



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.03.2020

CORAM:

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD) No.5888 of 2018

and

Crl.M.P. (MD) Nos.2814 and 2815 of 2018

- 1.Esakkiyapandian
- 2.Gopal Nadar
- 3.Tharmaraj
- 4.Ponaiah Nadar
- 5.Murugesan

... Petitioners / Accused 1 to 5

-vs-

- 1.The State of Tamilnadu
represented by the Deputy Superintendent of Police,
Valliyoor,
Tirunelveli District.

- 2.The Inspector of Police,
Thisaiyanvilai Police Station,
Tirunelveli District.

... Respondents / Complainant

- 3.Saraswathy (died)

- 4.Chelladurai
(R4 impleaded as per order of this Court
dated 12.12.2019) ... Respondents / Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records relating to the case in P.R.C.No.55 of 2015 on the file of the District Munsif cum Judicial Magistrate, Nanguneri in Crime No.161 of 2008 on the file of the second respondent and quash the same.

For Petitioner : Mr.R.Balakrishnan

For R1 and R2 : Mr.A.Robinson
Government Advocate (Crl.side)

For R4 : Mr.S.Sivaprakash



ORDER

1. The petitioners are shown as accused in P.R.C.No.55 of 2015 on the file of the learned Judicial Magistrate, Nanguneri. The defacto complainant in this case is one Saraswathi. She has since passed away and her son Chelladurai has come on record in her place.

2. The case of the prosecution is that the house property comprised in S.No.49/2B, Thisayanvilai Village, belonged to Arumuga Nainar and that the said property was mortgaged in favour of A1 Esakkiapandian. When the defacto complainant wanted to redeem the same, the first accused refused to accede to the said request by contending that he had already purchased the property. A1 Esakkiapandian filed R.C.O.P.No.2 of 1999 before the Rent Controller, Valliyoor and obtained an eviction order in his favour. He also filed Crime No.223 of 2003 against the defacto complainant and others and got them arrested and remanded. Taking advantage of their absence A1 trespassed into the house and demolished the same and took away the materials worth Rs.1½ Lakhs. Whenever, the defacto complainant demanded return of her property, A1 used to abuse her by referring to her community. In the year 2006, A1 Esakkiyapandian executed a power of attorney in favour of one Duraipandian who sold the property to the other accused who demolished the house on 31.08.2007. In this regard, Saraswathi, w/o. Arumuga Nainar lodged a complaint before the Thisayanvilai Police Station leading to registration of Crime No.161 of 2009. Since Saraswathi belongs to Schedule Caste community, the case was taken over for investigation by the Deputy Superintendent of police, Valliyoor.

3. The matter was investigated and final report was filed against the petitioners herein in P.R.C.No.55 of 2015 before the learned District Munsif cum Judicial Magistrate, Nanguneri. Cognizance of the offence under Section 448, 379, 380(N.H) and 506 (ii) of IPC read with 3(1)(x), 3(1)(iv), 3(1)(v), 3(1)(viii), 3(1)(ix), 3(1)(xi), 3(1)(xv), 3(2)(vii) of SC/ST Act 1989 was taken. When the case was pending at the stage of committal, this Criminal Original petition came to be filed for quashing the proceedings.

4. The learned counsel for the petitioners reiterated the contentions set out in the memorandum of grounds and wanted this Court to quash the impugned proceedings.

5. Per contra, the learned Government Advocate as well as the counsel for the private respondent submitted that the case involves theft of goods and materials and demolition of the residential property. Therefore, the inherent powers of this Court ought not to be exercised.



6. The learned counsel for the respondents also contended that this is a case involving perpetration of atrocity on a Schedule Caste member and that this Court should be too slow to quash the impugned proceedings. They would also contend that appreciating the contentions of the learned counsel for the petitioner would involve going into factual aspects, which would be the function of the trial Court. They wanted this Court to relegate the petitioners to move the trial Court to establish their innocence.

7. I carefully heard the rival contentions and went through the materials on record.

8. It is not in dispute that the property in question was sold by Arumuga Nainar in favour of Esakkiyapandian on 30.04.1996 through a registered sale deed. In fact, the final report filed by the prosecution categorically refers to this. It is again not in dispute that A1 Esakkiyapandian filed R.C.O.P.No.2 of 1999 before the Rent Controller, Vallioor against Chelladurai. It is again not in dispute that an eviction order was passed on 22.09.2000. It is true that Chelladurai was called absent and set ex parte and thereafter an eviction order was passed. But while going through the eviction order, one can note that an advocate by name S.A.Kadhar, had represented the private respondent herein.

9. Thus, it is beyond dispute that the defacto complainant herein had suffered an eviction order. In order to enforce the eviction order, A1 Esakkiyapandian filed E.P.No.10 of 2001. The case was taken up for enquiry and finally the property was delivered on 01.08.2002. The senior bailiff had made an endorsement that vacant possession of the property was handed over to A1 Esakkiyapandian, since the respondent had already removed their goods. These are judicial proceedings.

10. The private respondent herein had not challenged the same in the manner known to law. Since he is a party to those eviction proceedings, the findings set out in those proceedings are very much binding on the fourth respondent. Even according to the defacto complainant, the First Information Report registered against them was only in the year 2003. That is well after the delivery order was already passed and recorded. The defacto complainant would claim that A1 trespassed into the property sometime in the year 2003 after implicating them in false case in Crime No.223 of 2003. But then, the case on hand was registered only in the year 2008. Thus, there is a gap of more than five years between the alleged act of trespass and demolition and lodging of the criminal case.



11. The first petitioner had later sold the property in favour of the second petitioner who in turn had sold the property to petitioners 3 to 5. When the father of the private respondent herein through a registered sale deed sold the property to the first petitioner, when the private respondent himself suffered an eviction order at the instance of the Rent Controller and when the Executing Court had effected and recorded delivery of the property way back in the year 2002, I fail to understand as to how the defacto complainant can be heard to complain that she was unlawfully dispossessed.

12. As already pointed out, there is a gap of five years between the alleged cause of action and the actual lodging of criminal case. I am satisfied that the impugned prosecution had been set in motion by the defacto complainant only to wreak vengeance on the petitioners herein. The private respondent having lost conclusively in the civil proceedings, cannot salvage the situation by setting criminal law in motion. The entire proceedings attended by malafides. The continuance of the proceedings would amount to abuse of legal process.

13. Accordingly, the impugned proceedings in P.R.C.No.55 of 2015 on the file of the District Munsif cum Judicial Magistrate, Nanguneri stand quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

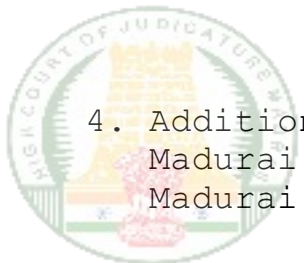
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/ /2020

Sub Assistant Registrar(CS)

To

1. The District Munsif-Cum-Judicial Magistrate,
Nanguneri.
2. The Deputy Superintendent of Police,
Valliyoor,
Tirunelveli District.
3. The Inspector of Police,
Thisaiyanvilai Police Station,
Tirunelveli District.



4. Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.BALAKRISHNAN, Advocate (SR-10898[F] dated
10/03/2020)

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