



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Crl.O.P (MD) No.3897 of 2015

and

M.P. (MD) Nos.1 and 2 of 2015

WEB COPY

1.Manikandan
2.Sathishkumar
3.Nagakumar
4.Chellaiah

... Petitioners

Vs

1.The State rep. by
The Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.
(Crime No.58 of 2012)

2.E.Paramasivan

... Respondent

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the final report as made in S.T.C.No.497 of 2013, on the file of the learned Judicial Magistrate, Cheranmahadevi, Tirunelveli District, by the first respondent in connection with Crime No.58 of 2012 on the file of the Inspector of Police, Suthamallai Police Station, Tirunelveli District and quash the same.

For Petitioners : Mr.M.Jegadeeshpandian
for Mr.K.J.Associates

For Respondent : Mr.J.Parekh Kumar for R2
: A.Robinson, (GA., Crl.side) for R1

ORDER

The petitioners are facing trial in S.T.C.No.497 of 2013 on the file of the Judicial Magistrate, Cheranmahadevi, for the offences under Sections 341 and 323 of IPC.

2. Heard the learned counsel on either side.

3.The second respondent herein is the defacto complainant. The defacto complainant had availed loan from the Sri Ram Finance Company for purchasing a passenger auto. The defacto complainant was to clear the dues in 36 instalments. The defacto complainant had promptly remitted 27 instalments. But then, there was a default in the matter of remitting two instalments alone. The petitioners herein, who had repossessed the auto in question on 18.02.2012 and in the process, are said to have caused simple injuries to the defacto complainant. In this regard, Crime No.58 of 2012 was registered on the file of the first respondent police station. Investigation was conducted and final report was filed and cognizance of the offence was taken. When the case was taken up on file in S.T.C.No.497 of 2013, the present criminal original petition came to be filed to quash the impugned proceedings.



4. The learned counsel appearing for the defacto complainant submitted that the finance company has employed an illegal method to repossess the asset in question and that, therefore, the impugned proceedings ought not to be quashed.

5. It is seen that the occurrence had taken place on 18.02.2012. But then, FIR was lodged only on 19.02.2012 at about 22.30 hours. It is not in dispute that on the occurrence date, the defacto complainant was in arrears. As per the contract executed between the parties, if default has been committed, the financier is entitled to repossess the asset.

6. The learned counsel appearing for the defacto complainant would submit that this is contrary to the dictum laid down by the Hon'ble Supreme Court. It cannot be in dispute that the terms of contract authorizes such repossession by the financier. This Court comes to the conclusion that upset over repossession of the asset in question, the complaint has been lodged. The fact that the complaint has been lodged full 24 hours later, leads one to the impression that the impugned proceedings have been instituted more out of spite and upset by the re-possession. It is not in dispute that the defacto complainant has now settled the entire dues payable to the financier and has also taken no objection certificate from the company.

7. The occurrence is of the year 2012. When the defacto complainant had already become the full owner of the property, the continuance of the impugned proceedings alone does not serve any purpose. Even according to the complainant, he did not suffer any injury and that is why, he did not go to the hospital. Therefore, I am of the view that the continuation of the impugned proceedings would only amount to an abuse of legal process. However, it appears that some force might have been used, while taking repossession of the asset. Therefore, the petitioner's counsel states that the financier will issue a formal letter of apology and regret to the defacto complainant. Such a letter will be issued within a period of two weeks from the date of receipt of a copy of this order.

8. Recording the undertaking of the petitioner's counsel, the impugned proceedings are quashed. The criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



rmi

To

1.The Inspector of Police,
Suthamalli Police Station,
Tirunelveli District.

2.The Judicial Magistrate, Cheranmahadevi,
Tirunelveli District.

+1 CC to M/s.J. PAREKHKUMAR, Advocate (SR-90983[F] dated 03/10/2019

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SMA/29/01/2020/3P/4C