



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.07.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

CrI.O.P.(MD)No.7636 of 2020

and

CrI.M.P.(MD)Nos.3666 and 3667 of 2020

WEB COPY

1.P.Perumalsamy

2.Kumaresan, S/o.P.Perumalsamy

... Petitioners 1 & 2 /

Accused 1 & 2

Vs.

1.The Inspector of Police,
Kannivadi Police Station,
Dindigul District.

(Crime No.120 of 2017)

... Respondent / Complainant

2.Arumugam,
S/o.Vanchiyappa Gounder

... Respondent/ Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.564 of 2018, for the offences under Sections 323, 447, 427, 294(b) and 506(i) of I.P.C., pending before the Judicial Magistrate Court No.II, Dindigul West and quash the same as illegal as against the petitioners alone.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.564 of 2018, for the offences punishable under Sections 323, 447, 427, 294(b) and 506(i) of I.P.C., pending on the file of the Judicial Magistrate Court No.II, Dindigul, as illegal, insofar as the present petitioners are concerned.

2.The case of the prosecution is that, the second respondent/de-facto complainant gave a complaint before the first respondent police by alleging that the petitioners had trespassed into the land belongs to him in S.No.687/3, measuring an extent of 40 cents, situated at Achampatti Village, Kannivadi. On 06.06.2017, when the second respondent/de-facto complainant was doing cultivation in his land, the petitioners claimed that a portion of the said land belongs to common pathway, which resulted in hard conversation between them and due to which, the petitioners assaulted the second respondent/de-facto complainant and had also damaged the fencing and boundary stones belonging to the second respondent/de-facto complainant.



3.The learned counsel appearing for the petitioners contended that the prosecution case is entirely false and the petitioners did not commit any offence as alleged by the second respondent/de-facto complainant. According to the petitioners, no trespass as alleged by the second respondent/de-facto complainant has been made out, since the land in dispute belongs to the petitioners from the year 2000 based on the Judgment dated 18.08.2000, made in A.S.No.184 of 1999, against which, S.A.No.2119 of 2001 has been filed before this Court and the same was dismissed for default on 22.03.2017 and therefore, the judgment rendered in A.S.No.184 of 1999 has become final.

4.The learned counsel appearing for the petitioners submitted that since the petitioners and the second respondent/de-facto complainant are having civil dispute in respect of the property, in which, the alleged occurrence had happened, the above mentioned case has been foisted against the petitioners with an illegal motive and thereby, the pending criminal proceedings against the petitioners would be abuse of process of law.

5.In support of his submission, the learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Apex Court in **Paramjeet Batra Vs. State of Uttarkhand and others** reported in **2013 (11) SCC 673** and submitted that, a complaint disclosing civil transactions may also have a criminal texture. But, the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the Court. Hence, interference of this Court under Section 482 of Cr.P.C. is necessary.

6.The learned Additional Public Prosecutor appearing for the respondents submitted that on 06.06.2017, when the second respondent/de-facto complainant was doing cultivation in his land, the petitioners claimed that a portion of the said land belongs to common pathway, which resulted in hard conversation between them and due to which, the petitioners assaulted the second respondent/de-facto complainant and also damaged the fencing and boundary stones belonging to him. He further submitted that the correctness or otherwise of the said allegations has to be decided only in the Trial and therefore, prayed for dismissal of the Criminal Original Petition.

7.Upon perusal of the charge sheet filed by the first respondent police, it disclose the fact that the statement recorded from the witnesses are all in favour of the charges now faced by the petitioners.



8.In general, in a proceeding for quashing, where some substance in allegations and material exist to substantiate the complicity of the accused, the case should be examined in its full conspectus and proceedings should not be quashed only on the ground that the same was initiated with *mala fides* to wreak vengeance or to achieve an ulterior goal.

9.In this context, it is relevant to refer a judgment of the Hon'ble Apex Court in **Sau. Kamal Shivaji Pokarnekar vs. The State Of Maharashtra and others** [CrI.A.No.255 of 2019, dated 12.02.2019], wherein it has been held as follows:-

'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.'

10.Applying the principles set out by the Hon'ble Apex Court in this case and on going through the complaint given by the second respondent/de-facto complainant, which makes it very clear that during the time of occurrence, the petitioners and others damaged the property worth about Rs.20,000/- and also considering the fact that the ownership of the said stone pillars and other things are in dispute, the same have to be identified only at the time of trial. In otherwise, it cannot be said that the civil liability was converted as criminal liability. In the charge sheet, it was alleged that the damaged properties are in the possession of the second respondent/de-facto complainant.

11.In the light of the above discussion, the petition filed by the petitioners, is devoid of merits and therefore, the same is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



smn2

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.II,
Dindigul.
- 2.The Inspector of Police,
Kannivadi Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SMA/06/08/2020/4P/4C