

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.9612 of 2020 and
Crl.MP.No.4303 of 2020

T.Senthilkumaran

... Petitioner

Vs.

1.State represented by
Inspector of Police,
R-1, Police Station(Mambalam),
No.1, Madley Road,
T Nagar, Chennai,
Tamil Nadu 600017

2.Shanmugapriya

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records pertaining to FIR No.129 of 2020 on the file of the respondent Police, R1 Police Station, Mambalam, Chennai-17 and quash the same.

For Petitioner : Mr.ARL.Sundaresan,
Senior Counsel
For M/s.KNS Law Chambers

For Respondents

For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For R2 : Mr.G.Prabakaran

O R D E R

This petition has been filed to quash the FIR in Cr.No.129 of 2020 registered for the offences under Sections 448, 427 and 506(i) of IPC on the file of the first respondent.

2. Mr.A.R.L.Sundaresan, learned Senior Counsel for the petitioner submitted that on the complaint lodged by the second respondent before the first respondent, detailed enquiry was conducted after issuance of CSR.No.597 of 2019 and closed by the report dated 18.09.2019. Aggrieved by the same, the second respondent filed private complaint before the XVII Metropolitan Magistrate, Saidapet, Chennai in Crl.MP.No.242 of 2020. The

learned Magistrate without conducting any enquiry without stating any reason for satisfaction, mechanically referred the complaint under Section 156(3) of Cr.P.C. to register FIR and for investigation by an order dated 24.01.2020. As directed by the learned Magistrate, the first respondent registered the impugned FIR for the offences under Section 448, 427 and 506(i) of IPC. He further submitted that the second respondent attempted to abuse the process of law by filing the present complaint with the knowledge of the fact that the petitioner and the second respondent already instituted suit for the property dispute between them. In fact, the false complaint has been lodged only for the cause of action to file a suit for injunction as against the petitioner by the second respondent herein. The first respondent after conducting enquiry rightly closed the complaint as civil in nature and directed the parties to approach civil court, and till then not to indulge in any law and order issue by the closure report dated 18.09.2019.

2.1 He further submitted that on going through the entire complaint, there is absolutely no prima facie case made out for the offence under Sections 448, 427 and 506(i) of IPC. The entire allegations are pertaining to the property dispute between the petitioner and the second respondent and there is absolutely no allegation to attract the offence under Sections 448, 427 and 506(i) of IPC as against the petitioner herein. Even assuming that the allegations made in the complaint are proved, the property is a joint family property and the right of the petitioner cannot be taken away. The right of co-sharer to enjoy the joint family property is a civil right. Therefore, such a right if denied by the other co-sharer, for one or other, must be enforced by taking recourse to the remedies available under the civil laws. Therefore, rightly the petitioner as well as the second respondent filed suits in O.S.No.7269 of 2019 and OS.No.8141 of 2019 on the file of the XV Assistant City Civil Court, Chennai, which are pending. In support of his contention, he relied upon the following judgments:

- (i) Rajinder Sing Katoch Vs. Chandigarh Admn and Others
reported in (2007) 10 SCC 69,
- (ii) G.Sagar Surl & Anr. Vs. State of UP & Ors
reported in AIR 2000 SCC 754
- (iii) Veer Prakash Vs. Anil Kumar Agarwal and Another
reported in (2007) 7 SCC 373

3. Per contra, Mr.G.Prabakaran, the learned counsel for the second respondent would submit that the second respondent lodged complaint alleging that the petitioner and the second respondent are brother and sister. The property is situated at No.23, Thanikachalam Road, T.Nagar, Chennai-17 was originally owned by their father. In the year 2002, he settled

the property in favour of the petitioner and the second respondent by the registered settlement deed 21.08.2002 registered for the document No.1269 of 2002 with the Office of the Sub Registrar, T.Nagar, Chennai, thereby retaining his life estate and provided 50% undivided share to each. Though the property was settled in terms of allotting undivided share, as per oral agreement, the ground floor of the premises was shared between the petitioner as well as the second respondent. Both were permitted to run their business. The second respondent is being a divorcee, she is allotted the first floor of the premises along with her aged father. The petitioner opted to reside in the second floor. Accordingly, the petitioner as well as the second respondent are living there and also run their respective business in the premises. While being so, in the year 2017, taking advantage of the destitute marital status of the second respondent, the petitioner started problem with the possession of the second respondent to grab the entire property with ulterior motive by using his muscle power. Thereafter, there was a settlement by mutual negotiation by the elders of the family. The petitioner also tendered apology to the second respondent herein. While being so, their father in the month of July 2019, was hospitalised due to brain stroke. Therefore, he lost his capacity of speaking and even could not able to recognize the people.

3.1 He further submitted that utilising the above said circumstances, in the absence of the second respondent in her premise on 29.08.2019, the petitioner illegally trespassed into the second respondent's portion and also broke down the locks and doors and attempted to take away the belongings of the second respondent herein. Successfully it was prevented by the second respondent. Once again on 09.09.2019, the petitioner trespassed into the premises when no one was present. Therefore, the second respondent was constrained to replace the locks and installed CCTV camera to watch and vigil for her premises. He also repeatedly intimidated the second respondent with dire consequences. She also produced photographs to show that the locks of the doors and windows were broke down. Therefore, the second respondent lodged complaint before the first respondent and on receipt of the same, she was issued CSR No.597 of 2019. Even then, the first respondent did not take action as against the second respondent herein. Therefore, she was constrained to file a suit in O.S.No.7269 of 2019 on the file of the XV Assistant City Civil Court, Chennai for injunction as against the petitioner herein on 23.09.2019. Since no action has been taken on the complaint lodged by the second respondent, she was constrained to file a private complaint before the XVII Metropolitan Magistrate, Saidapet, Chennai in CrI.MP.No.242 of 2020. The learned Magistrate, on perusal of the complaint and other related documents directed the first respondent to

register case for investigation by an order dated 24.01.2020. As directed by the learned Magistrate, the first respondent registered the FIR in Cr.No.129 of 2020 for the offences under Sections 448, 427 and 506(i) of IPC as against the second respondent.

3.2 He further submitted that there are specific allegations to attract the offence under Sections 448, 427 and 506(i) of IPC as against the second respondent herein. He further submitted that this FIR is only a tender child and it cannot be killed on its birth. The first respondent has to investigate to find out the truth and as such it cannot be quashed on its threshold. Therefore, he prayed for dismissal of the quash petition.

4. Mr.S.Karthikeyan, Additional Public Prosecutor appearing for the first respondent submitted that originally the second respondent lodged complaint and she was issued CSR.No.597 of 2019 and after conducting enquiry, it was closed and directed the parties to approach Civil Court. Thereafter, the second respondent lodged private complaint and the same was forwarded under Section 156(3) of Cr.P.C. As directed by the learned Magistrate, the first respondent registered the FIR in Cr.No.129 of 2020 for the offence under Sections 448, 427 and 506(i) of IPC and now the investigation is pending. He further submitted that the complaint discloses specific allegations to attract the offence under Sections 448, 427 and 506(i) of IP C as against the second respondent. He further submitted the civil suit is filed after lodgment of the complaint and as such there is a prima facie case made out by the second respondent to register case as against the petitioner and as such he prayed for dismissal of the quash petition.

5. Heard Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioner, Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent and Mr.G.Prabakaran, learned counsel for the second respondent.

6. Admittedly, the petitioner and the second respondent are brother and sister. The property is situated at door No.23 Thanikachalam Road, T.Nagar, Chennai was owned by their father. He settled the said property in favour of the petitioner as well as the second respondent herein by registered settlement deed dated 21.08.2002 registered as document No.1592 of 2002 with the Office of the Sub Registrar, T.Nagar, Chennai. As per the settlement deed, each was allotted 50% of undivided share. The said property is consisting three floors, in which by oral agreement, the ground floor was divided into two portion and permitted the petitioner as well as the second respondent to run their respective office. Insofar as the first floor is

concerned, the second respondent was allotted to reside there and insofar as the second floor is concerned, it was allotted to the petitioner herein for his residence. While being so, according to the second respondent, on 29.08.2019 at about 6.30 p.m., the petitioner illegally and criminally trespassed into her premises and unilaterally broke open the locks and entered into her premises without her permission and knowledge. Thereafter the second respondent with the assistance of their maintenance manager Mr.Devarajan, repairs have been carried and changed the locks. Again on 09.09.2019 at around 7.30 p.m. the petitioner trespassed into her premises and attempted to grab the entire portion of the second respondent. Therefore, she lodged complaint and she was issued CSR.No.597 of 2019. Thereafter, the first respondent conducted enquiry and closed the complaint for the reason that all the allegations are civil in nature and directed to approach civil court. In the meanwhile, the second respondent filed suit for permanent injunction restraining the petitioner from interfering with her peaceful possession, occupation and enjoyment of the premises, which she occupied as per their oral agreement in O.S.No.7269 of 2019 on the file of the XV Assistant City Civil Court, Chennai. Since the complaint lodged by the second respondent was closed by the first respondent, the second respondent was constrained to file private complaint and the same was forwarded under Section 156(3) of Cr.P.C. to the first respondent. As directed by the learned Magistrate, the first respondent registered FIR in Crime No.129 of 2020 for the offences under Sections 448, 427 and 506(i) of IPC as against the petitioner herein.

7. On perusal of the complaint, there are specific allegations as against the petitioner to attract the offences under Sections 448, 427 and 506(i) of IPC. When the first respondent closed the complaint as civil in nature, the second respondent had no other option except to approach the Magistrate Court by way of private complaint. Therefore, she rightly lodged complaint and on perusal of the allegations made in the complaint, the learned Magistrate directed the first respondent to register FIR for investigation. Therefore, the first respondent rightly registered the case for the offences under Sections 448, 427 and 506(i) of IPC as against the petitioner herein. It is true that the right of the second respondent to live in the joint family property cannot be taken away. The right of co-sharer to enjoy the joint family property is a civil right. Therefore, such a right if denied by the other co-sharer, for one or other, must be enforced by taking recourse to the remedies available under the civil laws. In this regard, the learned Senior Counsel appearing for the petitioner relied upon the judgment in the case of Rajinder Sing Katoch Vs. Chandigarh Admn and Others reported in (2007) 10 SCC 69, wherein the Hon'ble Supreme Court of India has held as follows:

8. Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them gives rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned; the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities had made investigations into the matter. In fact, the Superintendent of Police himself has, pursuant to the directions issued by the High Court, investigated into the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbours. It was found that the complaint made by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house.

9. Ms. Madan contended that the right of the appellant to live in the joint family cannot be taken away. Right of a co-sharer to enjoy the joint family property is a civil right. Such a right, if denied by the other co-sharers for one reason or the other, must be enforced by taking recourse to the remedies available under the civil laws

10. Criminal proceedings, in our opinion, cannot be taken recourse to for enforcing such a civil right. In any event, in a case of this nature where the authorities bound by law have already investigated into the matter and found that the allegations made by the appellant against respondent No.4 were not correct, it would not be proper for us to issue any direction to the respondent Nos. 1 to 3 to lodge a first information report.

11. We are not oblivious to the decision of this Court in Ramesh Kumari v. State (NCT of Delhi) and Ors. MANU/SC/8037/2006 : 2006CriLJ1622 wherein such a statutory duty has been found in the Police Officer. But, as indicated hereinbefore, in an appropriate case, the Police Officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not.

The Hon'ble Supreme Court of India held that the criminal proceedings cannot be taken recourse to for enforcing such a civil right. In the case on hand, in the year 2002, the father of the petitioner as well as the second respondent executed settlement deed dated 21.08.2002 registered vide document No.1592 of 2002, thereby settling 50% of the share in favour of the second respondent and the balance 50% of the share in favour of the petitioner herein. On perusal of the suit filed by the second respondent in O.S.No.7269 of 2019, she annexed documents to prove her possession in the subject property such as Aadhar card, voters ID and bank statement along with the complaint lodged by her. In injunction suit, the above mentioned documents are vital in nature to prove her possession and enjoyment of the property. According to the second respondent, she is residing in the disputed premises from the year 2002 by oral agreement between the petitioner and the second respondent herein. While being so, the petitioner trespassed into her premises and also broke down the locks of the doors and also damaged the windows. Therefore, the second respondent was constrained to file suit for injunction as against the petitioner in O.S.No.7269 of 2019 and it is pending for trial on the file of the XV Assistant City Civil Court, Chennai. Thereafter, the petitioner also filed a suit for injunction as against the second respondent for the very same premises and it is pending in O.S.No.8141 of 2019 on the file of the XV Assistant City Civil Court, Chennai. Therefore, the above judgment relied upon by the learned Senior Counsel appearing for the petitioner is not applicable to the case on hand.

8. Though there is dispute pending between the petitioner and the second respondent in respect of division of their respective shares in the subject premises, both admitted the fact that their father executed registered settlement deed dated 21.08.2002 in favour of them registered vide document No.1592 of 2002 before the Office of the Sub Registrar, T.Nagar, Chennai. Accordingly, the petitioner as well as the second respondent are having 50% undivided share in the premises with the life interest of their father. Further it is seen from the plaint filed by the petitioner in O.S.No.8141 of 2019 in paragraph 5 categorically stated that the plaintiff and the defendant are staying in the same premises situated at No.23, Thanikachalam Road, T.Nagar, Chennai. Therefore, the possession of the second respondent is not disputed by the petitioner herein. While being so, the allegations made in the complaint prima facie made out a case to register FIR as against the petitioner herein.

8.1 It is seen from the First Information Report that there are specific allegations as against the petitioner to

attract the offences, which has to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

8.2 It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in Crl.A.No.255 of 2019 dated 12.02.2019 in the case of Sau. Kamal Shivaji Pokarnekar vs. the State of Maharashtra & ors., as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused persons. The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are

disclosed, there would be no justification for the High Court to interfere.

.....

9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that prima facie, offences that are alleged against the Respondents. The correctness or otherwise of the said allegations has to be decided only in the Trial. At the initial stage of issuance of process it is not open to the Courts to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Criminal complaints cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are prima facie made out in the complaint, the criminal proceeding shall not be interdicted."

9. In view of the above discussion, this Court is not inclined to quash the First Information Report. Accordingly, this Criminal Original Petition stands dismissed. However, considering the facts and circumstances of the case, the first respondent is directed to complete the investigation in Crime No.129 of 2020 and file a final report within a period of twelve weeks from the date of receipt of copy of this Order, before the jurisdiction Magistrate, if not already filed. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

lok

To

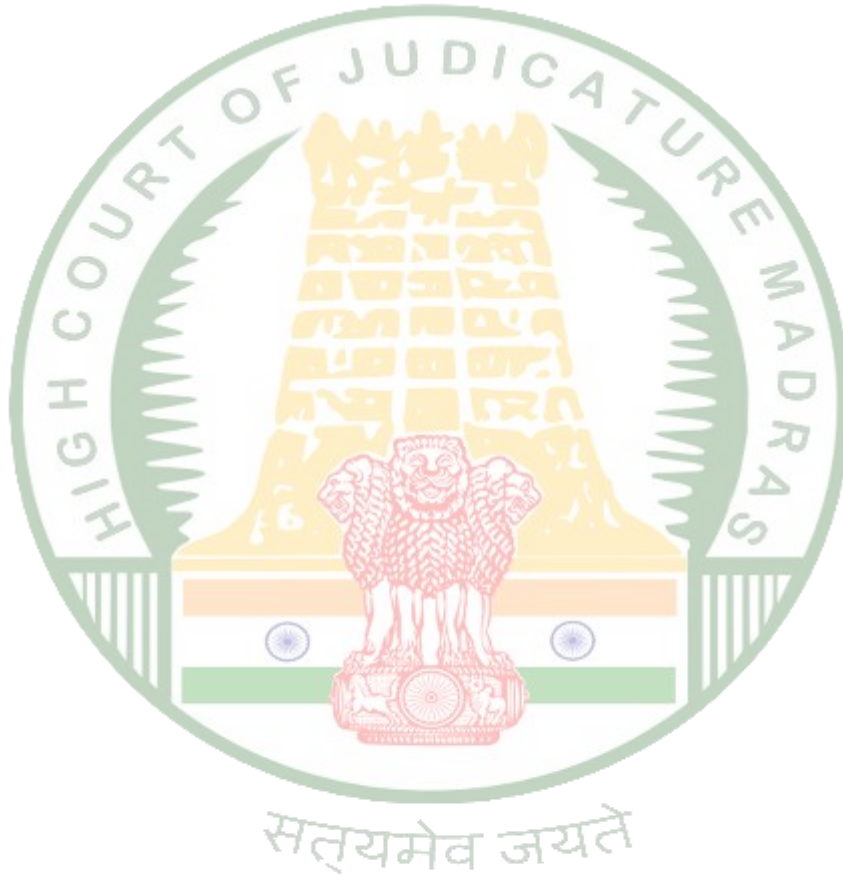
1.The Inspector of Police,
R-1, Police Station (Mambalam),
No.1, Madley Road,
T Nagar, Chennai,
Tamil Nadu 600017

2.The Public Prosecutor,
High Court of Madras

+1 CC to Mr.G.Prabakaran, Advocate sr 34952.

CRL.O.P.No.9612 of 2020

SSI (CO)
SP (07/12/2020)



WEB COPY