

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
01.10.2018	05/10/18

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.6902 of 2016

and

Crl.M.P.(MD) Nos.3472 and 3473 of 2016

1.Kumaravel
2.Ramachandran
3.Murugananthan
4.Manikandan

...Petitioners/Respondents

Vs.

A.Thangapandian

...Respondent/ Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the complaint in C.C.No.24 of 2014 on the file of the learned Judicial Magistrate No.II, Nagercoil and quash the same as illegal.

For Petitioners : Mr.T.Lenin Kumar

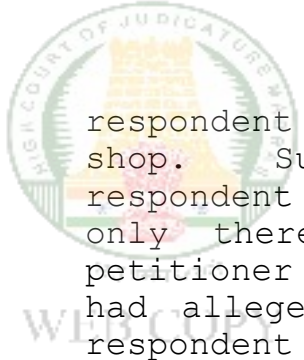
For Respondent : Mr.N.Sivakumar

O R D E R

This petition has been filed seeking to quash the private complaint in C.C.No.24 of 2014, on the file of the learned Judicial Magistrate No.II, Nagercoil.

2.The respondent herein had initially given a complaint against the petitioners before the Inspector of Police, Vadaseri Police Station, Kanyakumari District. Thereafter, a petition under Section 156(3) of Cr.P.C was filed before the learned Judicial Magistrate No.II, Nagercoil and based on the directions given by the Magistrate Court, the said Police registered a First Information Report against the petitioners for an alleged offence under Sections 294(b), 323 and 506(ii) IPC, in Crime No.24 of 2012.

3.The said police investigated the case and filed a closure report before the learned Judicial Magistrate No.II, Nagercoil on 10.01.2012. The complaint that was given by the respondent was that the accused persons approached the respondent and offered to sell the shop belonging to the first petitioner and received an advance of Rs.1000/- and later the respondent came to know that the first petitioner was not the owner of the property and one other lady named, Muththammal was the owner of the property. The



respondent had further spent more than Rs.50,000/- and renovated the shop. Subsequently, the said Muththammal had questioned the respondent as to how he occupied the shop without her permission and only thereafter the respondent came to know that the first petitioner is not a owner of the shop. Therefore, the respondent had alleged that the petitioners have cheated him and when the respondent asked for refund of the advance amount of Rs.10,000/- and also the loss suffered by him, the petitioners refused to repay the same and was also threatened by the petitioners.

4.The police, who investigated the case clearly found that the respondent did not properly pay the monthly rent and when they were asked to pay the monthly rent, he has given a false complaint against the petitioners and the police filed a closure report, since it was found that the complaint was false. After filing of the closure report, the respondent did not choose to file any protest petition.

5.In the year 2014, the respondent has chosen to file an independent private complaint against the petitioners on the very same allegations and the Court below has taken cognizance of the same.

6.The learned counsel for the petitioners would submit that the respondent who was a tenant in the shop, refused to pay the rent and had proceeded to file a false complaint against the petitioners and the same after investigation was closed by the police. Therefore, the subsequent private complaint on the very same set of allegations, is a clear abuse of process of Court and will amount to second complaint on the very same set of facts. Therefore, the learned counsel for the petitioners would submit that the Court below ought not to have taken cognizance of the complaint. The complaint is liable to be quashed by this Court.

7.The learned counsel for the respondent would submit the complaint filed before the Court below is maintainable and the allegations made therein clearly makes out the offence against the petitioners and therefore, there is no ground to quash the complaint filed by the respondent.

8.This Court has carefully considered the submissions made on either side. The entire allegations, in the considered view of this Court, is totally civil in nature and the police after investigation has found the complaint to be false. Therefore, the Court below ought not to have entertained a fresh private complaint on the very set of facts for which the police have already filed a closure report.

9.After the police filed the closure report, the Court below could have entertained the complaint as a protest petition and dealt with the same. However, the Court below has taken cognizance of the complaint independently without taking note of the closure report



filed by the police. In the considered view of this Court, there is total non application of mind on the part of the Court below and the Court below ought not to have taken cognizance of the private complaint independently without taking into account the closure report filed by the police.

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10. This Court is of the considered view that the private complaint filed by the respondent clearly amounts to abuse of process of Court. The respondent is trying to re-agitate the matter which is purely civil in nature and which has already been found by the police to be a false complaint. This Court has to necessarily exercise its jurisdiction under Section 482 Cr.P.C., in order to meet the ends of justice.

11. In the result, the proceedings in C.C.No.24 of 2014 on the file of the learned Judicial Magistrate No.II, Nagercoil is hereby quashed. Accordingly, this Criminal Original Petition shall stand allowed. Consequently, connected miscellaneous petitions are closed.

Sd/

Assistant Registrar

/True copy/

Sub Assistant Registrar (CS-IV)

To

The Judicial Magistrate No.II,
Nagercoil

+1cc to Mr.T.LENIN KUMAR, Advocate, SR.No. 89156

+1cc to Mr.N.SIVAKUMAR, Advocate, SR.No.88945

Cr1.O.P. (MD) .No.6902 of 2016

and

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