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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2018

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.26902 of 2018

and

Crl.M.P.No.15526 of 2018

Kalaivanan

...Petitioner

-Vs-

1.The Inspector of Police,
P.2. Otteri Police Station,
Chennai.

2.Krishnaveni

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and quash the summon dated 28.10.2018, U/s.160 & 91 Cr.P.C. pending on the file of the 1st respondent / Complainant.

For Petitioner : Mr.R.Ravindra Ram

For R1 : Mr.C.Raghavan
Government Advocate (Crl.side)

ORDER

This Criminal Original Petition has been filed challenging the summon dated 28.10.2018, issued by the first respondent.

2.The learned counsel for the petitioner would submit that the second respondent is the first accused in Crime No.1807 of 2016 for the alleged offence under Sections 324, 420, 468 & 506 (i) IPC and the same is pending investigation before the first respondent. The learned counsel would further submit that the petitioner had filed a petition in Crl.O.P.No.3648 of 2017 before this Court seeking for police protection. The learned counsel specifically relied upon the directions given by this Court and the same is extracted here under:

"2.It is the case of the petitioner that his family was the tenant in Door No.249/1, Bricklin Road, Purasaivakkam, Chennai-600 007 for over 70 years under one Andalammal; Andalammal died in the year 1995 ; after the death of Andalammal, Krishnaveni (A1) created a false document as if she is the owner of the property and sold the same by document No.4778 of 2011 to one Mamtha A.Mutha,



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Krishnaveni had derived title by a will that is said to have been left by Andalammal and obtained probate in Original Petition No.565 of 2001 from the High Court of Madras ; one Sankaran who was living in the said property challenged the probate proceedings and prayed for revocation of the probate by filing Application No.111 of 2008 in Original Petition No.565 of 2001, which was dismissed by a learned Single Judge; in O.S.A.No.37 of 2011, the order passed by the learned Single Judge, was set aside by a Division Bench on 01.07.2011 and the probate order was revoked; Krishnaveni (A1) challenged the order before the Supreme Court in S.L.P (Civil) No.28582 of 2011 which was dismissed on 05.09.2013 on the ground that she had no interest in the property, for she having sold it by document No.4778 of 2011 ; during the Chennai floods in December 2015, the roof of the property gave way and when the petitioner wanted to put up the roof, Krishnaveni brought five Advocates and assaulted the workers of the petitioner and thereby, prevented them from putting up asbestos roof. Therefore, in connection with that, on the complaint given by the petitioner, the respondent police have registered a case in Otteri Police Station Crime No.1807 of 2016 on 16.12.2016 under Section 468, 420, 324 and 506(i) IPC against Krishnaveni and others; even in the FIR the petitioner had given the names of the Advocates, who had accompanied Krishnaveni to take forcible possession of the property.

3. Heard the learned counsel for the petitioner, learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the second respondent.

4.The learned counsel for the second respondent submitted that there are civil dispute between the parties insomuch as a suit in O.S.No.2782 of 2016 is pending on the file of the XIII Assistant City Civil Court, Chennai and under such circumstances, no protection can be granted to the petitioner.

5. This Court gave its anxious consideration to the rival submissions.

6. The fact remains that the Division Bench of this Court has revoked the probate that was granted in favour of Krishnaveni (A1) and the S.L.P. filed by Krishnaveni (A1) has also been dismissed. What the petitioner is now seeking is, police protection for putting up roof, as the existing roof has fallen during the Chennai floods in December 2015.

7. Under such circumstances, this Court directs the first respondent police to give sufficient



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protection to the petitioner and his workers, enabling the petitioner to put up roof over the property. If any obstruction is raised by Krishnaveni (A1) or any others on her behalf, the first respondent police shall take appropriate action against them."

3. In spite of the order passed by this Court, the petitioner has not been permitted to put up the roof over the property and the petitioner is taking steps to file a contempt petition before this Court. The learned counsel for the petitioner would further submit that the second respondent had early obtained an order of injunction against the petitioner by filing a suit in O.S.No.2782 of 2016, on the file of the XIII Assistant City Civil Court, Chennai, by concealing all the earlier proceedings. The petitioner had approached this Court by filing C.R.P.(PD). No.802 of 2017. This Court, by an order dated 07.03.2017, had stayed the operation of the injunction order.

4. The learned counsel would further submit that while all the above issues were pending, the second respondent has chosen to give a complaint against the petitioner and the respondent police are calling the petitioner by issuing a summon, in spite of knowing about all the earlier proceedings. The learned counsel would submit that the respondent police instead of investigating the pending FIR and filing a final report, are now harassing the petitioner in the name of enquiry based on the false complaint given by the second respondent.

5. The learned Additional Public Prosecutor on instructions would submit that the respondent police had called the petitioner for an enquiry only based on the complaint given by the second respondent. The respondent police never intended to harass the petitioner.

6. This Court has carefully considered the submissions made on either side and also materials placed on record. The second respondent has been indulging herself in various litigations inspite of her petition for grant of probate having been rejected in the year 2011 itself and confirmed by the Hon'ble Supreme Court. The second respondent proceeded to execute a sale deed in the year 2011 in favour of one Mamtha. This has resulted in the filing of the FIR against the second respondent and others. This Court has also taken into consideration the entire proceedings that had happened earlier and also directed the respondent police to give police protection to the petitioner to put up roof in the property. In order to scuttle all these attempts, the respondent has chosen to give a complaint to the first respondent police and the petitioner is now being asked to attend the enquiry.

7. This Court is clearly able to see abuse of process of law



by the second respondent. The investigation is already pending against the second respondent in Crime No.1807 of 2016 and there is no ground for the second respondent to give a complaint against the petitioner and the first respondent police ought not to have been issued a summon to the petitioner and conducted an enquiry. The statement given by the second respondent should have been recorded by the first respondent police in the pending FIR and the petitioner should not have been harassed by calling for an enquiry.

8. In view of the above, this Court is of the considered view that the summon issued by the respondent police to the petitioner is a clear abuse of process of law and accordingly the same is hereby quashed.

9. In the result, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

vsa/lpp

To

1. The Inspector of Police,
P.2. Otteri Police Station,
Chennai.

2. The Additional Public Prosecutor,
High Court, Madras.

+1 CC to Mr. R. Ravindraram, Advocate sr 80676.

Cr1.O.P.No.26902 of 2018
and
Cr1.M.P.No.15526 of 2018

EV(CO)
SP(24/12/2018)