered eviction of the 2nd respondent and decreed the suit in favour of the said Govindan.

4.It is further contended that, on the day of the alleged occurrence, the 2nd respondent/defacto complainant was at New Delhi appearing for a client before the National Consumer Redressal Council, New Delhi and the

order copy of the same is filed. Further, it is contended that, the 2nd respondent having mala fide intention and vindictive motive had purposely given false complaint against the petitioners. Further, the 1st respondent failed to look into the fact that the 2nd respondent to thwart orders of the Civil Court had given a false complaint. Though in the charge sheet, the said Govindan and the 1st petitioner were shown as accused, the 2nd petitioner was made as an accused under Section 319 of the Code of Criminal Procedure without any material. Hence, prayed to quash the petition.

5.The learned counsel for the petitioners had also relied on the decision of the Apex Court and various High courts reported in

1. (2013) 9 S.C.C. 293 PRASHANT BHARTI VS. STATE (NCT OF DELHI);
2. 2007 CrI.L.J. 472 of JHARKHAND HIGH COURT in the case of RAMCHANDRA YADAV AND OTHERS VS. THE STATE OF JHARKHAND; and
3. 1992 CrI.L.J. 671 of PUNJAB & HARYANA HIGH COURT in the case of CHARAN SINGH AND OTHERS VS. S.D.M. JALLANDHAR AND OTHERS.

6.The learned Government Advocate [Crl. Side] had submitted that the 1st respondent on receipt of the complaint had visited the scene of occurrence, examined witnesses, who were present and after thorough investigation filed the charge sheet. LW.1 is the defacto complainant; LW.2 is a real estate broker, who is residing near to the shop; LW.3 is the employee of LW.1; LW.4 and LW.5 are the customers of LW.1; LW.6 is the Head Constable, who had registered the FIR; and LW.7 is the Sub-Inspector of Police, who had taken up the investigation and completed the same and filed final report. The 2nd respondent/defacto complainant had reiterated the same what is stated in the final report and prayed that the quash petition may be dismissed and the accused to face the trial.

7.Considering the rival submissions and on perusal of the documents submitted and the charge sheet, it is seen that, except for the 2nd respondent, no other witness have spoken about the 2nd petitioner, the other witnesses are all known persons of the 2nd respondent and interested witnesses. It is an admitted case that the Civil Court

had ordered the 2nd respondent to evict from the premises of the 1st accused Govindan, the 2nd petitioner is his counsel, who appeared for the said Govindan, the 1st petitioner is the wife of the 2nd petitioner and there is every reason that the complaint is motivated against the petitioners. Further, on reading of the entire statements and records, it is seen that there is no case of trespass, the place of occurrence is a shop wherein everyone have access and there is no witness and material to show that the damage caused to the tune of Rs.100/-. Further, the alleged intimidation seems to be an empty threat.

8.In view of the above, this Court finds that the continuation of the proceedings against the petitioners would be an abuse of process of law.

9.Coming to such conclusion, this Court hereby quashes the proceedings against the petitioners in C.C.No.784 of 2007 pending on the file of the Judicial Magistrate Court, Tambaram. Hence, this Criminal Original Petition stands allowed and consequently, the Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate Court,
Tambaram.

2.The Inspector of Police,
Shankar Nagar Police Station S-6,
Pammal, Chennai - 75.

3.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.8710 of 2010

ASK(04/12/2018)