



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation : 02.03.2020
Date of Pronouncement : 10.03.2020

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THE HONOURABLE MR. JUSTICE C.SARAVANAN

CRL.O.P (MD) No.4390 of 2017
and
Crl.M.P. (MD) Nos.3142 and 3143 of 2017

1.Karuppasamy
2.Anbalagan

... Petitioners

Vs

Kallangkondan

... Respondent

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records in connection with C.C.No.228 of 2015 on the file of the Judicial Magistrate, Sankarankovil, Tirunleveli District and quash the same as devoid of merits as against these petitioners.

For Petitioners : Mr.S.Palani Velayutham
For Respondent : Mr.M.Ramu

O R D E R

This petition has been filed by the petitioner to quash the charge sheet in C.C.No.228 of 2015 on the file of the Judicial Magistrate, Sankarankovil, Tirunleveli District and quash the same as devoid of merits as against these petitioners. In the impugned order, the learned Judicial Magistrate, Sankarankovil has concluded that the petitioners herein had used filthy language and assaulted the respondent and thus, being satisfied that prima facie case made out in the complaint, the same was taken on file in C.C.No.228 of 2015 for the offence under Sections 166, 177, 450, 417, 324, 294(b) and 506(2) IPC and summons were directed to be issued to the petitioners and posted the case on 10.09.2015.

2.The case of the petitioners is that the 1st petitioner borrowed a sum of Rs.1,00,000/- (Rupees one lakh only) from the respondent and had executed certain documents. However, misusing the same, the respondent tried to exercise the rights as that of his own land. In such circumstances, the 1st petitioner filed a complaint before the Inspector of Police, Karivalamvanthanallur, Tirunelveli District on 29.01.2015. On the basis of the said



complaint, FIR in crime No.24 of 2015 has been registered against the respondent for the offence under Sections 341, 294(b), 506(i), 499 and 500 IPC.

3.The respondent, thereafter, filed a private complaint under Section 156(3) Cr.P.C. before the learned Judicial Magistrate, Sankarankovil, which was taken on file in C.C.No.228 of 2015, which is under challenged in this criminal original petition. It also appears that the 1st petitioner has filed a suit in O.S.No.174 of 2015 before the learned Principal District Munsif, Sankarankovil for the relief of declaration and permanent injunction against the respondent.

4.The main point raised by the petitioner before this Court in the present proceedings is that there is no case made out as against the petitioners. In fact, initially the petitioners had filed the complaint on 29.01.2015 against the respondent, which was registered in crime No.24 of 2015 on 29.01.2015 and it is thereafter, after an afterthought, the respondent filed a complaint dated 18.02.2015 to make it as the petitioner had assaulted and intimidated the respondent in C.C.No.228 of 2015.

5.The second petitioner, who is the son of the first petitioner is an employee of CISF and that an order dated 06.01.2015 was part of the escort service at Chief Office Store II, Avadi along with 4 others. The order was issued by the Commandant, TSP VIII Battalion, New Delhi and that the 2nd petitioner was serving in 'D' Company as P.C.No.2472, when the alleged offence is said to have been committed

6.There is a private dispute between the parties and that the respondent has also filed a written statement before the Principal District Munsif, Sankarankovil in O.S.No.174 of 2015.

7.The learned counsel appearing for the respondent submitted that alibi is not a valid ground for quashing the criminal complaint and therefore, the present petition under Section 482 Cr.P.C. cannot be maintainable. In this connection, reference was made to the decision of the Hon'ble Supreme Court in **Amanullah and Ors. V. State of Bihar and Ors - (2016) 6 SCC 699**. He further submitted that in the above said case, the Hon'ble Supreme Court has held that a criminal complaint cannot be quashed, where the offence needs to be proved and the criminal proceedings cannot be scuttled under Section 482 Cr.P.C.

8.I have considered the submission made by the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent and perused the materials available on records.



9.The Judicial Magistrate, Sankarankovil, Thirunelveli District has taken the complaint on record, after considering the deposition of PW2 to PW5. Based on the records submitted before the Court, it has concluded that the petitioners have furnished false information, cheated by creating documents, used filthy language against the respondent and assaulted the respondent and criminally intimidated and threatened the respondent and that the Sub Inspector of Police, Karivalamvanthanallur Police Station, namely, Subbiah, 5th respondent therein, who is a public servant has disobeyed law with an intent to cause injury.

10.On the basis of the above observation, the learned Judicial Magistrate, Sankarankovil, Tirunelveli District has concluded that he is satisfied the ground for presuming that the petitioners would have committed offence and therefore, the case be taken on the file under Sections 166, 177, 415, 417, 324, 294(b) & 506(ii) of IPC.

11.I have perused the documents filed by the 1st petitioner which includes the suit filed by him against his uncle Muthusamy Nadar in the year 2004 before the Principal District Munsif Court, Sankarankovil. I have also perused the copy of the FIR dated 29.01.2015 lodged by the 1st petitioner against the respondent and a copy of the private complaint filed by the respondent on 18.02.2015 and copy of the plaint filed by the 1st petitioner against the respondent in O.S.No.174 of 2015 and copy of the order passed by the Judicial Magistrate Court, Sankarankovil on 12.08.2015.

12.From the narration of above facts and perusal of the documents, it is noticed that the 1st petitioner claims that he is owner of the property while the respondent claims that it was mortgaged to the respondent by the 1st petitioner and his brothers and that for the last 27 years, the respondent was possessing it and was in peaceful enjoyment of the property. It is the case of the respondent that since the patta has not been transferred and no sale deed has been registered in favour of the respondent, the petitioners threatened the respondent and demanded a sum of Rs.2,00,000/-.

13.On the other hand, it is the case of the petitioners that the respondent had created false documents and he had mischievously pasted notices in the village to insult the petitioners and their family members stating that if anything happens to him, the 1st petitioner was liable. On 29.01.2015, the 1st petitioner along with his brothers went to the respondent's house to sort out the issue, where, since the respondent has threatened, 1st petitioner's brothers advised the 1st petitioner to



approach the police station. According to the petitioners, the 1st petitioner filed a complaint before the police which resulted in an FIR being registered on 29.01.2015.

14.It is the contention of the respondent in his private complaint that the Sub Inspector of Police, Karivalamvanthanallur Police Station, namely, Subbiah, had collected the documents from the respondent and threatened the respondent to vacate the disputed the property and refused to return the documents.

15.From the narration of facts, it is evident that there is a civil dispute as to the ownership over the property. On the one hand, the respondent claims that there was a valid mortgage and subsequent oral sale agreement in his favour. It is the case of the petitioners that the respondent has created the false documents and abused the petitioner when he and his brothers went to sort out the issue with the respondent.

16.From the facts and circumstances of this case, it is evident that the petitioners may have approached the Subbiah, Sub Inspector of Police, who perhaps went beyond his calling by threatening the respondent. If it is the case of the respondent that the said Subbiah, Sub Inspector of Police the 5th respondent in C.C.No.228 of 2015 had abused the respondent and taken away the documents, it is for him to initiate appropriate action against the said Subbiah in accordance with law. Since the dispute appears to be private dispute between the petitioners and the respondent, I am of the view that there is no case made out against the petitioners. Further rival suits filed by the both parties are pending.

17.In the light of the above discussion, I am inclined to quash the impugned C.C. by allowing this criminal original petition. Accordingly, C.C.No.228 of 2015 on the file of the Judicial Magistrate, Sankarankovil, Tirunleveli District is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)



To

The Judicial Magistrate,
Sankarankovil.

+1 CC to M/s.S.PALANIVELAYUTHAM, Advocate (SR-10962[F] dated
11/03/2020)

Order made in
CRL.O.P (MD) No.4390 of 2017
and
CrI.M.P. (MD) Nos.3142 and 3143 of 2017
10.03.2020

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AE (17.03.2020) 5P 3C