

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.4050 of 2011
and
MP.No.1 of 2011

K.Balasubramaniam
Deputy Secretary,
S/o.Karuppana Vathiyar,
Ukkaram, Sathyamangalam Tk,
Erode District.

Petitioner/A2

Versus

1.Nagamuthu (died)

2.N.Moorthy

3.N.Nanjudasamy

....

Respondents/
Complainants

(R2 & R3 are impleaded as per order in Crl.MP.No.32/2020
in Crl.OP.NO.4050/11 dated 31.01.2020)

PRAYER: Criminal Original Petition is filed under Section 482
of the Code of Criminal Procedure, to call for the records
relating to the criminal complaint in C.C.No.126 of 2009 on the
file of the learned Judicial Magistrate No.II,
Gobichettipalayam, quash the same by allowing this Criminal
Original Petition.

सत्यमेव जयते

For Petitioner : M/s.M.Roshan ATIQ

For Respondent : Mr.MA.P.Thangavel.

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ORDER

This Criminal Original Petition is filed by the petitioner
to call for the records relating to the criminal complaint in
C.C.No.126 of 2009 on the file of the learned Judicial
Magistrate No.II, Gobichettipalayam, quash the same by allowing
this Criminal Original Petition.

2. The petitioner is arrayed as A2 in C.C.NO.126 of 2009
on the file of the learned Judicial Magistrate II,
Gobichettipalayam. The respondent herein filed a private
complaint on 24.09.2009 against the petitioner and two other
for the alleged offences under sections 447, 427 and 506(ii) of

IPC alleging that the said accused persons were said to have committed the alleged offences on 12.08.2009.

3. The case of the petitioner is that the petitioner is the owner of the subject land over which, the respondent / complainant is claiming the right. Accordingly, the respondent initially filed a civil suit in O.S.No.154 of 2009 and subsequently the suit was withdrawn by him and hence the petitioner is entitled to enjoy the property. However, the respondent/complainant prevented the petitioner to enjoy the said property and made a false police complaint before the Law Enforcing Agency. However, the Law Enforcing Agency refused to register the complaint and thereafter the petitioner filed a vexatious complaint under Section 200 of Cr.P.C., before the learned Judicial Magistrate. According to the petitioner, the entire disputes is a civil dispute, but the respondent wants to convert the civil dispute into a criminal case and filed a false complaint against the petitioner and others and hence the proceedings pending in C.C.No.126 of 2009 on the file of the learned Judicial Magistrate II, Gobichettipalayam are liable to be quashed.

4. Per contra, the learned counsel appearing for the respondent would submit that on 12.08.2009 at 4 pm the petitioner and other accused persons came in a jeep bearing Registration no. TN Q 4261 and trespassed into the property and tried to assault the defacto complainant and immediately thereafter the petitioner filed a complaint. However the Law Enforcing Agency had not registered the complaint and there was a previous complaint filed by the respondent against the friends of the petitioner in Cr.No. 35 of 2007 on 19.02.2007 already there was a complaint and the same is pending and still there was also a threaten by the petitioner and thereby the defacto complainant filed a complaint before the learned Judicial Magistrate II Gobichettipalayam and since there is a life threat gave by the petitioner and a cognizable offence is made out, even before conducting the trial to know veracity of the allegations, it is not appropriate for this Court to quash the proceedings and if at all the petitioner proves that the case has been falsely foisted with baseless allegations, the learned Magistrate is having power to quash the same and without resorting to trial, the proceedings cannot be sustained. Therefore, the learned counsel prays for dismissal of the petition.

5. The Hon'ble Supreme Court has succinctly formulated the guidelines in regard to the matter where the High Court could exercise its inherent power to quash the proceedings in State of Haryana and others Vs. Ch.Bhajan Lal and others [AIR 1992 SC 604], wherein the Hon'ble Apex Court has held as follows:-

'102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary

power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to

the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.''

Having regard to the above, when the case on hand is analyzed, this Court does not find none of the above grounds would attract in order to exercise the inherent power under Section 482 Cr.P.C. by this Court to quash the criminal proceedings pending against the petitioner. In fact, on a perusal of the allegations made in the complaint against the petitioner, prima facie disclose a cognizable case to proceed against the petitioner.

6. The learned counsel for the petitioner would further submit that the appearance of the petitioner before the Trial Court may be dispensed with and would further submit that the petitioner shall appear as and when necessary arise.

7. The learned counsel appearing for the first respondent concede to the request made by the learned counsel appearing for the petitioner.

8. The appearance of the petitioner before the Trial Court is dispensed with. However, this order will not stand on the way of the Trial Court to insist for the appearance of the petitioners for receiving copies under Section 207 of Cr.P.C., framing of charges, questioning under Section 313 of Cr.P.C. and judgment and as and when the Trial Court feels it necessary.

9. With the above directions, these Criminal Original petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Jrs

To

1. The Judicial Magistrate No.II,
Gopichettipalayam.

2.The Public Prosecutor,
Madras High Court, Madras.

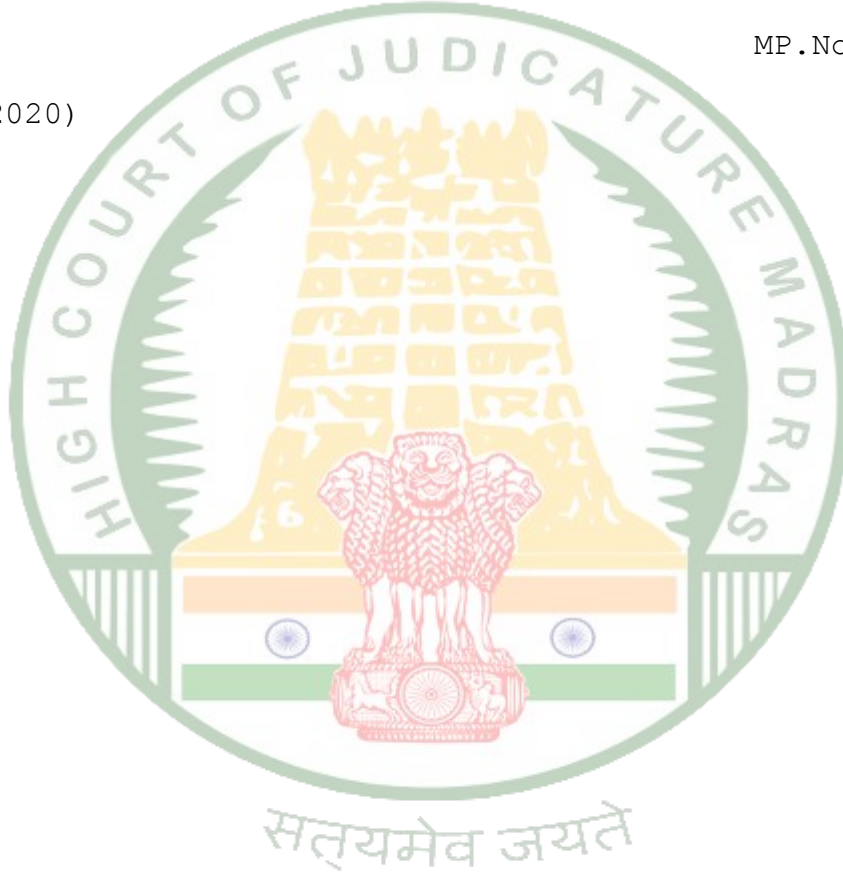
+1cc to Mr.MA.Pa.Thangavel, Advocate, S.R.No. 601

+1cc to Mr.S.A.Mohammed Mubarack, Advocate, S.R.No. 1436

CrI.O.P.No.4050 of 2011
and

MP.No.1 of 2011

RP(CO)
GN(26/02/2020)



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