



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Cr1.O.P. No.17913 of 2015

1. Palaniyammal,
2. Sadaiyammal,
3. Vellaiyammal,
4. Ramesh,
5. Rajendran,
6. Pichannan

...Petitioners/Accused

Vs.

Kanagarathinam

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the C.C.No.58 of 2015 on the file of the Judicial Magistrate-II, Attur, registered under Sections 147, 148, 447, 323, 324 and 326 of IPC and quash the same.

For Petitioners : Mr. R. Rajendiran

For Respondent : Mr.P. Jagadeesan

O R D E R

This Criminal Original petition has been filed under Section 482 Cr.P.C. seeking for to call for the records relating to the C.C.No.58 of 2015 on the file of the Judicial Magistrate-II, Attur, registered under Sections 147, 148, 447, 323, 324 and 326 of IPC and quash the same.

2. The case of the prosecution is that the respondent/complainant bought the land from one Perumal who is brother of Pichannan/6th petitioner herein in which common well owned to the 6th petitioner herein and perumal, which resulted in enmity between the respondent/complainant and 6th petitioner herein. On 24.12.2013 at 11.30 a.m. while the respondent/complainant had removed unwanted trees and hazards from his land, the petitioners 1 to 4 proceeded to switch off the Motor. when the same was questioned by the respondent/complainant, the petitioners 1 to 5 have attacked the respondent/complainant herein and threatened him having with



dangerous weapons. After the said incident, the respondent/complainant was admitted to the Salem Government Hospital. The Inspector of Police had obtained statement from the respondent and filed a case against the petitioners under Sections 147, 148, 323, 324 and 506(ii) of IPC in Crime No.603 of 2013 on the file of the Inspector of Police, Thalaivasal Police Station. Hence, this Criminal Original petitioner has been filed to quash the complaint in C.C. No.58 of 2015 on the file of the Judicial Magistrate-II, Attur.

3.The learned Counsel appearing for the petitioners would submit that the land comprising in Survey No.5/1 measuring 3 acres belonged to one Perumal and 6th petitioner herein who are brothers. The respondent's husband Ponnuvel bought the share of Perumal measuring one acres. However, the Well is common for Perumal and 6th petitioner herein, wherein 3rd petitioner who is the purchaser of land of the 6th petitioner herein got right over in the land and her share in the well. The respondent who is the purchaser of Perumal's land became the right over the land and also in the common well. Though the 6th petitioner sold the land to the 3rd petitioner, he continued to living there in the small hut. On 24.12.2013, the complainant and her associates entered into the 3rd petitioner's property and proceeded to close the ever since water passage which is access from common well to the 6th petitioner herein while the same was questioned by the petitioners herein, the respondent and her henchmen attacked the petitioners. The petitioners were brought into 108 Ambulance and taken to the Hospital for treatment. It is pertinent to note that the occurrence was taken place on 24.12.2013 at 11.30 a.m in which the petitioners were attacked by the respondent and her henchmen. The Police personnel attached to Thalaivasal Police Station had obtained statement from the 3rd petitioner herein on 25.12.2013 at 10.30 am. Thereafter, a case has been registered against the respondent and others who have attacked the petitioners herein under Sections 324, 323, 506(ii) r/w. 3(1)(x) of SC/ST Act.

4. It has been further submitted that the respondent made a false complaint against the petitioners herein alleging that the petitioners have attacked the respondent while removing unwanted trees and hazards in the land. The police have registered a counter case against the petitioners under Section 147, 148, 323, 324 and 506(ii) in Crime No.603 of 2013. The petitioners had informed to the police about the foul play committed by the respondent and her associates about the false complaint. The police had conducted a detailed enquiry to find out the truth. After investigation, the police found that the statement of the respondent is false. Thereafter, the police have filed a FIR in Crime No.602 of 2013 against the respondent under Section 323, 324 and 506(ii) of IPC r/w 3(i)(x) of SC/ST Act and the same



also forwarded to the DSP, Attur. The petitioners had approached the DSP about the false complaint given against the petitioners. The DSP also visited the place of occurrence and found that there was no evidence to show that the unwanted trees and hazards were removed from the occurrence place. In contra, the ever since water passage which is access to the 6th petitioner herein was closed by the respondent and her associates. Hence, the DSP ascertained the case that the complaint given by the respondent was false and hence he has filed a report on 26.12.2013. According to his report, the case could be closed as mistake of fact. The complaint of the respondent is only to retaliate the case in Crime No.602 of 2013 which is filed against the respondent and her associates under the SC/ST Act. In other words to escape from the allegations as well as the case against the respondent and her associates, the present private complaint has been filed against the petitioners. Hence, the complaint in C.C. No.58 of 2015 is liable to be quashed.

5. The learned counsel appearing for the respondent would submit that there are two suits are pending with regard to the suit common well was situated in the land in question. The dispute will come to an end after disposing of the suit filed by each other. Further, the interim temporary injunction has been granted in favour of the 6th petitioner herein in I.A. No.638 of 2003 in O.S. No.204 of 2003 which is pending before the Trial Court. The dispute had arisen due to purchase of part of land owned by the family members wherein the common well is situated in which here the respondent and the petitioners are trying to take water from there.

6. Heard Mr. Rajendiran, learned counsel appearing for the petitioners and Mr. P. Jagadeesan, learned counsel appearing for the respondent.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be



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done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a



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complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. The land comprising in Survey No.5/1 measuring 3 acres belonged to Pichannan and Perumal. The husband of the respondent has purchased the share of perumal and third petitioner herein has purchased the share of the Pichannan. The common well is situated in the aforesaid land which is being used for irrigation. Under these circumstances, while taking the water from the suit common well, the petitioners and the respondent fought each other in the usage of the water from the common well. In this regard, two suits have been filed and the same are pending before the Trial Court. However, the points raised by the petitioners cannot be considered by this Court under Section 482 Cr.P.C.

11. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.42 of 2019 in Crime No.58 of 2015 on the file of the Judicial Magistrate-II, Attur. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioners 2 and 6, their personal appearance is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a



period of six months from the date of receipt of copy of this Order. However, taking note of the points raised by the counsel for the respondent, as two suits are pending before the Trial Court in this regard, the Trial Court concerned is directed to consider the all aspects raised by the learned counsel in this case and dispose the same as early as possible to settle the issue in the common well in the land.

12. Accordingly, this Criminal Original Petition is dismissed with the aforesaid direction. Consequently, connected miscellaneous petition is closed if any.

Sd/-  
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

lbm

To:

1. The Judicial Magistrate-II, Attur
2. The Additional Public Prosecutor,  
High Court of Madras,  
Chennai.

+1 CC to Mr.P.Jagadeesan, Advocate, Sr.No. 41491.

Cr1.O.P. No.17913 of 2015

GSM(CO)  
LS(14/09/2021)