



WEB COPY

CrI.O.P(MD)No.5379 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.01.2020

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.O.P(MD)No.5379 of 2017

and

CrI.M.P(MD)No.3797 and 3798 of 2017

Arul @ Aruldoss

... Petitioner/Accused No.1

Vs

1.State of Tamil Nadu

represented by

The Inspector of Police,

Thuckalay Police Station,

Kanyakumari District.

... 1st Respondent/ Complainant

2.Ponmuthu

... 2nd Respondent /defacto Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to C.C.No.176 of 2017 on the file of the Judicial Magistrate, Padmanabapuram, Kanyakumari District and quash the same as illegal as against the petitioner/accused No.1.

For Petitioner : Mr.G.Aravinthan

For Respondent : Mr.K.K.Ramakrishnan

No.1

Additional Public Prosecutor

For Respondent : Mr.M.Saravanan

No.2

ORDER

This petition is filed by accused No.1 in C.C.No.176 of 2017 on the file of the learned Judicial Magistrate, Padmanabapuram, Kanyakumari District to quash the proceedings pending against him.

2.The second respondent / defacto complainant lodged a complaint against the petitioner and others before the Thuckalay Police Station on 03.10.2015 that the petitioner along with two others have cut the trees from his property and also taken away the trees from his land. This was informed to the complainant by his son-in-law and based on that information the complainant went to the place of occurrence. The accused abused him, caught hold of him, assaulted and also criminally intimidated him. It is the further case of the complainant that they have also snatched away a sum of Rs.5,000/- from his pocket. Based on this complaint, the first respondent Police registered a case against this petitioner and others in Crime No.872 of 2015 for the offence under Sections 342, 294(b), 323, 506 (ii) IPC and under Section 379 (NP) of IPC.

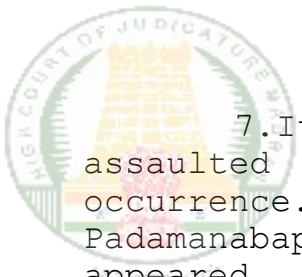


3. In conclusion of the investigation, the first respondent Police has also filed a final report as against this petitioner and the same was taken on file by the learned Judicial Magistrate in C.C.No.176 of 2017. While taking cognizance of the final report, the learned Judicial Magistrate has also suo motu taken cognizance as against two other accused and issued summons to them. As against the cognizance taken by the learned Judicial Magistrate, the present criminal original petition has been filed by petitioner/accused No.1

4. The defacto complainant is none other than the father-in-law of the brother of the petitioner. The petitioner's father one Kannayyan is having three sons and one daughter. Kannayyan was having property of five cents at Padmanabapuram and he settled the property in favour of his daughter one Amala Bai on 14.08.2007. Amala Bai is a spinster and after some time as she was not able to maintain the property, she settled the property in favour of the petitioner and to her brother one David on 22.02.2013. After the settlement made by Amala Bai, Kannayyan cancelled the settlement deed dated 14.08.2007, on 26.06.2013. Therefore, the petitioner filed a suit for declaration and sought for a permanent injunction against his father Kannayan and this second respondent / defacto complainant in O.S.No.189 of 2013 before the learned Sub Judge, Padmanabapuram and also obtained an order of interim injunction on 02.01.2014.

5. On 17.09.2015 the petitioner along with two others cut a jack fruit tree and three rubber trees from the said land and for which a complaint was lodged before the respondent Police and therefore, those cut trees were not removed from the place of occurrence. On 26.09.2015, the petitioner along with two others attempted to take away those cut trees from the land and on coming to know the same through his son-in-law, the respondent/defacto complainant went to the place of occurrence on 26.09.2015 at about 8.45 am and at that time the petitioner and others abused him with filthy words, assaulted him and also criminally intimidated him. They have also said to have snatched away a sum of Rs.5,000/- from his pocket.

6. In support of this petition, the learned Counsel for the petitioner submitted that the respondent/defacto complainant has nothing to do with the property in Survey No.399/5E. Moreover, even according to them, the occurrence is said to have taken place on 26.09.2015 when the petitioner was armed with an order of interim injunction granted by the learned Sub Court, Padmanabapuram on 02.01.2014. The respondent/defacto complainant, who is no way connected with the property, has lodged a complaint, as if the petitioner trespassed into his land and cut trees from his land.



7.It is also the case of the complainant that he was assaulted by the petitioner and others on the date of the occurrence. The Accident Register issued by the Government Doctor at Padamanabapuram would reveal that there was no injury obviously appeared. However, by obtaining a certificate from a private hospital, this complaint has been foisted to coerce the petitioner in order to get the land in their favour. Apparently, the complaint is filed with an ulterior motive, to wreak vengeance and with a malicious intention to grab the property and therefore, this complaint is liable to be quashed.

8.Per contra, the learned Counsel for the respondent/complainant submits that the son-in-law of the respondent/complainant has filed a partition suit before the Sub Court, Padmanabapuram in O.S.No.14 of 2017. That apart, the said Kannayyan, owner of the property has settled the property in favour of the complainant's son-in-law, Samraj by a registered deed on 05.03.2013. Therefore, according to him, the son-in-law of the respondent/complainant is having right over the disputed property and to defeat his right over the property, the accused along with others attempted to take away the trees from the land and this respondent bonafidely attempted to prevent the theft from the place of occurrence, at that time, he was assaulted and it is only a matter for evidence and it cannot be quashed in limine.

9.This Court paid its anxious consideration to the rival submission made and also perused the available records.

10.Admittedly, the property belongs to one Kannayyan, the father of the petitioner. Kannayyan gave his property by way of settlement to his daughter Amala Bai on 14.08.2007. Amala Bai is a spinster and therefore, she could not maintain the property and she in turn, settled the property in favour of her brothers, the petitioner and one David on 22.02.2013. Only after this settlement made by Amala Bai in favour of the petitioner, at the instance of the other son Sam Raj, Kannayyan cancelled the settlement deed dated 14.08.2007 on 26.02.2013. The petitioner also approached the civil court and filed a suit for declaration and permanent injunction as against the father and obtained an order of injunction as against this respondent/complainant and his father on 02.01.2014. This petitioner brother Samraj also filed a suit for partition in O.S.No.189 of 2013.

11.This occurrence is said to have taken place on 26.09.2015 on that day the petitioner/accused was attempting to take away the grown up trees from the disputed land, the respondent/defacto complainant objected to it, he was abused and assaulted. According to the complainant, these trees are said to have been cut on 17.09.2015 and on that day, this complaint is said to have been lodged by the respondent/complainant before the first respondent Police. But, there is no material to that effect.

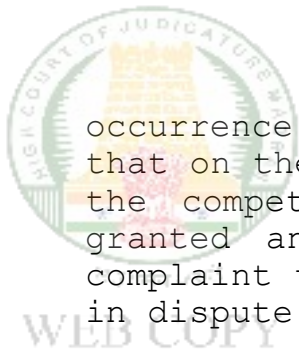


12.This occurrence has taken place on 26.09.2015, the complaint was lodged only on 03.10.2015. By referring this delay, the learned Counsel for the petitioner submitted that this is a fit case to be quashed. Though there is a delay in reporting the incident, according to the learned Counsel for the respondent/complainant was admitted in the hospital as an inpatient and therefore, the complaint was lodged after seven days. He also referred the wound certificate issued in this case.

13.The respondent/complainant has taken treatment in the Government Hospital at Padmanabapuram on 26.09.2015 at about 10.10am. The Medical Officer, who attended the respondent/complainant issued Accident Register that he was said to have assaulted by two known male persons with stick, hands at Paraikodu vilai. The Doctor while, recording the Accident Register has also mentioned it that the complainant was not aware of the exact location of the occurrence. Moreover, the Doctor has also recorded that no obvious external injuries were noted by him, while examining the defacto complainant on 26.09.2015. He was not admitted as in patient by the Government Doctor at Padmanabapuram. While so, the respondent/complainant approached a private hospital namely, ISAAC Hospitals at Marthandam and obtained a certificate from one Dr.W.H.Isaac Sunder Sen, Ortho Specialist, that the defacto complainant sustained a contusion on the left temporal region (3X2X1Cm), a contusion on the neck (4X3X2CM) and a contusion on the chest (3X2X1CM). The said Doctor has also admitted the respondent/defacto complainant as an inpatient on 26.09.2015 and he was discharged on 27.09.2015.

14.The manner in which, the certificate was obtained by the respondent/defacto complainant from an Ortho Specialist at Marthandam, after taking treatment at Government Hospital at Padmanabapuram shows the manner in which, the wound certificate was obtained for the purpose of this complaint. The dispute is between the brothers. The respondent / defacto complainant is the father-in-law of the brother of the petitioner. But, the brother of this petitioner Samraj has not come forward to lodge a complaint.

15.Admittedly it is the property of their father Kannayyan, who has settled this property in favour of his daughter Amala Bai in the year 2007. When the property was settled in the year 2007, there was no objection from his son Samraj. Amala Bai, being a spinster, was not able to maintain the land, gave this property by settlement to her brothers, the petitioner and one David in the year 2013. Only thereafter, at the instance of the other son Samraj, Kannayyan cancelled the settlement deed dated 14.08.2007 and settled them in favour of Samraj. The petitioner has also filed a civil suit as against his father and Samraj, in O.S.No.189 of 2013 and also obtained an order of interim injunction on 02.01.2014. The



occurrence has taken place on 26.09.2015 and it is not in dispute that on the date of occurrence, the interim order was in force. When the competent Court has taken cognizance of the issue and also granted an order of interim injunction, the allegation of this complaint that the petitioner has taken away the trees from the land in dispute cannot be sustained.

16.As rightly, pointed by the learned Counsel for the petitioner, this respondent/complainant is no way connected with the disputed property and even the other brother Samraj has not filed any complaint. It appears that this complaint has been lodged to wreak vengeance with an ulterior motive to wreak vengeance for the civil suit filed by the petitioner before the Sub Court, Padmanabapuram. The manner in which, the wound certificate was obtained in this case itself shows the manner in which the complaint has been foisted.

17.Admittedly, the occurrence has taken place on 26.09.2015. But the complaint was lodged only after seven days. There is no averment in the complaint about the specific words used by the petitioners and abused the defacto complainant in a public place. In the absence of any material, the offence under Sections 294(b) and 342 IPC are not made out. The person, who makes the complaint of intimidation should have felt the intimidation. This complaint is only lodged after seven day of the alleged intimidation and therefore, this complaint for the offence under Section 506(ii) IPC also can be quashed.

18.Accordingly, the petition is allowed and consequently, connected miscellaneous petitions are closed. The proceedings as against this petitioner and others in C.C.No.176 of 2017, on the file of the Judicial Magistrate, Padmanabapuram, Kanyakumari District is hereby quashed.

19.The observation made in this order need not be taken as a ground by the civil Court in deciding the issues pending before the Court.

Sd/-

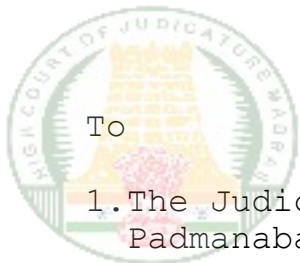
Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

dsk



To

1.The Judicial Magistrate,
Padmanabapuram,
Kanyakumari District.

2.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.M.SARAVANAN, Advocate (SR-2084[F] dated 21/01/2020)

+1 CC to Mr.S..ARAVINDAN, Advocate (SR-2264[F] dated 22/01/2020)

Crl.O.P(MD)No.5379 of 2017
20.01.2020

VB (05.08.2020) 6P 6C