

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018
Pronounced on : 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20734 of 2010

and

M.P.No.1 of 2010

1.R.Vandarkuzhali,
W/o.S.Babu.

2.R.Valluvan,
S/o.T.Ramachandran.

3.R.Pandian,
S/o.Ramachandran.

4.S.Babu,
S/o.Selvaraj.

5.I.Annavayal,
W/o.T.Ramachandran. Petitioners/Accused
Nos.1 to 5

Vs.

1.The State of Tamil Nadu
Represented by the Inspector of Police,
Arni Town Police Station,
Arni,
Thiruvannamalai District.
[Crime No.865 of 2009]. ... Respondent/Complainant

2.V.G.Dhanasekaran,
S/o.Gopal. ... Respondent/Defacto-
Complainant

[Impleaded the second
respondent as per the
Order of this Court dated
05.04.2017 in Crl.M.P.
No.4900 of 2017 in
Crl.O.P.No.20734 of 2010]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.166 of 2010 on the file of the Judicial Magistrate Court, Arni, Thiruvannamalai District and quash the same only in so far as it relates to the petitioners.

For Petitioners: Mr.K.Selvaraj

For R1 : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

For R2 : Mr.R.Amardeep for
M/s.Tamizh Law Firm

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O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.166 of 2010 on the file of the Judicial Magistrate Court, Arni, Thiruvannamalai District and quash the same only in so far as it relates to the petitioners.

2.The second respondent/defacto complainant had lodged a complaint before the first respondent in Crime No.865 of 2009 for the offences under Sections 147, 427 and 380 of the Indian Penal Code. The second respondent/defacto complainant, who claims that he was a tenant in the property in Door No.26, Indira Nagar, Arni from the year 2003. The land lord of the property is the second petitioner till the year 2008 and thereafter, the property was settled in favour of the first petitioner. The petitioners on 10.06.2009 had forcibly thrown out the articles of the second respondent/defacto complainant and locked the house.

3.Further on 23.07.2009, in the night a gang of persons came in two vehicles and thrown the household articles, which was kept by the second respondent/defacto complainant and his family members in the road in the presence of the Villagers. For the same, the second respondent/defacto complainant had lodged a complaint before the first respondent and the first respondent had registered a case in Crime No.865 of 2009 for the offences under Sections 147, 427, 380 of the Indian Penal Code. After thorough investigation, the first respondent had filed the final report.

4.The contention of the learned counsel for the petitioners is that the fifth petitioner and her husband are retired teachers and they are residing in the house bearing Door No.26, Indira Nagar, Arni. The second respondent/defacto complainant was the Ex-President of Vilai Panchayat, who is the permanent residence at Door No.7, Eswaran Koil Street, Vilai Village, Arni Taluk, Thiruvannamalai District. By using his position and influence, he has lodged a complaint before the first respondent in Crime No.865 of 2009 for the offences under Sections 147, 427, 380 of the Indian Penal Code. The second respondent/defacto complainant had lodged the above said false complaint in order to grab the property of the petitioners, by taking advantage that the petitioners and the family members are residing in Chennai and Bangalore.

5.The second respondent/defacto complainant had filed a Civil Suit in O.S.No.65 of 2009 before the District Munsif Court, Arni and also filed an Interlocutory Application in I.A.No.317 of 2009, not to disturb the peaceful possession of the second respondent/defacto complainant. The learned District Munsif, Arni by order dated 16.07.2010 had dismissed the above said I.A.No.317 of 2009 filed by the second respondent/defacto complainant.

6.Further the contention is that being an Ex-President of Vilai Panchayat and influenced persons in the locality, the second respondent/defacto complainant had threatened and taken away the property and possession of the petitioners.

7.The complaint of the second respondent/defacto complainant is a counter blast to the complaint of the fifth petitioner, which was registered in Crime No.866 of 2009. The first respondent on the influence and pressure of the second respondent/defacto complainant had filed the final report.

8.The first petitioner is residing with her husband at Kolar Gold Fields, Karnataka; the second petitioner is working as an Assistant in Tamil Nadu Water Supply and Drainage Board, having office at Kamarajar Salai, Chepauk, Chennai; the third petitioner is a Government Teacher in the Government Higher Secondary School at Vellore District; fourth petitioner is the husband of the first petitioner and he is working in Kolar Gold Fields, Karnataka and the fifth petitioner is the aged mother of

the petitioners 1 to 3, a retired school Teacher. The petitioners were not at all present on the date of the alleged occurrence.

9. Further, the petitioners had produced the documents viz., the Voters Identity Card, Electricity Card, BSNL Phone connection of the second respondent/defacto complainant to show that the second respondent/defacto complainant was residing at No.146, Vilai Village, Nesal Post, Arni Taluk, Vellore District. The affidavit of the second respondent/defacto complainant to the Bank officials, Indian Bank seeking education loan for his daughter and a representation sent to the Finance Minister, Government of India.

10. The above said documents show that the second respondent/defacto complainant is residing at No.146, Vilai Village, Nesal Post, Arni Taluk, Vellore District. Only in the suit in O.S.No.65 of 2009, the second respondent/defacto complainant has stated that the second respondent/defacto complainant is residing in the property of the first petitioner as tenant. The Civil Court had initially dismissed the Interlocutory Application in I.A.No.317 of 2009 on 16.07.2010 and given a categorical finding that the second respondent/defacto complainant never residing in the property of the first petitioner as tenant. Thereafter, the suit filed in O.S.No.65 of 2009 by the second respondent/defacto complainant was dismissed by the Trial Court on 19.12.2013 and he has not filed any appeal against the said Judgment and Decree. Therefore, it clearly proves that the second respondent/defacto complainant was not a tenant under the first petitioner and he was not in possession of the property at any point of time.

11. It is submitted that the second respondent/defacto complainant had encroached the temple land in the village viz., Valayakara Amman Koil and had constructed a building in the Government land. When the Revenue Authorities and the police attempted to remove the encroachment, he had prevented them by threatening that he would consume poison and thereby, deterring the Revenue and Police officials to demolish and to take possession of the Government land.

12. Further the second petitioner had filed an affidavit stating that on the date of the alleged occurrence he had attended the office of Tamil Nadu Water and Drainage Board, Chennai.

13.The learned Government Advocate [Crl. Side] submits that the first respondent had completed the investigation, recorded the statements and filed the charge sheet against the petitioners/accused Nos.1 to 5 before the learned Judicial Magistrate, Arni, Thiruvannamalai District.

14.The learned counsel appearing for the petitioners relied upon the following decisions of the Hon'ble Supreme Court of India:

1)G.Sagar Suri and another Versus State of Uttar Pradesh and others reported in (2000) 2 Supreme Court Cases 636;

2)Zandu Pharmaceutical Works Limited and others Versus Mohd. Sharaful Haque and Another reported in (2005) 1 Supreme Court Cases 122; and

3)Gorige Pentaiah Versus State of Andhra Pradesh and Others reported in (2008) 12 Supreme Court Cases 531.

15.The second respondent filed counter reiterating that what he has stated in the complaint are true and also stated that he is a tenant under the first petitioner, who was forcibly thrown out from the property, taking advantage of no interim order was granted between the notice period. By using the men and force the second respondent/defacto complainant was left in the road along with the belongings and the family members and the second respondent/defacto complainant had consumed poison, thereafter on medical treatment he was discharged.

16.The learned counsel for the petitioners submitted that the second respondent had approached the Civil Court by unlawful means and had planned to finish the petitioners with the help of goons.

17.Considering the same and the materials placed before this Court, this Court finds that the continuation of the proceedings against the petitioners is nothing but an abuse of process of law.

18.Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.166 of 2010 on the file of the Judicial Magistrate Court, Arni,

Thiruvannamalai District is quashed as against the petitioners. Consequently, the connected Miscellaneous Petition is closed.

Sd/--

Assistant Registrar (CS)

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Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Arni,
Thiruvannamalai District.

2.Do thro'the Chief Judicial Magistarate,
Thiruvannamalai

3.The Inspector of Police,
Arni Town Police Station,
Arni, Thiruvannamalai District.
[Crime No.865 of 2009].

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Selvaraj, Advocate SR.No. 3002

CrI.O.P.No.20734 of 2010

A.SK (20/02/2019)

सत्यमेव जयते

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