

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.07.2018
C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

Cr1.O.P.No.22746 of 2012
and
M.P.Nos.1 an 2 of 2012

Nithyakalyani

...Petitioner

Vs.

1.State

Rep.by the Inspector of Police
District Crime Branch,
Namakkal.

2.R.Ramasamy

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.92 of 2012 on the file of the Judicial Magistrate No.I, Namakkal and quash the same.

For Petitioner : Mr.R.Jayaprakash
For R1 : Mr.T.Shunmugarajeswaran
Government Advocate
For R2 : Mr.R.Karthikeyan

ORDER

The petitioner is the accused No.2 in C.C.No.92/2012 on the file of the Judicial Magistrate No.II, Namakkal.

2. The second respondent, the defacto complainant lodged a complaint dated 02.11.2011 with the Inspector of Police, District Crime Branch, Namakkal District, against the present petitioner and the petitioner's husband for the alleged offences punishable under Sections 341, 447 and 506 (ii) IPC contending that the petitioner and her husband did not allow him to enter into his land in S.No.79/4 A, eventhough, he has purchased the said land and a Civil Court has also declared that he is entitled to the said property. It is further averred that the petitioner and her husband also criminally intimidated him and threatened him with dire consequences by pelting stones on him.

3. Based on this complaint, the first respondent registered a First Information Report in Cr.No.46 of 2011 and on conclusion of the investigation laid a final report in C.C.No.92/2012 before the Judicial Magistrate No.I, Namakkal, for the alleged offences punishable under Sections 341, 447 and 506(ii) IPC. The learned Judicial Magistrate No.I, Namakkal, took cognizance of the aforesaid offences and issued summons to the accused.

4. The learned Government Advocate (Crl.Side) would contend that C.C.No.92/2012 on the file of the Judicial Magistrate No.I, Namakkal was transferred to the Special Judicial Magistrate Land Grabbing Court, Namakkal and a new Calendar Case number is assigned as C.C.No.2 of 2013 and the same is pending.

5. The main contention of the petitioner is that her father-in-law Paramasiva Gounder was the original owner of the property in S.No.79/4A of Thondipatti Village, measuring at 6.84 acres and that her husband had sold 3 acres out of 6.84 acres to the defacto complainant and two others on 03.12.1998. According to her, the petitioner and her minor children filed a suit in O.S.No.5332 of 2004 seeking to set aside the said sale and also prayed for partition of the said property and that though the suit filed by her and her minor children was dismissed by the Additional District Munsif Court at Tiruchengodu, she preferred two appeals in A.S.Nos.21 and 22 of 2011 before the Sub-Court at Tiruchengode and the same are pending. Her specific contention is that she has been in possession of the property allegedly sold to the defacto complainant and that the first respondent has filed the final report without ascertaining the real facts especially when the dispute between the petitioner and the defacto complainant is purely civil in nature. She has therefore, prayed for quashing of the proceedings in C.C.No.92/2012 on the file of the Judicial Magistrate No.I, Namakkal.

6. Mr.R.Jayaprakash, the learned counsel appearing for the petitioner would contend that there are no allegations against the present petitioner either in the First Information Report or in the final report and that since, she is in possession of the property in dispute, Section 441 IPC would not to be attracted in the instant case. He would further contend that the defacto complainant in his First Information Report has clearly mentioned that he had gone over to the land in dispute for taking possession especially, when appeals filed by the present petitioner in A.S.Nos.21 and 22 of 2011 against the judgment passed by the District Munsif Court, Tiruchengode are still pending. According to him, only the defacto complainant had committed the offence of trespass and that the first respondent in collusion with the second respondent has filed the final report despite the fact that the petitioner alone is in possession of the said property.

7. At the out set, it may be observed that even as per the averments made in the present petition, the property was sold to the defacto complainant and the suit filed by the petitioner was also dismissed by the District Munsif Court, Tiruchengodu. When the petitioner contends that the defacto complainant illegally entered her land for taking possession of the same, she should have lodged a complaint with the Police. In the final report it is alleged that the petitioner and her husband petted stones on the defacto complainant and also criminally intimidated him.

8. Therefore, this Court, at this stage cannot go into the merits of the case and since there are sufficient materials available on record to proceed further as against the present petitioner in C.C.No.2/2013, the proceedings in C.C.No.2/2013 on the file of the Special Judicial Magistrate Land Grabbing Court, Namakkal cannot be quashed.

9. In the result, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Inspector of Police
District Crime Branch,
Namakkal.

2.The Judicial Magistrate No.I,
Namakkal

+1cc to Mr.R.Jayaprakash, Advocate, S.R.No.48320

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.48446

CrI.O.P.No.22746 of 2012
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GSP(10/08/2018)