



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

WEB COPY

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

CrI.O.P.Nos.404 & 1362 of 2019
and

CrI.M.P.Nos.247 & 892 of 2019

CrI.OP.No.404/2019

1.M.Myilsamy

2.M.Mayangathal

3.N.Ramasamy

... Petitioners/Accused 1, 2 & 9

Vs.

C.Thangaraj

... Respondent/Complainant

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.118 of 2018, pending on the file of the learned Judicial Magistrate-III at Tiruppur and quash the same.

CrI.OP.No.1362/2019

1.R.Ramani

2.N.Sivasubramani

3.S.Subramaniam

4.K.Rajan

5.D.Mohan Kumar

... Petitioners/Accused 4 to 8

Vs.

C.Thangaraj

... Respondent/Complainant

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records in C.C.No.118 of 2018, pending on the file of the learned Judicial Magistrate-III at Tiruppur and quash the same.



WEB COPY

In both Crl.OPs,

For Petitioners
in Crl. O.P.No.404/2019 :M/s.K.Myilsamy

For Petitioner
in Crl.O.P.No.1362 of 2019 :M/S.M.Manohar

For Respondent
in both Crl.OPs : M/S.K.Govi Ganesan

COMMON ORDER

(Heard through Video Conferencing)

These Criminal Original Petitions have been filed by the respective petitioners, to call for the records in C.C.No.118 of 2018, pending on the file of the learned Judicial Magistrate No.III at Tirupur and quash the same. Since the issue involved in these petitions are similar in nature, by the consent of both side counsel, they are disposed of by this common order.

2. The learned counsel for the petitioners submitted that the case in C.C.No.118/2018 has been taken on file on the vexatious complaint given by the defacto complainant. It is submitted that prior to filing the said compliant, a police complaint was given before the Velampalayam Police station and the same was closed as, 'the matter is civil in nature', but the respondent has once again filed the criminal compliant against the petitioners. He has further submitted that the respondent has also filed a civil suit in O.S.No.40/2018 against the petitioners in Crl.OP.No.404/2019, for recovery of money and the same is pending. It is further submitted that the respondent having filed a suit seeking for a remedy before the Civil Court, wantonly filed the criminal complaint also without any basis and hence the proceedings should be quashed.

3. On perusal of the records it is seen that the petitioners have already filed a complaint on 21.12.2017 against the petitioners; after enquiry and after obtaining legal opinion from the legal advisor to the Commissioner of Police, the said complaint was closed as Civil in nature. Aggrieved over the same, the respondent has preferred a private complaint before the learned Judicial Magistrate No.III, Thirupur. On perusal of



the complaint filed before the Magistrate, it is seen that the respondent has made the very same allegations which he had made in his complaint dated 21.12.2017.

4. The learned counsel for the respondent submitted that only because the police has not taken any serious action on the allegations made by the respondent with regard to forgery, misappropriation, criminal intimidation, etc., he has filed the private complaint before the Juridical Magistrate and hence the remedy that is open to the respondent cannot be taken away by way of quashing the proceedings.

5. It is not in dispute that on the complaint given by the petitioners on 21.12.2017, an enquiry was made and the matter was closed as civil in nature. Subsequent to that the respondent has filed the civil suit for recovery of money in OS.No.40/2018.

6. The learned counsel for the respondent submitted that the remedy sought before the civil Court was for recovery of money and action has to be taken on the criminal complaint for several offences committed by the petitioners by trespassing into the property and also by fabricating the documents and cheating the respondent.

7. The learned counsel for the petitioners invited the attention of this Court that had the allegations with regard to the trespass is true, then the respondent would have got his possession over the property disturbed and in that situation, he would have invoked the Civil Court jurisdiction for getting relief of permanent injunction. The prayer sought by the respondent in OS.No.40/2018 is to the following effect:

"1.Directing the defendants 1 to 3 to pay a sum of Rs.1,25,36,779.00 with subsequent interest at the rate of 9% p.a on the advance amount Rs.1,13,28,963.00/- from the date of suit till the date of payment.

2.To create a charge over the properties described in B Schedule for the due payment of the amount payable by the defendants.

3.granting mandatory injunction directing the 4th defendant to return the original settlement deed dated 22.06.1992, registered as Document No.3549/1992 SRO, Joint No.II, Tiruppur.

4.Awarding the costs of the suit.



5. And to grant such other and further relief that are deemed fit and proper in the circumstances of the case and render justice."

WEB COPY

8. As rightly pointed out by the learned counsel for the petitioners that the respondent has not filed any suit for permanent injunction or for recovery of possession. Had the respondent seriously aggrieved by alleged unlawful activities committed by the petitioners by trespassing into his properties he could not have filed the suit without seeking appropriate civil remedies.

9. It is true that the remedy open to the respondent by way of filing civil suit is different from the action that has to be taken against the petitioners for committing criminal offences. But at the same time, it has to be seen whether the petitioners had made any prima facie case for taking criminal action against the petitioners.

10. The learned counsel for the respondent has invited the attention of this Court to the allegations made in paragraph No.9 of his prime complaint. But the reading of the allegations would show that the averments are very general in nature, despite the allegations are made as to forging of documents and misappropriation of money, no basic details have been given in this regard.

11. It is true that FIR need not be an encyclopaedia which should contain very many details of the occurrence. But however it should have at least basic details and prima facie case on which the case has to be registered for the alleged offences. But the complaint only states about the words of offences and not mentioned at least which of the documents have been forged or how the misappropriation has been done.

12. Only on the basis on the said facts the Court could get convinced on the prima facie materials to make out the case that has been given by the respondent. The conduct of the respondent is not seeking any remedy to protect his alleged possession over the property culpable with the allegations in the complaint would only show that the problem between the respondent and the petitioners are civil in nature and it has arisen out of money transactions between themselves.



13. Under such circumstances, it is right for the police to close the earlier complaint as civil in nature, as not much materials have been produced before the Magistrate to take a different view and the allegations made in the complaint is nothing but the reframing of same facts. The reading of the entire complaint would also show that the matter has cause of action for preferring civil suit and seek remedies before the civil Courts. To take up the matters of such nature by criminal Court and try the same would only be wasting the precious time of the criminal Court.

14. Due to the said reason it is appropriate to invoke the inherent jurisdiction of this Court to quash the proceedings in C.C.No.118 of 2018, pending before the Judicial Magistrate-III at Tiruppur.

In the result, these petitions in CrI.O.P.Nos.404 & 1362 of 2019 are allowed and the proceedings are quashed; Consequently connected criminal miscellaneous petitions are also closed. Even though the 3rd accused has not filed any petition for quashing the proceedings in C.C.No.118 of 2018 before this Court, the benefit of this order will enure to him also. However it is open to the respondent to seek remedy by filing civil suits other than the suit already pending if the cause of action is not barred by limitation.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

jrs
To

The Judicial Magistrate-III at Tiruppur.

+2cc to M/s.K.Govi Ganesan, Advocate Sr.56383, 56384.

CrI.O.P.Nos.404 & 1362 of 2019
and
CrI.M.P.Nos.247 & 892 of 2019

sj[col]
srg 03/12/2021