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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.22091 of 2017

and

CRL.M.P.Nos.8220, 12984 of 2017

1.M.Soundrapandian
2.Kathiresan
3.Kumaresan

.. Petitioners

Vs

1. State rep.by
Inspector of Police,
P.6 Kodungaiyur Police Station,
Pulianthope,
chennai - 600118.

2. Rajasekaran
Flat No.D, Block No.F, 1st Floor
Seven Stars Apartments, No.3
Singaram Mudlai Street,
Erukkancherry, Chennai - 600118.

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C.,
praying to call for the records and quash the First Information
Report in Crime No.533 of 2017 on the file of Inspector of
Police, P-6 Kodungaiyur Police Station, Pulianthope, Chennai -
600 118, insofar it relate to the petitioners 1 to 3 herein.

For Petitioners	:	Mr.M.Senthilkumar
For R1	:	Mr.M.Prabhavathi, APP
For R2	:	Mr.E.J.Ayyappan

O R D E R

This petition has been filed to call for the records and
quash the First Information Report in Crime No.533 of 2017 on
the file of Inspector of Police, P-6 Kodungaiyur Police Station,
Pulianthope, Chennai - 600 118.



2. The second respondent filed Crl.M.P.No.415 of 2017 under Section 156(3) Cr.P.C and as per the order of the V Metropolitan Magistrate, Chennai, the police have registered a case in Crime No.533 of 2017 on 03.03.2017 for the offences under Sections 423, 294(b) and 506(1) IPC, against four accused, for quashing which, the petitioners herein/A1 to A3 are before this Court.

3. Heard the learned counsel for the petitioners/accused, the learned Additional Public Prosecutor for the first respondent police and the learned counsel for the de facto complainant. Today, Mr.D.Rajesh, Sub Inspector of Police, Kodungaiyur Police Station, Chennai-118, is present.

4. To appreciate the rival contentions, it may be necessary to advert to the F.I.R. averments. It is the case of the de facto complainant that pursuant to the advertisement issued by J.B.Builders, he approached one Soundarapandian, (the first petitioner) who is the Proprietor of J.B.Builders, for purchase of a flat that was being promoted by them at Door No.47/2, Vedivel Mudhali Street, Perambur; the second and third petitioners are the sons of the first petitioner, who were assisting their father's construction business; the defacto complainant was shown the approved flat and other title documents; he chose Flat No.D in the first floor of F-Block and gave an advance on 09.03.2013 and entered into a builders agreement; J.B.Builders is being run by Soundarapandian (A1); his son, viz., Kathiresan (A2) has arranged for L.I.C loan, which was sanctioned by the L.I.C; he paid the sale consideration and occupied the Flat on 28.05.2013; after he occupied the flat, he found that there was a staircase between F-Block and G-Block, which was not shown in the approved plan; one Srinivasan (A4) occupied a flat, the toilet of which is above the kitchen of the de facto complainant's flat; the said Srinivasan (A4) had illegally occupied the said flat and that there is no permission for that flat and therefore, criminal action should be taken against the petitioners herein, who are the Promoters of J.B.Builders and Srinivasan/A4. Admittedly, the de facto complainant gave a police complaint and all the complaints were closed. Thereafter, the de facto complainant filed a petition under Section 156 (3) Cr.P.C. and pursuant to the direction of the Magistrate, the present F.I.R has been registered.

5. On a reading of the F.I.R, it is seen that the offence under Section 423 IPC is not made out at all. In order to give a criminal color to the F.I.R., the de facto complainant added that when he approached the accused viz., Soundarapandian (A1) and his sons viz., Kadhiresan (A2) and Kumaresan (A3), they abused him in a filthy language and threatened him and therefore, Sections 294(b) and 506(1) IPC have been included. That apart, it is seen that the de facto complainant had



initiated the proceedings before the Consumer Disputes Redressal Commission for deficiency in service against J.B.Builders and also against the fourth accused in C.C.No.422/2015 and the same is pending, whereas, in Crl.M.P.No.415 of 2017 filed by the second respondent under Section 156 (3) Cr.P.C, the defacto complainant has completely suppressed the pendency of the consumer complaint that has been filed by him in the year 2015. Thus, it is obvious that a purely civil dispute has been given a criminal colour by the de facto complainant in order to harass the petitioners (A1 to A3) and A4, who is living in the flat above the flat of the de facto complainant.

6. In the result, this petition is allowed and the impugned FIR in Cr.No.533 of 2017, is quashed, The de facto complainant shall pay cost of Rs.5,000/- to the petitioners herein. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1.State rep.by
Inspector of Police,
P.6 Kodungaiyur Police Station,
Pulianthope,
Chennai - 600118.

2.The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M.Senthilkumar, Advocate sr 57552.

+1 CC to Mr.E.J. Ayyappan, Advocate sr 57821.

CRL.O.P.No.22091 of 2017
and

CRL.M.P.Nos.8220 & 12984 of 2017

VSNII (CO)
SP(18/09/2018)