

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.3856 of 2014 and
M.P.No.1 of 2014

S.Lingeswaran

... Petitioner

Vs.

1.State rep. By
Inspector of Police,
R-10, MGR Nagar Police Station,
Chennai-78

2.M.Kalaivanan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in the impugned charge sheet dated 15.06.2012 in S.C.No.384 of 2013 pending on the file of the V Additional City Civil Court, Chennai and quash the same as not maintainable.

For Petitioner : Mr.P.L.Narayanan

For RR1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For RR2 : Mr.M.Balaji

ORDER

This petition has been filed to quash the proceedings in S.C.No.384 of 2013 pending on the file of the V Additional City Civil Court, Chennai.

2. Mr.P.L.Narayanan, the learned counsel for the petitioner submits that a false complaint has been preferred in order to support the brother of the defacto complainant who is a tenant by himself and who could be vacated only by due process of law and not by intimidation or through foisted complaint. The defacto complainant suppressed the vital fact that he is none other than own brother of Mr.M.George the alleged owner of the building. Therefore, it is a clear case of abuse of process of law and has been given criminal colour. The brother of the defacto complainant admitted that an agreement of sale dated 14.03.2005 entered into between him and late one C.Pandurangan

and it is purely a civil dispute. Further he submitted that the civil disputes which are already pending before the Civil Courts, the rent control proceedings which are prior to the filing of the present complaint and as such the present criminal proceedings is nothing but clear abuse of process of law. The materials collected by the first respondent did not disclose any cognizable offence as against the petitioner and as such the continuation of trial would cause prejudice to the petitioner. He also relied upon the Judgments in the case of Chandran Vs. Ratnaswami reported in (2013) 6 SCC 740 and in the case of Zandu Pharmaceutical Works Ltd and others Vs. Mohd. Sharaful Haque and another reported in (2005) 1 SCC 122.

3. Per contra, Mr.M.Balaji, the learned counsel for the second respondent submitted that he has lodged a complaint and the same was registered in Crime No.1161 of 2011 for the offences under Sections 147, 448, 323, 294(b), 506(ii) and 380 I.P.C. After completion of investigation, the first respondent filed final report and the trial court have taken cognizance for the offences under Sections 452, 397 r/w 427, 336 I.P.C. read with 149 I.P.C. in S.C.No.384 of 2013. While the second respondent was running an Ice Cream Parlour in the name and style of 'Amma Kudineer Valagam' in the rented premises owned by Mr.M.George, I on 08.03.2011, when the second respondent was in his shop, the accused persons trespassed into his shop and had beaten the second respondent and also threatened him with dire consequences stating that there is an agreement of sale in favour of their one of the sisters. Thereafter, they took all the valuables from the shop and locked it with another lock. Further he submitted that there is incriminating materials to attract the charges as against the petitioners. Therefore, he prayed for dismissal of this quash petition.

4. Mr.M.Mohamed Riyaz, Additional Public Prosecutor submitted that there are totally 5 accused persons in which the petitioner is arrayed as third accused. They completed investigation and filed final report and trial court has taken cognizance under Sections 452, 397 r/w 427, 336 I.P.C. read with 149 I.P.C. in S.C.No.384 of 2013 and it is pending for trial. He further submitted that to attract the offence taken cognizance by the trial court there are statements and materials to connect the petitioner for the offence. Though there is a civil dispute, the occurrence took place on 08.03.2011 constitutes offence and as such it cannot be quashed at this stage and he prayed for dismissal of this quash petition.

5. Heard Mr.P.L.Narayanan, the learned counsel for the petitioner, Mr.M.Balaji, the learned counsel for the second respondent and Mr.M.Mohamed Riyaz, Additional Public Prosecutor appearing for the first respondent Police.

6. There are totally five accused in which the petitioner is arrayed as A3. The trial court has taken cognizance for the offences under Sections 452, 397 r/w 427, 336 I.P.C. read with 149 I.P.C. in S.C.No.384 of 2013. It is seen from the suit filed by the petitioner in O.S.No.14711 of 2010 before the City Civil Court, Chennai wherein it is averred as follows:

"3. The plaintiff most respectfully submits that the third defendant and one Mr.Late C.Pandurangan entered into a sale agreement with respect to the land and building at Plot No.3230, Door No.1, Anna Main Road, No.2, Govindasamy Street, MGR Nagar, Chennai-600 078 on 14.03.2005 for a total consideration of Rs.42,50,000/- out of which Rs.35,25,000/- was paid on various dates by way of Cheque except Rs.10,000/- which was paid by cash on 20.01.2003. Rs.3,75,000/- was adjusted against advance / deposit paid by tenants to the 3rd defendant and he received Rs.2,00,000/- by cash on 16.03.2005. And hence only balance of Rs.1,00,000/- is due to the 3rd defendant. Possession of the entire land and building was handed over even prior to 14.03.2005 itself to C.Pandurangan through his Power Agent by the 3rd defendant. The extent of the land is 1675 sq.ft. And the building therein is 5150 sq.ft. the possession of which was given to C.Pandurangan. Subsequently, at the request of the 3rd defendant, he became one of the tenants under C.Pandurangan with respect to the Shop No.3 in the second floor of the above premises and the 3rd defendant also executed fresh tenancy agreement in favour of this C.Pandurangan."

7. It is seen that they filed the said suit for the cause of action arose on 14.03.2005. The owner of the building namely one, Mr.M.George handed over the possession of the disputed property to one Mr.C.Pandurangan and as such he became the tenant. Even then, Mr.M.George instigated other persons and attempted to dispossess him from the suit property. Therefore, it clearly shows that to evict the second respondent from the premises with the false and frivolous particulars, the petitioner initiated civil suit and trespassed into second respondent shop and looted all the materials. Further there are materials to prove the charges as against the petitioner. At this stage, the entire proceedings cannot be quashed by this Court and all the documents produced by the petitioner have to be tested before the trial court during the trial. On perusal of charges and statements, it discloses prima facie offences that are alleged as against the petitioner. The correctness or otherwise of the said allegations has to be tested only during the trial. Further the criminal proceedings cannot be quashed

only on the ground that the allegations made therein appear to be civil in nature. Further the judgments relied upon by the petitioner do not help the case of the petitioner to quash the entire proceedings.

8. In view of the above discussions, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The V Additional City Civil Court,
Chennai.
2. The Inspector of Police,
R-10, MGR Nagar Police Station,
Chennai-78
3. The Public Prosecutor,
High Court of Madras.

+1 cc to Mr.P.L.Narayanan, Advocate, Sr.No. 27822

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M.P.No.1 of 2014

PMS (CO)
CSL/27.04.2019

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