



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2021

CORAM:

THE HON'BLE MR.JUSTICE V. BHARATHIDASAN

Cr1.O.P.No.28010 of 2015

and

M.P. Nos.1 and 2 of 2015

1. Mrs.V.Shanthi

2. Mr.M.Veeraraghavan

...Petitioners

Versus

P.Rajesh,
rep. by his father and Power holder
Mr.M.A.Panchatcharam

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.55 of 2015 on the file of Judicial Magistrate-I, Poonamallee and quash the same.

For Petitioners : Ms.A.Sumathy

For Respondent : No appearance

Mr.R.M.Srinivas
appeared as Legal Aid
counsel

ORDER

This Criminal Original Petition has been filed to quash the private complaint filed under Sec.200 Cr.P.C. in C.C.No.55 of 2015 on the file of Judicial Magistrate-I, Poonamallee for the offence under Sec.441, 442, 445, 447, 448, 452, 461 and 462 I.P.C.

2. Brief facts leading to filing of this quash petition is as follows:-

The 1st petitioner is the owner of property situated at Plot No.4/38, Gangai Amman koil Street, Sridevikuppam, Valasaravakkam, Chennai-600 087 to an extent of 6600 sq.ft. Earlier, the petitioners said to have entered into a joint venture agreement with one Panchatcharam, who is none other than father of



complainant. As per the Joint Venture Agreement, the builder is supposed to construct six apartments with specific extent of construction area with connected UDS land. Out of which, three flats should be given to the 1st petitioner, who is owner of the property and the remaining flats will be given to the promoter. Alleging that the complainant purchased one of apartments allotted in favour of builder, and the petitioners alleged to have entered into the said apartment purchased by the complainant, thereby caused criminal trespass. In the said circumstances, a criminal complaint has been filed, but no action has been taken by the police authorities. Hence, the present private complaint has been filed for the above alleged offence. Now, to quash the same, the present petition has been filed by the accused.

3. Ms.A.Sumathy, learned counsel appearing for petitioners would content that, admittedly, the petitioners are owners of the land and entered into a joint venture agreement with the father of the complainant. But, on violation of joint venture agreement, he has constructed excess areas, hence, there is a civil suit pending between the parties. Earlier, the petitioners have filed a suit against the complainant, who is represented by his father and power holder for permanent injunction, in O.S.No.481 of 2012, on the file of Principal District Munsif, Poonamallee and the same is pending. Subsequently, the respondent/complainant himself filed a suit against the petitioners for injunction before the very same court, thereafter, he withdrew the suit, and filed another suit before this court in C.S.No.650 of 2012, seeking for damages, and on an application filed by the petitioners under Order VII Rule 11 of C.P.C., the suit was rejected by an order dated 17.11.2014. Subsequently, Original Side Appeal has been filed by the respondent in O.S.A.No.108 of 2015, which was also dismissed by the Division Bench of this Court by an order dated 20.09.2015. Thereafter, the present complaint has been filed as if the petitioners have trespassed into his property. It is further submitted that it is only a civil dispute and a civil suit is also pending between them. Now, by giving criminal colour to a civil dispute, the present private complaint has been filed and the learned Judicial Magistrate-I, Poonamallee has also mechanically taken cognizance and issued summons.

4. The respondent appeared party in person, but he did not appear for several occasions. Hence, this Court had appointed Mr.R.M.Srinivas as legal aid counsel for respondent. The learned legal-aid counsel would submit that as per joint venture agreement, the 1st petitioner is entitled for three flats, which was already given to her. Out of the apartment allotted to the builder, the respondent/complainant purchased one apartment, wherein, the petitioners have illegally trespassed into the



property and occupied the same. In the said circumstances, the present complaint has been filed for criminal trespass and the pendency of civil suit is nothing to do with the trespassing into the property.

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5.I have considered rival submissions and perused the records.

6.On perusal of records, it could be seen that there are civil proceedings pending between the petitioner and the promoter, viz., father of complainant. That apart, earlier suit filed by the respondent/complainant seeking for injunction was withdrawn by him. That apart, another suit filed by the petitioner seeking for damages was also rejected by this court, which was confirmed by the Division Bench in O.S.A.No.108 of 2015. Thereafter only, the present private complaint has been filed alleging trespass. Considering the fact that it is only a civil dispute between the parties, giving criminal colour, the present complaint has been filed. The learned Judicial Magistrate without considering all those materials mechanically taken cognizance of offence.

7. Considering all the materials, I find no prima facie case against the petitioners and the complaint is liable to be quashed. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.55 of 2015 on the file of Judicial Magistrate-I, Poonamallee is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

rpp

To

The Judicial Magistrate - I,
Poonamallee, Chennai - 56.

+1cc to M/s.R.M.Srinivas, Legal Aid Counsel, S.R.No.67546

CRL.O.P.No.28010 of 2015

CP(CO)
RGA(12/01/2022)