

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.01.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.21453 of 2016

Dr.G.S.M.P.Khaderi,
President/Muthavalli,
M/s.Nawab Khairunissa Begum Sahiba Endowment
& Hazrath Pappu Masthan Dargah Wakf,
Office at No.31, Big Street, Triplicane,
Chennai - 600 005.

... Petitioner

Vs.

1. The Inspector of Police,
E2, Royapettah Police Station,
Royapettah,
Chennai - 600 014.

2. Jayavelu,
S/o. Late Arunachalam

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to call for the records and to quash the FIR in Crime No.558 of 2016 on the file of the Inspector of Police, E-2 Royapettah Police Station, Chennai - 600 014.

For Petitioner : Mr.J.Jayaprakasam

For R-1 : Mr.C.Iyyappa Raj,
Additional Public Prosecutor.

For R-2 : Mr.A.P.Surya Prakasam

O R D E R

(The case has been heard through video conference)

The quash petition has been filed seeking to call for the records in FIR in Crime No.558 of 2016 pending on the file of the first respondent for the offence under Sections 465, 467, 468, 471, 472 and 420 IPC

2. The learned counsel appearing for the petitioner would submit that the petitioner is the President/Muthavalli of M/s.Nawab Khairunissa Begum Sahiba Endowment and Hazrath Pappu Masthan Dargah Wakf, which is a surveyed and Notified Wakf by the Tamil Nadu Wakf Board. The Wakf is possessed of vast extent

of land measuring 5 Cawnies, 16 Grounds & 1,284 Sft., comprised in Survey No.1055/1 & 1055/2, Mylapore Village. The said properties were ear marked and dedicated by Janaba Khairunnissa Begum Sahiba, for the purpose of Free Burial Ground to the poor Muslims residing in and around the locality. After the introduction of the Wakf Act in the year 1954, survey was made in respect of properties and they were notified as Wakf property. The above Wakf property is governed by the scheme passed by the Hon'ble High Court, by the Managing Committee consisting of 11 members and the Wakf board is the supervising authority over the above Wakf. During the year 2008, the petitioner along with the committee was appointed by the Walk Borad for managing the property. Various tenants in occupation of the Wakf property have constructed superstructure there on and they are paying rents to the petitioner. One of the tenants namely Hanif S/o.Mohammed Ibrahim, had as per sale seed dated 24.02.1986 conveyed the superstructure in respect of the property in favour of the second respondent. The second respondent thereafter, had not come forward to execute the lease deed or chosen to pay the rents to the Wakf and had been illegally occupying the Wakf land without any authority or consent. While so, the Wakf Board issued notice to the second respondent on 02.01.2016 to quit and deliver vacant possession of the suit property illegally occupied by him. Whereas, he had sent a reply and later the second respondent had obtained a Patta by fraud and in order to avoid eviction, has given a false complaint against the petitioner as if the petitioner had been claiming the Government Properties and it belongs to the Wakf by creating false and bogus documents. He would submit that a case of civil nature, has been given criminal colour and the case has been registered on the false F.I.R. and that the first respondent had failed to see that already a civil suit is pending for recovery of possession and that the issue can be agitated in the suit and final verdict may be given in the civil suit. He would further submit that the petitioner is a Muthavalli has also been issued several documents by the Government of Tamil Nadu whereas, the defacto complainant along with the others encroached the property and he has given a false complaint as if, the petitioner had encroached the property by forging the documents and the defacto complainant has filed the complaint based on certain documents issued by the Tahsildar, under the RTI Act.

3. The respondent has filed detailed counter wherein, it has been stated that the investigation is conducted in a fair, free and impartial manner and also in accordance with law.

4. The learned Additional Public Prosecutor appearing for the respondent would submit that in respect of the complaint, the respondent has applied for genuineness certificate in

respect of the Permanent Land Register, which was stated to be issued by the Sub Inspector of Survey, Mylapore-Triplicane Taluk, Chennai-8, and only on receipt of the genuineness certificate, the respondent will be able to continue with the further investigation. He would submit that the petition for quashing, has been pre-maturely filed.

5. Heard the learned counsel on either side and perused the materials placed on record.

6. As per the F.I.R., the complainant had stated that the petitioner based on the false and bogus documents, has fraudulently claimed the properties as if, they belong to the Wakf. Further, the second respondent/complainant had obtained information under RTI Act wherein, he had been informed by letter dated 09.10.2014 that the extract of the P.L.R. being used by the petitioner is a fraudulent document since, only the Deputy Tahsildhar, Head Quarters is legally entitled to issue any extract of the P.L.R. and that it was not issued by the Tamil Nadu Government to any 3rd party. The allegation against the petitioner needs to be investigated into thoroughly and that this Court finds no irregularity in the registering of the F.I.R. and the continuation of investigation. Further, no legal grounds have been raised for quashing the FIR.

7. The petitioner has raised grounds which are factual in nature and which can be decided only after conducting detailed investigation.

8. However, it is seen that the F.I.R. is of the year 2016. The first respondent is directed to complete the investigation as expeditiously as possible and file the final report preferably within a period of four months from the date of receipt of a copy of this order.

9. Accordingly, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar

//True Copy//

ssi
To

Sub Assistant Registrar

1. The Inspector of Police,
E2, Royapettah Police Station,
Royapettah,
Chennai - 600 014.

2. The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

Crl.O.P.No.21453 of 2016

rsv(CO)
rv(05/02/2021)



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