

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.5585 of 2020
and Crl.M.P.No.3144 of 2020

1. D.Gnanavel
S/o.Dharmalingam,
Salem Man (Silk Dept)
M/s. Nalli Silks,
No.9, Nageswaran Road,
T.Nagar, Chennai.
2. R.Kangaraj
S/o. Ramasamy,
Old NO.43, New No.105,
Ground Floor,
Sadiyappan Street,
Saidapet, Chennai. Petitioners/Accused 3&4

Vs.

K.Balaji,
S/o. Late T.M.Kalyanasundaram,
Old No.43, New No.105,
Ground Floor,
Sadaiyappan Street,
Saidapet,
Chennai. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.2991 of 2014 on the file of the learned XXIII Metropolitan Magistrate at Saidapet, Chennai and quash the same.

For Petitioners: Mr.K.Myilsamy

For Respondent : No appearance

ORDER

This petition has been filed to quash the proceeding in C.C.No.2991 of 2014 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, thereby taken cognizance for the offences under Section 500 of IPC as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that the respondent herein filed a complaint for the offence punishable under Section 500 of IPC as against four accused persons in which, the petitioners are arrayed as A3 and A4. The case of the respondent is that the petitioners are the tenants and the property originally belonged to the father of the respondent. He died intestate leaving behind the respondent and another son. The father of the respondent bequeathed tenancy property in favour of the respondent and his younger brother. After his demise, there was a disputed between the respondent and his brother resulted in a civil suit in O.S.No.751 of 2007 of the file of the IV Assistant City Civil Court, Chennai and it is pending. The respondent demanded monthly rent from the petitioners, which was refused by them. Despite remitting the rent, the petitioners stated false story stating that the respondent is an illegal son and trying to grab the property by throwing away other legal heirs from the property. These statements caused damage to the respondent and hence the complaint.

2.1. The learned counsel appearing for the petitioners would further submit that the petitioners were inducted by the mother of the respondent in the year 2000. There are very prompt in paying the rent without committing any default. After demise of her husband, there was a dispute between the respondent and other legal heirs. In this regard, the respondent also filed a suit in O.S.No.751 of 2007 and the same is pending on the file of the IV Assistant City Civil Court, Chennai. Though the mother of the respondent herein received rents, the respondent claimed to be the owner of the property and claimed rents from the petitioners. In fact, the respondent issued notice for which the petitioners suitably replied. The respondent also filed an interlocutory application in I.A.No.1338 of 2012 in the said suit for depositing of rent. Now the present impugned complaint has been filed as against the petitioners, as if they made false statement as against the respondent. Even according to the respondent, there is absolutely no averments made in the complaint to attract the offence under Section 500 of IPC. Therefore, he sought for quashment of the entire proceedings.

3. Heard Mr.K.Myilsamy, learned counsel appearing for the petitioners. Though notice served and name printed in the cause list, no one is appeared on behalf of the respondent.

4. The respondent lodged complaint for the offence under Section 500 of IPC, in which the petitioners are arrayed as A3 and A4. Admittedly, the petitioners are tenants in the property owned by the respondent's father. According to the respondent after his father's demise, the property was bequeathed to him and his brother. Thereafter there was a

property dispute between the family members and in this regard, the respondent also filed a suit in O.S.No.751 of 2007 and it is pending on the file of the IV Assistant City Civil Court, Chennai. When the respondent claimed the rent from the petitioners, they stated a false story that the respondent was not born to his father, out of legal wed lock. Therefore, the respondent caused notice dated 30.05.2011, and also called upon the petitioners to pay rent. In the reply notice dated 06.06.2011, the petitioners denied the allegations made by the respondent and also refused to pay rent to the respondent herein.

5. It is seen that the petitioners were inducted as tenant by the respondent's mother. After demise of her husband i.e., the father of the respondent, there is a property dispute between the family members. They also filed a suit in O.S.No.751 of 2007 for partition and it is pending before IV Assistant City Civil Court, Chennai. While being so, the respondent demanded the petitioners to pay rent to him. Since the petitioners were inducted as tenants by the mother of the respondent, they refused to pay the rent to the respondent.

6. It is also seen that the respondent also caused notice dated 30.05.2011 for which the petitioners issued reply notice on 06.06.2011. It is relevant to extract the portion of the reply notice hereunder :-

"3. My client states that all the maintenance and other works of the premises were all done by Mrs.Prabhavathi and her daughter. Hence, the rent was paid to here. The said Mrs.Prabhavathi during her life time expressed that your client was also a tenant to her. Even at the death ceremony of Mrs.Prabhavathi, your client was not attended the same and infact, the funeral function of the deceased Prabhavathi was performed by her son, Mr.Neelagandan, who being the Karta of the family.

4. My client states that as per Hindu Customs the funeral functions has to be performed by the elder son. However, the same was performed by Mr.Neelagandan. This itself shows that your client is not a son to the deceased Prabhavathi and your client cannot say that he is the elder son. In addition to the same, your client has not attended any of the function of Mrs.Prabhavathi and her relatives. Even the rent mentioned in your notice is also wrong.

On prima facie it is found that some how to grab money from my client, your client has instructed you to issue the present threatening notice.

5. My client states that therefore, your client do not have any locus standi to question my client either in respect of the rent or any rights over the said property. Till date, your client has not furnished any alleged Will or any Court order claiming to have right over the said property and/or its benefits.

6. My client states that he is not aware of the alleged suit and infact my client is not a party to the said suit. You would be aware that pending the alleged suit any claim over the suit property in any way will not arise till the disposal of the said suit and your client has wrongly instructed you to issue the vexatious notice to harass and threaten my client."

7. On perusal of the above reply, there is absolutely no defamatory statement is made by the petitioners, to attract the offence under Section 500 of IPC. That apart, the respondent also filed application in I.A.No.1338 of 2012 in O.S.No.751 of 2007 directing the petitioners to deposit the rent before the said Court in O.S.No.751 of 2007 by impleading the petitioners as parties. Therefore, the present proceedings is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

8. In view of the above discussion, this Criminal Original Petition stands allowed and the proceedings in C.C.No.2991 of 2014 on the file of the learned XXIII Metropolitan Magistrate at Saidapet, Chennai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

rts

To

The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

CRL.O.P.No.5585 of 2020
and CrI.M.P.No.3144 of 2020

CA (CO)
CB (02/11/2020)



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