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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P (MD) No.3071 of 2015

and

M.P. (MD) No.1 of 2015

1.Thangappan

2.Indhira

... Petitioners/Accused No.1 & 2

Vs

1.The State of Tamilnadu

Rep. by its Inspector of Police,

District Crime Branch,

Office of the Superintendent of Police,

Theni,

Theni District.

Crime No.34 of 2010.

... 1st Respondent/Complainant

2.Elangovan

...2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, call for the records from the file of the Judicial Magistrate Court, Theni District in C.C.No.325 of 2012 and quash the same as it has no prima facie case against the petitioners.

For Petitioners : Mr.J.Lawrence

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : Mr.R.Aravindan

ORDER

This criminal original petition has been filed for quashing the proceedings in C.C.No.325 of 2012 on the file of the Judicial Magistrate, Theni.

2.The case of the defacto complainant is that the property in question belongs to the temple and that the defacto complainant is one of the trustees. It appears that the first petitioner Thangappan was the priest in the temple. He was allowed to occupy the property in question and also to run the tea shop.

3.The learned counsel appearing for the petitioner would point out that the issue had attained finality vide compromise decree dated 14.09.201 in O.S.No.431 of 1992 on the file of the



District Munsif Court, Bodinayakanoor.

4. Be that as it may, the case of the prosecution is that the said property was settled by the first petitioner Thangappan in favour of his wife Indhira-second petitioner herein and that thereafter, four commercial shops were put up on the property and then, mortgaged the property for a sum of Rs.15,00,000/-. This, according to the defacto complainant, constitutes clear breach of trust.

5. Without going into the merits of the matter, I am of the view that the issue raised in this case will have to be necessarily gone into only in a regular trial. No case has been made out for invoking the inherent power of this Court. It appears that the first petitioner is no more. It is not as if the second petitioner has not played any role in the matter. Admittedly, the first petitioner had executed the settlement deed in favour of the second petitioner and that, the second petitioner is alleged to have mortgaged the property. But then, it appears that the same was redeemed by the second petitioner and subsequently, the first petitioner executed a fresh deed of mortgage. These are all factual aspects and the defence of the second petitioner will have to be necessarily established only before the Court below. No case has been made out for quashing the impugned proceedings. This criminal original petition stands dismissed. Therefore, the personal appearance of the petitioner is dispensed with.

6. The learned trial Magistrate shall insist on the personal appearance of the petitioner only when it is absolutely necessary and imperative. The petitioner shall be called upon to appear in person before the trial Court at the time of answering the charges and at the time of examination under Section 313 of Cr.P.C., and at the time of pronouncement of Judgment. On all other occasions, the petitioner can be represented through their counsel. It is made clear that this Court has not gone into the merits of the matter. All the contentions and defences are left open. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

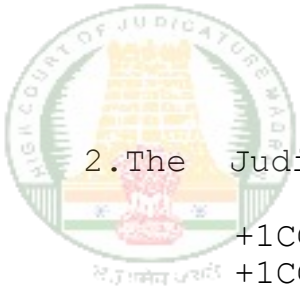
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Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
District Crime Branch,
Office of the Superintendent of Police,
Theni, Theni District.



2.The Judicial Magistrate, Theni District.

+1CC TO MR.K.ARAVINDAN, Advocate Sr. No.92054

+1CC TO MR.J.LAWRANCE, Advocate Sr. No. 91800

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CrI.O.P (MD) No.3071 of 2015
and
M.P. (MD) No.1 of 2015

GKG (CO)

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