



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

CrI.O.P. (MD) No.4730 of 2013

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1.Prakash
2.Savithri

... Petitioners/Accused Nos.1&2

Vs.

1.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.
(Crime No.71/2013)

.. 1st Respondent/ Complainant

2.M.Parameswaran

.. 2nd Respondent/ Defacto
Complainant

PRAYER: The Petition filed under Section 482 Cr.P.C. to call for the records and quash the FIR in Crime No.71 of 2013, pending on the file of the respondent police.

For Petitioners : Mr.T.Antony Arul Raj

For Respondent No.1 : Mr.A.Robinson
Government Advocate (Criminal side)

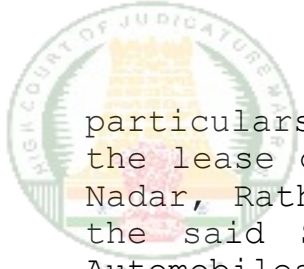
ORDER

The petitioners herein are the accused Nos.1 and 2, in Crime No.71 of 2013, for the offences punishable under Sections 452, 294 (b), 420 and 506(i) of IPC., on the file of the respondent police. This petition has been filed by the petitioners under Section 482 of Cr.P.C., in which they seek relief of quashing the FIR.

2. The case of the prosecution is that the petitioners are the adjacent land owner of the defacto complainant. In the complaint lodged by the defacto complainant, it is alleged that the petitioners encroached the land of the defacto complainant by constructing septic tank and water tank. Hence, the case has been registered for the above said offences.

3. I have heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal side) appearing for the first respondent and perused the records.

4. The first and foremost submission raised by the petitioners is that the complaint lodged by the defacto complainant does not disclose the date of offence, time of offence and the other



particulars with regard to the ownership of the property. Further, the lease deed, dated 30.08.1968 was executed between one Marimuthu Nadar, Rathinam Nadar and Shanmugavel Nadar. As per the lease deed, the said Shanmugavel Nadar established Petrol Bunk business and Automobiles business in the name and style of Shanmuga Automobiles and Thiyagaraja Automobiles in the lease property. After his demise, his legal heirs namely, A.Vijayalakshmi and others looked into the business. In the meanwhile, the second respondent herein, who is the son of the said Marimuthu Nadar, after demise of his father, trying to evict the said lessee by way of illegal method. Hence, the said legal heirs of the deceased Shanmugavel Nadar gave the Power-of-Attorney in favour of one Lakshmanan, who is the father and husband of the petitioners herein respectively, for continuing the lease. Further, as per the power deed, a suit is also pending in O.S.No.133 of 2001 on the file of the District Munsif Court, Thirumangalam.

5. Admittedly, after the demise of the said Lakshmanan, the petitioners were put into the possession of the disputed property for which the Civil Suit is also pending in O.S.No.133 of 2001 before the District Munsif Court, Thirumangalam. Accordingly, the dispute between the petitioners and the defacto complainant is nothing but a civil dispute. But without mentioning the same, the defacto complainant lodged a complaint against the petitioners after six months from the date of occurrence only with *mala fide* intention. So, accordingly, the prayer sought for by the petitioners in this case is having substantial truth. However, on considering the facts and circumstances, it is necessary to see the scope and ambit of Courts with regard to Section 482 Cr.P.C., for which, in a case of Inder Mohan Goswami and another Vs. State of Uttaranchal and others reported in 2007 (12) SCC 1 was relied on by the learned counsel appearing for the petitioners, wherein at Paragraphs Nos.23 and 24, the Hon'ble Supreme Court has held as follows:

'23. This Court in a number of cases has laid down the scope and ambit of courts' powers under Section 482 Cr.P.C. Every High Court has inherent power to act ex debito justitiae to do real and substantial justice, for the administration of which alone it exists, or to prevent abuse of the process of the court. Inherent power under Section 482 Cr.P.C. can be exercised:

- (i) to give effect to an order under the Code;*
- (ii) to prevent abuse of the process of court, and*
- (iii) to otherwise secure the ends of justice.*

24. Inherent powers under Section 482 Cr.P.C. though wide have to be exercised sparingly, carefully and with great caution and only when such exercise is justified by the tests specifically laid down in this section itself.



Authority of the court exists for the advancement of justice. If any abuse of process leading to injustice is brought to the notice of the court, then the court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the statute.''

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6. So, this Court is having the duty to eradicate the abuse of process of law. On the way, in this case also, the circumstances in and around the alleged offences create a doubt whether the complaint lodged by the second respondent is for real occurrence or for taking revenge or for giving criminal colour to the civil dispute, which *prima facie* appears to be an abuse of process of law. Accordingly, this Criminal Original Petition is allowed and the proceedings relating to Crime No.71 of 2013 pending against the petitioners, on the file of the respondent police shall stand quashed.

Sd/

Assistant Registrar (Crl side)

/True copy/

Sub Assistant Registrar

To

1.The Inspector of Police,
Thirumangalam Town Police Station,
Madurai District.

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

+1cc to Mr.T.Antony Arul Raj Advocate, SR.No. 45588

Crl.O.P. (MD) No.4730 of 2013
31.01.2018

pjl

KK/CVC /05.04.2018/SAR-4/3P-4C