

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On : 29.09.2020
Pronounced On : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.15822 of 2017
and
CRL MP.Nos.9535 and 9857 of 2017

1.G.R.Apparaj
2.L.S.R.Sekar
3.Mohamed Ali
4.M.C.Asok
5.Harikrishna

... Petitioners / A1 to A5

Vs.

1.The State Represent by
The Sub-Inspector of Police,
Chintadaripet Police Station,
Triplicane, Chennai

... 1st Respondent /
Complainant

(Crime No.692 of 2017),

2.S.Mahadevan

... 2nd Respondent /
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in Crime No.692 of 2017, on the file of the respondent Police and quash the same.

For Petitioners : Mr.R.Thirumurthy
For R1 : Mr.C.Iyyapparaj
Addl.Public Prosecutor
For R2 : Mr.B.A.Prakash

ORDER

This Criminal Original Petition has been filed praying to quash the proceedings in Crime No.692 of 2017, on the file of the respondent Police.

2. The brief facts of the case are as follows:-

(i) J.M.H.I fish market, Chindatharipet, originally belongs to one C.R.Balusamy Iyyar. The land and building area of the said fish market has as an extent of 9077 Sq.ft. The original owner viz., Balusamy Iyyar mortgaged the property in a Nationalized Bank, 27 years back. Subsequently, there was default in paying the loan amount. The Bank instituted recovery proceedings before the Deputy Recovery Tribunal(DRT). In the meanwhile, the original land owner approached one J.M.Haroon, Ex.M.P., who purchased the property, which was registered as sale document No.1235/2017, before the Periyamedu S.R.O., on 03.05.2017.

(ii) After purchasing the property, the owners summoned the fishermen for peace talk to determine the rent wherein some of the fishermen signed the agreement. Thereafter, the 1st petitioner issued life threat against the said J.M.Haroon and his son. Moreover, the 1st petitioner and his henchmen collected rents illegally from the fishermen and also attempted to restrain the rightful owner from entering into the fish market. On 28.04.2017, the first accused renege his version, gathered all accused along with unruly mob, held demonstration and agitation against the defacto complainant Management, vilify the name of J.M.Haroon, Ex.M.P., threatened him as well as his family members.

(iii) Subsequently, the accused continued daily collection with the help of henchmen, added fuel by promoting communal animosity between Hindu-Muslim, in order to create riot and Law & Order problem. Therefore, on 01.05.2017, one Imran Khan gave a complaint before the Inspector of Police. Since the police has not taken any effective steps, a petition under Section 156(3) Cr.P.C., has been filed before the XIV Metropolitan Magistrate Court, Egmore, Chennai and consequent to the order issued by the learned Magistrate, the 1st respondent police registered a case against the petitioners.

3. Mr.R.Thirumurthy, the learned counsel appearing for the petitioners would submit that the complainant is working as Manager in J.M.Haroon Company, he filed a complaint under Section 156(3) of Cr.P.C., before the Hon'ble XIV Metropolitan Magistrate, who in turn, forwarded the same to the 1st respondent police. The 1st respondent registered FIR in Crime No.692 of 2017, for offences under Sections 143, 341, 294(b), 506(1) and 417 of IPC.

4. It was further contended by the learned counsel for the petitioners that there are 19 wholesalers, 200 retailers and 10,000 fishermen depend on this fish market, for their daily livelihood. The 1st petitioner – G.R.Apparaj is the President of 'Chintardripet Fish and Perishables Merchants' Association'. (in short 'the Association'). In 1990, the Association made agreement for the property with the original owner, paid Rs.90,000/-, as advance. Though the original owner of the fish market promised to sell the property to the Association, he sold the market to the former Congress MP J M Haroon Rashid, contrary to the agreement. The price quoted for the market was Rs 5.4 crore and the Association paid an Advance of Rs.25,00,000/-. The sale deed between the original owner C.R.Balusamy Iyyar group and J.M.Haroon group in Doc.No.1235/2017 is a questionable one. The payment particulars shown in the document are doubtful.

5. It is his further submission that the said J.M.Haroon, his son J.M.H.Imrankhan, and 200 others entered into the fish market with deadly weapons and threatened the petitioner association with dire consequences, further fixed an advance of Rs.2,00,000/- per shop, increased the rent to Rs.25,000/- per month, putting pressure on the businessmen to leave the place. Therefore, the 1st petitioner, as the President of the Association, made a complaint on 26.04.2017, to the Sub-Inspector of Police, Chintadaripet, which was assigned with CSR.No.153 of 2017.

6. Continuing further, the learned counsel for the petitioners would submit that the original owner sold the property to J M Haroon Rashid, Ex.M.P. Contrary to the understanding and agreement, since there was breach of agreement, the Association filed a Suit against the original owner of the property, which is still pending. Since this is a traditional fish market, which has been around more than 200 years, it is an issue of livelihood, rather than the property dispute. Further, the complainant, who is the Manager of J.M.H.I.Fish Market, the property, purchased by the former Congress M.P., J.M.Haroon, filed the present false and concocted case against the petitioners and the same was registered. Hence, the learned counsel prays for quashing of

the FIR.

7. Mr.B.A.Prakash, the learned counsel appearing for the 2nd respondent - defacto complainant would submit that J.M.H.I fish market, originally belongs to one C.R.Balusamy Iyyar. The original owner viz., Balusamy Iyyar mortgaged the property, there was default in paying the loan amount, the Bank instituted recovery proceedings in the Deputy Recovery Tribunal(DRT). Subsequently, the original land owner approached the said J.M.Haroon, Ex.M.P., who purchased the property, which was registered on a valid sale consideration through Sale Document No.1235/2017, before the Periyamedu S.R.O., on 03.05.2017.

8. Adding further, the learned counsel for the 2nd respondent submitted that even after purchase of the property, the 1st petitioner and his henchmen collected the rents illegally from the fishermen, attempted to restrain the rightful owner from entering into the fish market. Further, the accused to divert the issue, promoted communal animosity between Hindu-Muslim, in order to create riot and Law & Order problem. Therefore, on 01.05.2017, the said Imran Khan gave a complaint before the Inspector of Police. Since the

police failed to take steps to register a case against the accused persons, a petition under Section 156(3) Cr.P.C., has been filed before the XIV Metropolitan Magistrate Court, Egmore, Chennai, who in turn, forwarded the same to the 1st respondent police, which was registered in Crime No.692 of 2017 against the accused persons. Therefore, prayed for dismissal of the petition.

9. The learned Additional Public Prosecutor appearing for the State would submit that the complainant filed the complaint under Section 156(3) of Cr.P.C., before the Hon'ble XIV Metropolitan Magistrate, who in turn, forwarded the same to the 1st respondent police pursuant to which, the FIR in Crime No.692 of 2017, registered for the offences under Sections 143, 341, 294(b), 506(1) and 417 of IPC. The matter is under investigation. This petition is filed to quash the said FIR. The allegations in the First Information Report *prima facie* constitute the offence. The FIR can be quashed only if the allegations in the FIR do not constitute the offence. Therefore, the learned Additional Public Prosecutor prayed for dismissal of the petition.

10. I have heard the learned counsels appearing on either side and perused the materials available on record.

11. The admitted facts are that J.M.H.I fish market, Chindatharipet, originally belongs to one C.R.Balusamy Iyyar. The original owner viz., Balusamy Iyyar mortgaged the property in a Nationalized Bank, 27 years back, there was default in paying the loan amount, Bank instituted recovery proceedings, the original owner of the property approached one J.M.Haroon, Ex.M.P., who purchased the property, which was registered as sale document No.1235/2017, before the Periyamedu S.R.O., on 03.05.2017. The 1st petitioner – G.R.Apparaj is the President of 'Chintardripet Fish and Perishables Merchants' Association', who entered into an agreement with the original owner of the property for sale, paid Rs.90,000/-, as advance. Though the original owner of the fish market promised to sell the property to the Association, later has been sold to the said J M Haroon Rashid, Ex.M.P., contrary to the agreement. The Sale itself is questioned, further there are Civil Suits pending between them. Be that as it may.

12. The law is well-settled that the jurisdiction to quash a complaint, F.I.R. or a charge-sheet should be exercised sparingly and only in exceptional cases and Courts should not ordinarily interfere with the investigations of cognizable offences. However, the law is equally settled that where the allegations made in the F.I.R. or the complaint even if 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, the F.I.R. or complaint may be quashed in exercise of inherent powers under Section 482 of the Cr.P.C.

13. A scrutiny of the F.I.R. in question clearly shows that this F.I.R. has been lodged by 2nd respondent only with a view to harass, pressurise and intimidate the petitioners knowing fully well that the dispute is with regard to ownership and occupation of the Market, which is in existence for more than 100 years, which is a known fact and further civil suits are pending. No doubt, the original land owner approached the said J.M.Haroon, Ex.M.P., who purchased the property, which was registered as sale document No.1235/2017, before the Periyamedu S.R.O., on 03.05.2017. It is to be noted that prior to that, in the year 1990, there was an agreement between the petitioner Association and the original owner in respect of selling of the property and

Advance of Rs.25,00,000/- was also paid. Contrary to the agreement, the original owner sold the property in dispute to the J.M.Haroon, Ex.M.P. And a civil Suit is also pending to that effect.

14. This dispute, therefore, is a dispute over ownership, possession and collection of rent, which is a civil right to be established and proved in a civil court. The dispute is already before a civil Court and a suit is also filed by the petitioner association. Therefore, in the considered opinion of this Court, the very registration of the First Information Report itself is without taking into account these facts. Further the petitioner Association, is till date continuing their Trade in the Market. In view of the same, this Court has no hesitation in concluding that the complaint filed by 2nd respondent against the petitioner, on the basis of which the F.I.R. in question has been registered is an abuse of the process of law, with a view to pressurise and intimidate the petitioner. From the complaint it is seen that the petitioners are traders carrying on their business for decades, knowing the same 2nd respondent had purchased the property without physical possession, at the most symbolic possession following the due process of Law their right of ownership and possession has to be secured. The dispute is with regard to the possession and right over

collection of rent, which can be established and secured only through the Civil Court. In view of the same, petitioners cannot be now termed as offenders and their right of trade cannot be permitted to be jeopardised and threatened in this manner.

15. In fine, this Criminal Original Petition stands allowed and the proceedings in Crime No.692 of 2017, on the file of the respondent Police and any other proceedings pursuant to the Crime No.692 of 2017 is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

08.06.2021

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
MPK/ah

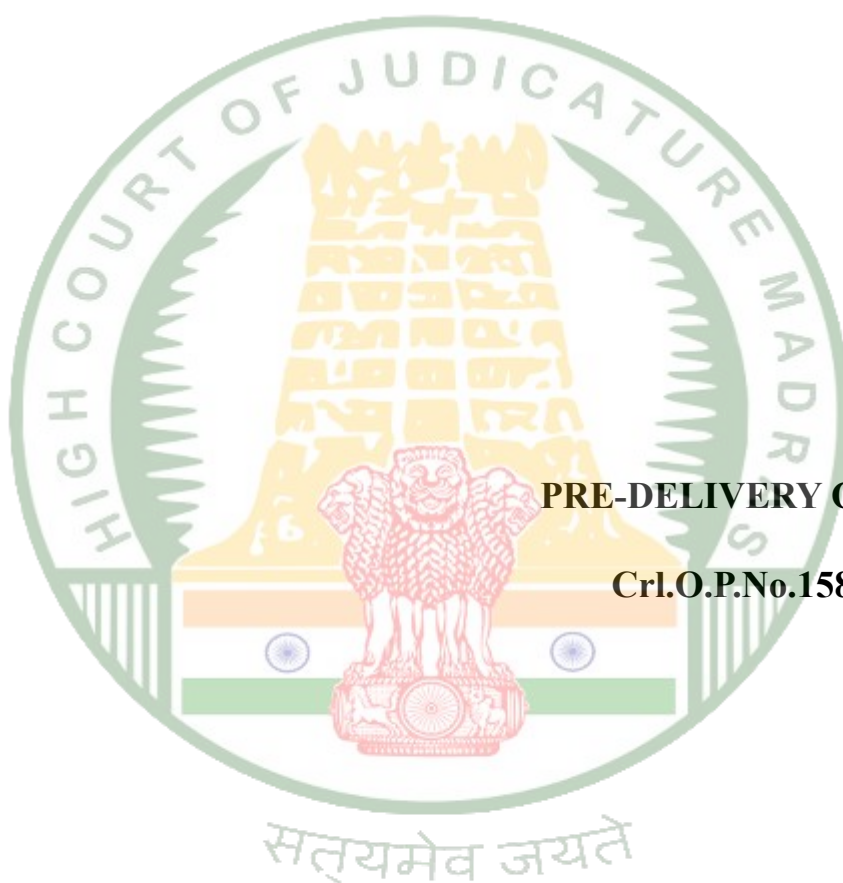
To

1.The Sub-Inspector of Police,
Chintadaripet Police Station,
Triplicane, Chennai

2.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

MPK/ah



PRE-DELIVERY ORDER IN

Crl.O.P.No.15822 of 2017

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