



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.No.1778 of 2016 and
Crl.M.P.No.873 of 2016

Raja@ Periyasamy

... Petitioner/Accused

Versus

1. The State of Tamil Nadu,
Rep. By its Sub Inspector of Police,
B-6, Kondalampatti Police Station,
Salem - 10

2. Balakrishnan @ Chinnadurai

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.113 of 2015 on the file of Judicial magistrate No.5, Salem and to quash the same.

For Petitioner : Mr.P.Raja

For Respondents : Mr.E.Raj Thilak
Consel for Government
(Crl. Side) for R1
Mr.M.Devarajan for R2

ORDER

This Criminal original petition has been filed seeking to quash the proceedings in C.C.No.113 of 2015 on the file of Judicial magistrate No.5, Salem.

2. The crux of the case is that there was a property situated at Palapatti Mittapudur Agraharam Village, Salem Taluk, belongs to one Chinnasamy, who is the father of the petitioner. He obtained patta for the above said property in his name and his three sons including the petitioner. He partitioned the property to his sons. There arose a dispute between the petitioner and his brothers with regard to usage of common passage. The 2nd respondent, who is none other than the petitioner's brother son along with the help of the henchmen started harassing the petitioner and his family members and on 17.05.2015, when the defacto complainant and his uncle were crossing the pathway, the allegation made against the petitioner is that he is said to have abused the defacto complainant in filthy language and also attacked him



and therefore, the Defacto complainant gave a complaint before the 1st respondent police. Based on the complaint given, an FIR has been registered in Crime No.184 of 2015 for the offences under Sections 341, 294(b), 323, 506(ii) of IPC. A charge sheet has also been filed before the learned Chief Judicial Magistrate, No.57, Salem. Challenging the same, the present petition has been filed before this Court.

2. The learned counsel for the petitioner submitted that the charge sheet does not constitute any cognizable offence against the petitioner. The learned counsel further submitted that it is only a civil dispute, for which criminal colour has been given by the respondent police. A Civil Suit was already pending in O.S.No.452 of 2015 before the District Munsif, Salem.

3. The learned Additional Public Prosecutor submitted that based on the complaint received from the 2nd respondent/defacto complainant, an FIR has been registered. During the course of investigation and based on the statement given by the witnesses, it was found that the offence has been made out against the petitioner and therefore, the respondent police had filed a final report before the Court below. The learned counsel further submitted that the case is posted for trial on 03.07.2021.

4. Considering the facts and circumstances of this case and the materials available on records, this Court finds that the dispute arose between the parties involves a Civil dispute which has been given a criminal colour and the same has to be decided before the Court below, during trial and examination of all the witnesses and the same cannot be decided by this Court in exercise of its jurisdiction under Section 482 of Cr.PC. It is made clear that the observations made herein is for the purpose of the disposal of the Criminal Original petition and the trial Court shall not be influenced by the observations made herein and decide the case on merits on the evidence received during trial in accordance with law.

5. Accordingly, this Criminal Original Petition is disposed of with a direction to the parties to co-operate for the trial and the learned Judicial Magistrate No.5, Salem, is directed to dispose of the proceedings pending in C.C.No.113 of 2015, as expeditiously as possible, in accordance with law. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rka



To

1. The Judicial magistrate, No.5, Salem.

2. The Public Prosecutor,
High Court, Madras.

3. The Chief Judicial Magistrat, Salem

+1CC to Mr.P.Raja, Advocate, Sr.No.28740

CRL.O.P.No.1778 of 2016

KV (CO)

K.RK.(26.07.2021)