

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.11.2018

PRONOUNCED ON : 24.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P.No.13381 of 2011

1.K.P.Ramasamy
2.K.P.Deivasigamani
3.P.Natarajan
4.Parthiban
5.Selvaraj

... Petitioners

Vs

Deivasigamani

... Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in C.C.No.245 of 2009 on the file of the Judicial Magistrate, Palladam, and to quash the same.

For Petitioners: Mr.R.G.Narendhiran

For Respondent : Mr.P.M.Duraiswamy

ORDER

The accused 1 to 4 and 6 in C.C.No.245 of 2009, pending on the file of the learned Judicial Magistrate, Palladam, have filed this application to call for the records relating to the complaint in C.C.No.245 of 2009 and to quash the same.

2. The facts of the case, in nutshell, are as follows:

2.1. The complaint in C.C.No.245 of 2009 on the file of the learned Judicial Magistrate, Palladam, was filed by the respondent herein as against this petitioners and another, for the offences punishable under Sections 147, 447, 427, 506(ii) IPC and Section 341 read with Section 34 IPC.

2.2. The case of the complainant is that in Arasu Village, Palladam Taluk, the respondent / complainant and his brother are having lands in Survey Nos.194/6, 194/8, 194/9, 194/5 and 194/7,

totalling an extent of 4.42 ½ acres of land and they acquired the land by way of registered sale deed dated 24.08.1977. The accused 1 to 3 have purchased some properties in Survey No.194 and some other adjacent properties and started a Cotton Mill, in the name and style of M/s.KPR Cotton Mills Private Limited. They have also requested the respondent / complainant to sell their properties for the Mill. The respondent / complainant declined their offer stating that they know agriculture work alone and it is the only source of income and they are not prepared to sell the lands. Since then, the KPR Mills management used to give disturbances for their peaceful possession and enjoyment. Moving a step ahead, on 06/04/2007, at about 09.00 am, the petitioners along with another entered into the respondent's / complainant's land and damaged the Trees therein with a JCB machine. According to the respondent, when they objected them, the accused persons stated that they are doing it on the instructions of their owner.

2.3. The respondent / complainant lodged a complaint before the Suler Police on 06.04.2007 itself. But it was not properly enquired and therefore, he approached this Court in Crl.OP.No.11343 of 2007, wherein, a direction was issued by this Court to register the complaint and to enquire into the incident. Only on the orders of this Court, the Suler Police have registered the complaint in Crime No.272 of 2007, against the petitioners herein and another for the offence punishable under Sections 147, 447, 427 & 506(II) IPC.

2.4. Even after registering the complaint, the Suler Police have behaved in a partisan manner and filed a referred Charge Sheet, without even examining the respondent / complainant and the eye witnesses, namely, one Dhandapani, S/o. Nanjapagoundar and Chellamuthy, S/o. Ganesagoundar. The respondent / complainant had also given a protest petition. But, the learned Judicial Magistrate accepted the version of the Police. Hence, the present complaint is filed before the learned Judicial Magistrate, Palladam, in C.C.No.245 of 2009 under Section 200 Cr.P.C. As against the same, the petitioners have approached this Court under Section 482 Cr.P.C., to quash the complaint on the ground that a dispute, which is purely civil in nature, has been converted and lodged in the form of a criminal complaint.

3. Learned Counsel for the petitioners would submit that the issue involved is the subject matter of the suits pending before the Judicial Magistrate Court, Palladam, in O.S.Nos.760 of 2008 & 17 of 2010. The case of the respondent / complainant that the petitioners have encroached into his lands and damaged the Trees could be decided only by a Civil Court based on the oral and documentary evidences. Resorting a civil dispute through a criminal complaint is not sustainable and that too, when the

very same complaint having been examined and closed already by the Police. Therefore, the learned Counsel prayed for quashing the complaint lodged by the respondent / complainant.

4. Learned Counsel for the respondent / complainant had stated that the accused Company, who had acquired all the lands surrounding the respondent's lands, have asked the respondent also to part with his lands. When the respondent had declined the same, they have started disturbing his possession in one way or other. On 06.04.2007, they have entered into their land and caused damages to the Trees, which was witnessed by two witnesses and also supported by some photographs.

5. Heard the learned Counsel appearing for the petitioners and the learned Counsel appearing for the respondent.

6. The issue to be decided by this Court is whether the complaint preferred by the respondent / complainant under Section 200 Cr.P.C., can be allowed to be proceeded with or to be quashed and whether the pending civil suit would bar the criminal Court to proceed with the complaint pending against the petitioners.

7. Admittedly, the respondent / complainant is having lands to an extent of 4.42.5 acres in Survey No.194 of Arasu Village. The petitioners have also procured lands and started a Mill in the adjacent Survey numbers. According to the petitioners, on 12.02.2007, the respondent / complainant trespassed into their lands and attempted to encroach the Mill's property. Therefore, with an apprehension that the respondent / complainant may, at any time, make attempts to disturb the peaceful possession and enjoyment of the suit property, the petitioners 1 to 3 have filed a civil suit in O.S.No.760 of 2007 on 03.04.2007 as against the respondent / complainant for a permanent injunction on behalf of KPR Cotton Mills Private Limited. The respondent / complainant has also filed a suit in O.S.No.17 of 2010 for the relief of declaration. The suits are still pending and an order of interim injunction was granted in favour of petitioners 1 to 3, upto 17.04.2007, by order dated 03.04.2007. The main contention of the petitioners is that pending civil suit, allowing the criminal complaint to proceed further is not proper.

8. The petitioners and the respondent are neighbours, having lands adjacent to each other. The petitioners in their petition had admitted the fact that the respondent and his brother are joint owners of the lands to an extent of 4.42 ½ acres in Survey No.194 of Arasu Village. Therefore, the ownership of the respondent as regards the 4.42 ½ acres of land is not in dispute. The petitioners 1 to 3 are running a Cotton Mill in the

name and style of M/s.KPR Cotton Mills Private Limited. The case of the complainant is that the petitioners 1 to 3 have attempted to purchase the land and when the respondent / complainant refused to part away his lands, they have started creating nuisance to the respondent / complainant, however, the same is refuted by the petitioners.

9. In this context, when we look into the civil suit filed by the petitioners 1 to 3 in O.S.No.760 of 2007, it is seen that the suit was filed for a bare injunction, restraining the respondents herein from interfering with the peaceful possession and the enjoyment of the suit properties, belonging to the petitioners. But the case of the respondent / complainant is that the Trees in his lands were destroyed by the petitioners. Though the civil suit is pending, it is only for a bare injunction, that too in respect of the petitioners' lands. The damage of Trees and whether it is in the petitioners' land or in the respondent's land are a matter for Trial. This Court cannot come to a conclusion that the Trees said to have been destroyed are that of the petitioners' land and that the civil suit will have a direct bearing on the complaint.

10. In similar circumstances, the Hon'ble Supreme Court in Indian Oil Corporation Vrs. NEPC India Ltd. and Others, reported in (2006) 6 SCC 736, in an application filed under Section 482 Cr.P.C. for quashing a criminal complaint, which was filed alleging commission of various offences under Penal Code for which civil remedies are available, has held that pendency of the civil suit for the self same allegations is not a bar for remedy under the criminal law, if the allegations disclose a criminal offence. Allegations contained in the complaint petition is to be taken on their face value. If on facts, it constitute an offence under the Penal Code, even though there is pendency of civil suits for the self-same allegations, there is no bar for initiation of criminal proceedings.

11. In M.Krishnan v. Vijay Singh and another, the Hon'ble Supreme Court has held that if mere pendency of a civil suit is made as a ground for quashing the criminal proceedings, then the unscrupulous litigants, apprehending criminal action against them, would be encouraged to frustrate the course of justice and law by filing suits. Such a course cannot be the mandate of law. Civil proceedings, as distinguished from the criminal action, have to be adjudicated and concluded by adopting separate yardsticks.

12. It is pertinent to note that the civil suit for a bare injunction, which was filed in the year 2007, is still pending, without any adjudication. The complainant had filed six documents in support of his complaint and also cited one

Dhandapani, S/o.Nanjapagoundar and Chellamuthy, S/o.Ganesagoundar as eye witnesses to the occurrence, apart from him. They were also examined by the trial Court before taking cognizance of the complaint. It is for the trial Court to decide as to whether any damage has been caused to the Trees lying in the respondent's land.

13. In such a view of the matter, this criminal original petition is liable to be dismissed and the same is accordingly, dismissed. The complaint was filed in the year 2009 and the criminal original petition for quashing the complaint was filed in the year 2011. Therefore, the learned Judicial Magistrate, Palladam, is directed to expedite the proceedings and complete the same, as expeditiously as possible.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gk

To

The Judicial Magistrate,
Palladam.

+1 cc to Mr.R.G.Narendhiran, Advocate, S.R.No.5472

BR (CO)
SSM(05/03/2019)

Order made in
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