

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 22.09.2020
Pronounced On : 23.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.11400 of 2015

and

CRL MP.No. 1 of 2015

1.M.Sathiq Basha
2.M.Iliyas
3.Shaheda Begam
4.M.Shakira

...Petitioners / A1 to A4

Vs.

1.State Rep by its
The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.

... 1st Respondent /
Complainant

2.Mohammed Yunus ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in C.C.No.84 of 2015, on the file of the learned Judicial Magistrate No.I, Krishnagiri, facing trial for the offence under Sections 447 and 379 IPC., and quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.S.Viswanathan

For R1 : Mr.M.Mohamad Riyaz
Addl.Public Prosecutor

For R2 : Mr.C.R.Malarvannan

O R D E R

This Criminal Original Petition is filed praying to quash the proceedings in C.C.No.84 of 2015, on the file of the learned Judicial Magistrate No.I, Krishnagiri.

2.The gist of the case is that on 16.06.2014, at about 08.00 a.m., when the 2nd respondent had visited his mango groves, he found that the petitioners had trespassed into the property and had committed theft of mangoes to the tune of Rs.1,00,000/-. They had also earned 10 to 12% commission in the above theft. Initially, a complaint was received and CSR.No.3994 of 2014 was assigned and later, the First Information Report in Crime No.462 of 2014 for offence under Sections 147, 447 and 379 of IPC was registered on 09.09.2014 and after completion of investigation, charge sheet was filed listing LW1 to LW7 and documents.

3.Mr.S.Viswanathan, the learned counsel appearing for the petitioners would submit that the petitioners and the defacto complainant are brothers and sisters. The defacto complainant filed a Suit for temporary injunction and appointment of receiver in O.S.No.09 of 2007 on the file of the learned Subordinate Judge, Krishnagiri against the petitioners 1 to 3, his mother Maimoon Bai and others pertaining to the properties in Mitahaali Village S.Nos.267, 268, 274, 279/1, 279/2, 279/4, 280, 280/1, 280/2, Gangaleri Village S.No.156/1, 156/1B, 68, Amanimittahalli Village S.No.184, 183/1B and to allot him separate possession of his share in the said properties.

4.It was further contended by the learned counsel appearing for the petitioners that the defacto complainant filed Interlocutory Applications in I.A.Nos.352 and 354 of 2009 in O.S.No.9 of 2007, on the file of the learned Subordinate Judge, Krishnagiri, seeking temporary injunction restraining the petitioners herein and others from interfering with his peaceful possession and enjoyment of the suit properties along with an application to appoint a Receiver to manage and maintain the accounts of the suit properties and the said applications were dismissed on 08.02.2010. Thereafter, on 08.11.2012, the defacto complainant preferred a false complaint before the 1st respondent Police against the petitioners 1 to 3 alleging that they trespassed into the property of the defacto complainant, abused the defacto complainant and gave life threat. The said complaint was registered in Crime No.526 of 2012, for the offence under Sections 447, 294(b), and 506(ii) of IPC. After investigation, charge sheet filed, which was taken on file in C.C.No.979 of 2014, which is pending adjudication. A Quash Petition in Crl.O.P.No.7193 of 2015 challenging the same is pending. As far as this case in Crime No.462 of 2014, charge sheet for offence under Sections 447 and 379 of IPC filed and pending trial in C.C.No.84 of 2015 before the learned Judicial Magistrate No.I, Krishnagiri. In this case, the occurrence is said to have taken place on 16.06.2014, wherein the petitioners have trespassed into the mango grove and committed theft of mangoes valued around one lakh.

5.It is his further submission that for occurrence of 16.06.2014, the defacto complainant preferred a complaint before the 1st respondent Police alleging that the petitioners and others trespassed into mango grove belonging to the defacto complainant. On the complaint, CSR.No.3994 of 2014 was initially assigned and later, an First Information Report was registered for committing theft of mangoes valued around one lakh. The said complaint was registered in Crime No.462 of 2014, for the offence under Sections 147, 447 and 379 of IPC. On enquiry, the 1st respondent altered the offence as under Sections 147, 447, 379 IPC @ 447, 379 IPC, after investigation, charge sheet filed, which was taken on file in C.C.No.84 of 2015, by the learned Judicial Magistrate No.I, Krishnagiri.

6.Adding further, the learned counsel for the petitioners submitted that the charge sheet does not disclose any cognizable offence and therefore, the same is liable to be dismissed. There were civil disputes pending between the petitioners 2 & 4 / A2 and A4, before the learned Principal Subordinate Judge, Krishnagiri, in O.S.No.09 of 2007, in respect of the properties in question, where the alleged offence said to have taken place. Without taking note of that fact, the Interim Application for injunction was dismissed and the 1st respondent, registered the case against the petitioners. Even in the said suit, the defacto complainant's mother has categorically taken a stand that most of the properties are self acquired properties neither the defacto complainant nor the petitioners have lawful right over the same and they were only permitted to reside there. Likewise, the 3rd petitioner pleaded that she purchased 35/288 share of property in Mittahalli S.Nos.267, 279/1, 279/2, 279/4, 280/1 & 280/2 through sale deed, dated 07.10.1998, registered in Doc.No.943/1988, for valid consideration. The learned counsel for the petitioner, therefore, submitted that the case on hand is basically a civil dispute and not criminal one and hence, the proceedings in C.C.No.84 of 2015, on the file of the learned Judicial Magistrate No.I, Krishnagiri, is liable to be quashed.

7.The learned Additional Public Prosecutor appearing for the respondent State would submit that on receipt of the complaint, a case was registered, after investigation, charge sheet filed, which was taken on file in C.C.No.84 of 2014, on the file of the learned Judicial Magistrate No.I, Krishnagiri and the case is pending. Hence, the learned Additional Public Prosecutor prays for dismissal of the quash petition.

8.The learned counsel for the 2nd respondent submitted that the 2nd respondent was employed as Additional Professor in Mazharul Uloom College, Ambur. On 06.04.2009, he purchased some

properties in survey Nos.279, 280, 268 and 267 in Mittah Alli Village, totally around 3 acres 50 cents and thereafter, he has been enjoying the same. On 24.03.1992, he purchased some property through Court auction and from then on, he had been enjoying the property. In the same survey number, his mother Mimoonbe and his sister Shayeedha Begum were also owning some Mango groves. In the year 1982, the 2nd respondent's father passed away. Due to the employment, the 2nd respondent was staying out of his Village. Taking advantage of the 2nd respondent's absence, the properties were trespassed and encroached upon by the petitioners. On 08.11.2012, at about 02.00 p.m., when the 2nd respondent made a visit to his property, he found that the petitioners had engaged some person and entered into the property and committed theft of mangoes to the tune of one lakh.

9.He further submitted that the 2nd respondent filed a suit for partition, in which the petitioners had admitted the joint portion of the property along with the 2nd respondent. Taking advantage of the 2nd respondent's absence, the enjoyment of the entire property is being forcibly taken over by the petitioners and they have not given due share of the income from the property. Further, they attempted to create encumbrance.

10.From the documents produced it is seen that the petitioners 1 to 3 and the defacto complainant are brothers and sister. The properties in dispute are in joint possession of the petitioners and the defacto complainant. According to the defacto complainant, after filing of the suit, the petitioners who are virtually in management of the properties, does not allow him to enjoy the properties and income derived therefrom. Further, the petitioners indulged in mismanagement of the properties and tried to create encumbrance. Therefore, the defacto complainant gave a complaint before the 1st respondent police, after investigation, final report filed, which was taken on file in C.C.No.84 of 2014, on the file of the learned Judicial Magistrate No.1, Krishnagiri.

11.Admittedly, there are civil disputes pending between the petitioners 1 and 3 and the defacto complainant in O.S.No.09 of 2007, before the learned Principal Subordinate Judge, Krishnagiri, pertaining to the properties in Mitahaali Village S.Nos.267, 268, 274, 279/1, 279/2, 279/4, 280, 280/1, 280/2, Gangaleri Village S.No.156/1, 156/1B, 68, Amanimittahalli Village S.No.184, 183/1B. The civil suit proceedings are pending. The Interim Applications in I.A.Nos.352 of 2009 and 354 of 2009 were dismissed by the learned Principal Sub Judge, Krishnagiri on 08.02.2010. Having regard to the above and the disputes are pre-dominantly civil in nature amongst the family members and in relation to the property, giving colour

apparently with criminal flavour, this Court is of the considered view that continuation of the proceedings will no way sub serve the ends of justice, but tantamount to abuse of process. As ends of justice are more important than mere enforcement of law, this Court is inclined to quash the proceedings.

12.In fine, this Criminal Original Petition stands allowed and the proceedings in C.C.No.84 of 2014, on the file of the learned Judicial Magistrate No.I, Krishnagiri, is hereby quashed. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

MPK
To

- 1.The Judicial Magistrate No.I,
Krishnagiri.
- 2.The Inspector of Police,
Kaveripattinam Police Station,
Krishnagiri District.
- 3.The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.11400 of 2015

VSNII(CO)
SP(23/07/2021)