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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.11.2021

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THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.16861 of 2015

and

M.P.No.1 of 2015

1. Thilagavathi

2. Prasad

...Petitioners

Vs

1.State rep. by
Inspector of Police,
J-5, Sastrinagar Police Station,
(Law and Order)
Chennai 90.
(in Crime No.1060 of 2012)

2. Marimuthu

...Respondents

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records relating to the C.C.No.4048 of 2012 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For petitioners ... Mr. V.Ramamoorthy

For respondents ... Mr. C.E.Pratap,
Government Advocate (Crl.side)
for R1

... Mr. R.C.Paul Kanagaraj, for R2

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.4048 of 2012 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai.



2. The brief facts leading to file the quash petition is that the defacto complainant, Marimuthu was working as watchman under one Maiyyan, who is claiming to be an owner of the property in Door No.22, A-Block, Yamuna Homes, Parameshwari Nagar, Adyar, Chennai. According to the defacto complainant, while some repair works were being carried out in the above said house, on 28.04.2012, at about 12.00 p.m., all the accused trespassed into the house and caused damage to the house hold articles in the house. Hence, he lodged a complaint and based on that, a criminal case in Crime No.1060 of 2012 has been registered for the offences, under Sections 147, 294(b), 447, 427 and 506(i) of IPC. After investigation, final report has been filed and the same has also been taken cognizance and pending as C.C.No.4048 of 2012 by the learned IX Metropolitan Magistrate, Saidapet, Chennai. Now, to quash the above criminal proceedings, the present petition has been filed.

3. The learned counsel for the petitioners would submit that, the petitioners, who are arrayed as A3 and A4, have purchased the property from A1 and A2 in this case. Already, there is a civil dispute between A1, A2 and the said Maiyyan, earlier, the said Maiyyan has filed a civil suit in C.S.No.209 of 2002 before this Court for return of Rs.16,66,000/- and also for permanent injunction, wherein, he has also sought for an interim injunction in O.A.No.226 of 2002, on the ground that, he is in possession of the property. This Court by an order dated 18.02.2016 dismissed the said application. O.S Appeal filed against that order in OSA No.106 to 108 of 2016 by the above said Maiyyan was also dismissed by the Division Bench of this Court on 26.04.2016 holding that he was not in possession of the property. Subsequently, the suit in C.S.No.209 of 2002 itself was dismissed for non prosecution on 12.03.2020. In the above circumstances, the very claim that Maiyyan, who is alleged to have employer of the defacto complainant herein, was not in possession of the property. That apart, the petitioners herein have purchased the property for a valuable consideration from the owner of the property/A1 and A2, and there is no specific allegation as against the the petitioners in the First Information Report. Only at the instigation of the said Maiyyan, the defacto complainant has given a false complaint with an intention to harass the petitioners , which is nothing but abuse of process of law.



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4. The learned counsel for the second respondent would submit that now pending this criminal original petition, the 2nd respondent died and he has not taken any steps to bring the legal representatives of the 2nd respondent on record.

5. The learned Government Advocate (crl. side) appearing for the first respondent would submit that, even though there is a civil dispute between the Maiyyan and A1 & A2, the allegation is that all the accused trespassed into the house and caused damage to the property. There are materials available on records prima facie establishing that all the accused including the petitioners herein trespassed into the house and caused damage to the property and threatened the defacto complainant, and a prima facie case is made out as against the petitioners, there is no valid reason to quash the criminal proceedings.

6. This Court considered the rival submissions made on either side and perused the materials available on records carefully.

7. From the perusal of the records, it is seen that the main allegation is the property in Door No.22, A-Block, Yamuna Homes, Parameshwari Nagar, Adyar, Chennai, belongs to one Maiyyan and he is in possession and enjoyment of the property, wherein, the defacto complainant, his watchman, and others were carrying out some repair work on 28.04.2012. At that time, all the accused entered into the property and caused damage to the household articles. From the perusal of various orders passed by this Court, in the civil suits filed by the said Maiyyan, this Court clearly held that the above said Maiyyan was not in possession of the property. In another suit filed by the A1 and A2, who sold the property in favour of the petitioners, in O.s.No.2674 of 2021, on the file of the II Assistant City Civil Court, Chennai, wherein, injunction has been granted against the said Maiyyan in I.A.No.7931 of 2021.

8. In the above circumstances, since the employer of the defacto complainant was not in possession of the property, there is no reason for the accused to enter into the property and caused damage to the property. That apart, the petitioners are only purchaser of the property from A1 and A2, who are claiming to be the owners of the property, and no substantial allegation has been made as against the petitioners in the First Information Report. In these circumstances, the criminal case filed is totally abuse of process of law, and the same is liable to be quashed against the petitioners/A3 and A4.



9. Accordingly, this Criminal Original Petition is allowed and the case against the petitioners/A3 & A4 in C.c.No.4048 of 2012 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-VIII)

//True Copy//

Sub-Assistant Registrar

mrp

To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
J-5, Sastrinagar Police Station,
(Law and Order)
Chennai 90.
3. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.16861 of 2015

GPL(CO)
SP(01/12/2021)