

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2018

CORAM:

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

Crl.O.P.No.17532 of 2018
and
Crl.MP.Nos.9093 & 9094 of 2018

M.Ramu

...Petitioner

vs.

1. State Represented by
The Inspector of Police
Tholasampatty Police Station
Tholasampatty
Salem District.

2. Thiagarajan

...Respondents

Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.159 of 2018 on the file of the Judicial Magistrate Court, Omalur and quash the same insofar as the petitioner/accused is concerned.

For Petitioner : M/s.N.U.Presanna

For Respondents: Mrs.Kritika Kamal.P

Government Advocate (Crl. Side)
for R1

O R D E R

This criminal original petition has been filed to call for the records in C.C.No.159 of 2018 on the file of the Judicial Magistrate Court, Omalur and quash the same insofar as the petitioner/accused is concerned.

2. On the complaint lodged by Thiagarajan, the first respondent police registered a case in Crime No.71 of 2018 and after completing the investigation, have filed a charge sheet in C.C.No.159 of 2018 before the Judicial Magistrate, Omalur, for the offences under Sections 294-B, 427 and 506(ii) IPC against the petitioner herein, for quashing which, the petitioner is before this Court.

3. Heard the learned counsel for the accused and the learned Government Advocate (Crl. Side) for the first respondent-State.

4. On a reading of the final report, it is seen that it is alleged by the de facto complainant that the petitioner had dug a pit in the common passage and had removed the teak trees that were planted by the de facto complainant; that when the de facto complainant questioned the petitioner/accused, he is said to have abused and threatened him. Hence, the prosecution.

5. The learned counsel for the accused brought to the notice of this Court that the petitioner has filed OS.No.27 of 2018 in respect of the said land and the Vacation Court Judge, Salem District, has granted an interim injunction in respect of the said pathway on 17.05.2018 in I.A.No.56 of 2018 in O.S.No.27 of 2018 and therefore, the present prosecution is an abuse of process of law.

6. On a close scrutiny of the records, it is seen that the incident in question in C.C.No.159 of 2018 has taken place on 04.04.2018, whereas, the interim injunction has been obtained by the petitioner/accused only on 17.05.2018. It is a trite law that the decree in a civil case will not bind the criminal Court, except in certain cases set out in Sections 41 to 43 of the Evidence Act. Since there are prima facie materials for framing charges, the prosecution cannot be quashed and therefore, this petition is dismissed.

7. However, the learned counsel for the petitioner sought permission of this Court to dispense with the personal appearance of the petitioner before the trial Court.

8. Accepting his submission, the petitioner is directed to appear before the trial Court within a period of two weeks from the date of receipt of a copy of this order. On his appearance, he shall execute a bond under Section 88 Cr.P.C, for a sum of Rs.5,000/- without sureties. Thereafter, the petitioner shall appear before the trial Court for receiving the charge sheet, for answering the charges, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. For the other hearings, the petitioner shall file a petition before the trial Court under Section 317 Cr.PC., giving an undertaking that he will not dispute his identity and that the counsel named by him in the affidavit will cross-examine the prosecution witnesses on the day they are examined-in-chief, as held by the Supreme Court in Vinod Kumar vs. State of Punjab [2015(1) MLJ (Crl) 288]. On such a petition being filed, the trial Court may liberally consider the same. If the petitioner/accused adopts any dilatory tactics, it is open to the trial Court to insist

upon his presence and remand him to custody as laid down by the Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319]. If the petitioner/accused absconds, the trial Court shall direct registration of an FIR against him under Section 229-A IPC. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Omalur.

2. The Inspector of Police
Tholasampatty Police Station
Tholasampatty
Salem District.

3. The Public Prosecutor
High Court, Madras.

+2cc to Mr.K.Kumara Guru, Advocate, S.R.No.47240

+1cc to Mr.N.U.Presanna, Advocate, S.R.No.44819

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GSP(19/07/2018)

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