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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.7138 of 2014

and

M.P(MD).No.1 of 2014

Thiyagu

...Petitioner/Accused No.10

Vs.

1.The Inspector of Police

Natham Police Station

Natham, Dindigul District

..1st Respondent/Complainant

2.R.Ashok Kumar

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.67 of 2013 in Crime No.47 of 2010 on the file of the District Munsif Cum Judicial Magistrate, Natham to quash the charge sheet against the petitioner.

For Petitioner :Mr.S.Mahesh Babu

For R1 : Mr.V.Neelakandan
Additional Public Prosecutor

For R2 : Mr.S.Radhakrishnan

O R D E R

This petition has been filed to quash the criminal proceedings in C.C.No.67 of 2013 and have taken cognizance for the offences under Sections 120(b), 380, 503 and 506(i) I.P.C filed under Section 200 Cr.P.C on the file of the District Munsif Cum Judicial Magistrate, Natham as against the 14 accused persons, in which, the petitioner herein arraigned as Accused No.10.

2.The case of the second respondent/ defacto complainant is that he has possessed engineering degree and he was doing the civil contract works at Kattuvelanpatti. The 5th accused demanded money for continuing his contract work. When the second respondent/ defacto complainant refused to pay the demand money, the 5th accused created more problem and tried to stop the work in several occasion. When the second respondent and his father questioned the same and on 07.04.2009, 18 unknown persons as well as the 5th accused assaulted him, due to which, he sustained injuries. Immediately, the defacto complainant approached the first respondent and lodged a complaint. The first respondent even after receiving the complaint, did not



take any action against the accused persons. While being so, all the accused are joint together and stolen 10 bags of cements, steel bar, crow bar and 1100 roof tiles from the working place of the defacto complainant and the said stolen materials were kept in the 5th accused land.

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3.The learned counsel appearing for the petitioner would submit that even as per the complaint, the stolen materials were kept in the land belonging to the petitioner herein. Thereafter, it was taken by other accused and kept it in some other place. Except this allegation, there is absolutely no other allegations made as against the petitioner herein. Further, he would submit that there is four years delay in lodging the complaint and the delay has not been properly explained by the second respondent. Therefore, he prays for quashing the complaint as against the petitioner.

4.The learned counsel appearing for the second respondent would submit that there is a specific allegation as against the petitioner. Only on his instruction, the stolen materials were kept in the land and thereafter it was transferred to some other place. Therefore, the points raised by the petitioner cannot be considered under Section 482 Cr.P.C. and it has to be gone into by full fledged trial. Therefore, he prays for dismissal of the quash petition.

5.The learned Additional Public Prosecutor appearing for the first respondent would submit that there are incriminating evidences as against the petitioner and all the points raised by the petitioner to be established before the trial. Therefore, the learned Magistrate has rightly taken cognizance as against the petitioner and others for the offences under Sections 120(b), 380, 503 and 506(i) I.P.C. therefore, he prays for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner; the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the second respondent.

7.Admittedly, the allegation as against the petitioner in the complaint is that the alleged stolen goods viz., 10 bags of cements, steel bar, crow bar and 1100 roof tiles were kept in the petitioner's agricultural field. Further, alleged that the respondent police did not take any steps to recover the said stolen goods and as such the stolen goods were shifted to some other place by tractor owned by the petitioner's relative and the same was informed to the Inspector of Police. Except this allegation, there is no other allegation as against the petitioner. Further, no material to show that the petitioner conspired with other accused persons and had stolen the material as alleged by the second respondent. Further, as pointed by the learned counsel for the petitioner, the complaint filed with delay of four years. Admittedly, the alleged occurrence took place on 10.01.2010, whereas



the complaint has been filed on 13.12.2014. But, the second respondent did not explain the delay in filing the private complaint.

8. It is also seen from the materials filed along with the complaint that no clinching evidence as against the petitioner and there is absolutely no material to show any prima facie for taking cognizance as against the petitioner.

9. Under these circumstances, the petitioner cannot be put into ordeal trial, since there is absolutely no chance of conviction as against the petitioner. Thus, this Court is of the view that the charges as against the petitioner cannot be sustained. In fine, this criminal original petition is allowed and the complaint filed in C.C.No.67 of 2013 on the file of the learned District Munsif Cum Judicial Magistrate, Natham is quashed as against the petitioner alone. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The District Munsif Cum Judicial Magistrate
Natham

2. The Inspector of Police
Natham Police Station
Natham, Dindigul District

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

MSA

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