



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.O.P.(MD).No.7534 of 2014
and
M.P(MD).No. 2 of 2014

1.Titus
2.Elsi Bai ...Petitioners/Accused

Vs.

1.The Superintendent of Police
Nagercoil, Kanyakumari District

2.Deputy Superintendent of Police
Crime Branch, Land Grabbing
Nagercoil

3.The Inspector of Police
ALGSC, Nagercoil

4.State of Tamil Nadu
Represented by its
Sub Inspector of Police
ALGSC, Nagercoil

...1 to 4th Respondents

5.David Daniel ...5th Respondent/Defacto
Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to Crime No.8 of 2014 on the file of Sub Inspector of Police, ALGSC, Nagercoil, Kanyakumari District, the 4th Respondent herein, quash the same.

For Petitioners: Mr.K.Sreekumaran Nair

For R1 to 4 : Mr.K.Dinesh Babu

Additional Public Prosecutor

For R5 : Mr.S.Palanivelayutham

**ORDER**

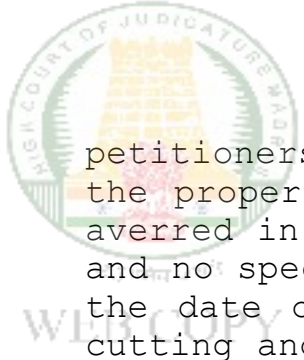
This criminal original petition has been filed to quash the case in Crime No.8 of 2014 on the file of Sub Inspector of Police, ALGSC, Nagercoil, Kanyakumari District.

2.The case of the prosecution is that there was a civil dispute between the parties in respect of S.No.608/1 and 608/2A1 of Pacode Village. The Plot No.VI, measuring 57.325 cents as per final decree plan in Original Suit No.133 of 1113 ME, 1938 AD belonged to one Chellayyan, son of Thaveethu. After the death of Chellayan, his right devolved on his son Devaraj and another 3 sons, who are the sons of another deceased son. On 15.09.1997 the above said persons jointly executed a sale deed in favour of the defacto complainant, the correct resurvey number is 608/1 of Pacode Village. The defacto complainant was in possession and enjoyment of the property, the petitioners who have no manner of right over the above property, trespassed and committed damage by cutting and removing the trees and erected the compound wall and also fixed stone along with their adjoining property. In fact the defacto complainant filed a suit in O.S.No.163 of 1998 before the District Munsif Court, Kuzhithurai for declaration of title, possession and consequential injunction as against the petitioners herein. On 30.04.1998 in I.A.No.298 of 1998, injunction was granted by the learned District Munsif, Kuzhithurai restraining the petitioners from constructing any new building in the said property. The injunction order was violated and the petitioners had put up two storied terrace building without obtaining permission from the Panchayat Commission and also caused damage to the property belonging to the defacto complainant. Hence, the complaint. Thereafter, the respondent registered a case in Crime No. 8 of 2014 for the offences punishable under Sections 120(b), 420, 465, 468 and 471 I.P.C against the petitioners herein.

3.The petitioners/Accused filed this petition to quash the same and they raised the following grounds:

3.1.The property in question was purchased by the second respondent from the defacto complainant comprised in S.No.608/2A1, whereas the complaint lodged as against the petitioners in respect of land comprised in Survey number 608/1. Therefore, without even any cause of action in respect of the property comprised in S.No.608/1, the present complaint has been lodged.

3.2.In respect of the property in questioned, the defacto complainant has also filed a suit in O.S.No.163 of 1998 before the learned District Munsif, Kuzhithurai and the said suit is pending. In fact in I.A.No.298 of 1998, the learned District Munsif, Kuzhithurai granted an order of injunction restraining the



petitioners from further construction in the building insofar as the property comprised in survey number 608/1 and the allegations averred in the impugned first information report is bald and vague and no specific averment as against the petitioners. In the F.I.R, the date of occurrence; the date of trespass; and the damage of cutting and removing of trees nothing have been mentioned and that the complainant did not whisper any allegation to attract the offences under Sections 420, 465, 468 and 471 I.P.C. Therefore, the learned counsel appearing for the petitioners sought for quash the first information report in Crime No.8 of 2014.

4.The learned counsel for the defacto complainant would submit that though civil suit is pending and after injunction order granted by the learned District Munsif, Kuzhithurai, the petitioners trespassed into the property and caused damages. Further, he would submit that it cannot be quashed on its threshold, without even conducting any enquiry. Therefore, he sought for dismissal of this quash petition.

5.The learned Additional Public Prosecutor would submit that the investigation is going on. The charge sheet is yet to be filed and it is pending in the stage of first information report.

6.Admittedly, there was a dispute between the petitioners and the defacto complainant in respect of the property comprised in Survey No.608/2A1, in which, the defacto complainant filed the suit in O.S.No.163 of 1998 on the file of the District Munsif, Kuzhithurai and it is pending. In fact, the learned District Munsif pleased to grant an interim injunction restraining the petitioners herein not to put up any construction in respect of the land comprised in Survey No.608/2A1. As contended by the petitioners, the petitioners have constructed the house and they have been in possession and enjoyment for the past several years in the land comprised in Survey No.608/1. Therefore, Survey Number mentioned in the complaint and the suit are completely different one.

7.Further, it is seen from the complaint that all the allegations made by the defacto complainant are bald and vague. There is no specific allegations as against the petitioners to attract the offences under Sections 420, 465, 468 and 471 I.P.C. The allegations are that the petitioners have committed the offences by way of illegal trespass and caused damages by cutting and removing trees and created fabricated bogus documents for the purpose of grabbing the property and also violated the Court order of injunction.

8.On reading of the said complaint, there is absolutely no whisper about the allegation of fabrication of document and forged signature of the defacto complainant. Admittedly, the civil suit has been filed by the defacto complainant in O.S.No.163 of 1998 on



the file of the District Munsif, Kuzhithurai and it is pending. If at all any violation of the order passed by the learned District Munsif, it is open to the defacto complainant to file an appropriate petition before the concerned Court. Therefore, the present complaint is nothing but clear abuse of process of law. On the one hand, the defacto complainant filed the suit, obtained interim order and on the other hand, with the same allegation, he filed the complaint that too after a period of six years from the date of the suit. Therefore, the complaint cannot be sustained and no offence is made out as against the petitioners.

9. In view of the above prosecution, this criminal original petition is allowed and the first information report in Crime No.8 of 2014 on the file of the sub Inspector of Police, ALGSC, Nagercoil, Kanyakumar is quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)

To

1. The Superintendent of Police
Nagercoil, Kanyakumari District
2. Deputy Superintendent of Police
Crime Branch, Land Grabbing
Nagercoil
3. The Inspector of Police
ALGSC, Nagercoil
4. State of Tamil Nadu
Represented by its Sub Inspector of Police
ALGSC, Nagercoil
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



+ 1 CC TO MR.K.SREEKUMARAN NAIR , ADVOCATE IN SR NO. 85818
+ 1 CC TO MR.S.PALANIVELAYUTHAM , ADVOCATE IN SR NO. 85531

MSA

BU/RSK/SAR-IV : 05.10.2018 : 5P/8C

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