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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.2259 of 2021
and Cr1.M.P.No.1241 of 2021

1.K.Vaidyalingam
2.V.Sudhakar
3.K.Murugesan

... Petitioners

Vs.

1.The State rep. by its
The Inspector of Police,
C-2 Police Station,
Hasthampatty, Salem,
Crime No.1096 of 2020

2.K.Chettiyappan

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.1096 of 2020 pending on the file of the Inspector of Police, C-2 Hasthampatty Police Station, Salem and quash the same.

For Petitioners: Mr.R.Rajaratnam for Mr.B.Vijay
For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : Mr.R.Saravana Kumar

O R D E R

This Criminal Original Petition is filed to call for the records in Crime No.1096 of 2020 pending on the file of the Inspector of Police, C-2 Hasthampatty Police Station, Salem and quash the same.

2.The petitioners, who are A1 and A3 in Crime No.1096 of 2020, for the offence under Sections 294(b), 323 and 307 of IPC.

3.The contention of the petitioners is that the first petitioner and the second respondent are blood brothers, there



seems to be some family dispute among them. For which, the petitioner has been falsely implicated. As per the complaint, the admitted case of the second respondent is that the second respondent along with his son had come to the office of the defacto complainant, where they attempted to assault the defacto complainant. The defacto complainant sustained some injuries, lodged a complaint, as though, the petitioners had assaulted the defacto complainant.

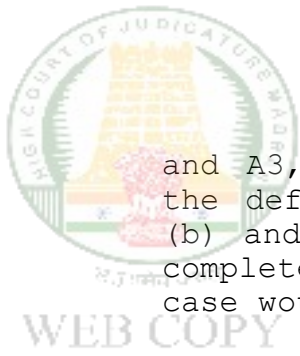
4.He further submitted that the impugned FIR has been registered at the instance of the defacto complainant, for wrecking personal vengeance to settle the family commercial disputes. There is commercial dispute pending between the petitioners and his brother viz., S.K.Ganesan and C.Prakash, son of the defacto complainant. Pursuant to the execution of the Memorandum of Understanding, the first petitioner has paid the part sale consideration of Rs.6 Crores, on various dates to his brother S.K.Ganesan. The petitioner's brother has unilaterally cancelled the Memorandum of Understanding on 10.11.2011, after receipt of huge sum of Rs.6 crores, as part consideration.

5.Further he submitted that there are some civil suits pending between them and the defacto complainant with an ill motive to implicate the petitioners, so that, the petitioners are brought down to knees and to settle the property. The respondent police should be fair in investigation, in one stretch they say that place of occurrence is in the petitioners premises, now project occurrence taken place in the defacto complainant's premises. Further falsity of defacto complainant exposed hence, the first petitioner's name was deleted from the case and sections altered to 294(b) and 323 IPC.

6.The defacto complainant being the aggressor, entered the petitioners place and assaulted them. In view of the prosecution, shifting the place of occurrence would clearly expose falsity of the case.

7.The learned Additional Public Prosecutor would submit that FIR came to be registered on 02.12.2020, on the complaint of the second respondent. The second respondent took treatment in Government Mohan Kumaramangalam Medical College, Salem, as in patient from 30.11.2020 to 02.12.2020. FIR came to be registered Initially CSR No.637 of 2020 assigned on the same day at about 03.00 p.m., since the fight was between the family. Thereafter, FIR came to be registered on 02.12.2020 at about 06.00 p.m.

8.He further submitted that during investigation, it was found that there is nothing to show the involvement of A1 in this case. Hence, A1 name deleted from the case. As regards A2



and A3, they used abusive words and caused simple injuries to the defacto complainant, hence the case altered to section 294 (b) and 323 IPC. Now the investigation in this case is almost completed, after getting wound certificate, final report in this case would be filed.

9.Mr.R.Saravana Kumar, learned counsel appearing for the second respondent/defacto complainant submitted that in this case, the petitioners and the defacto complainant are brothers. As regards the second respondent/defacto complainant, who is a common person nominated for dividing the property among the siblings, for that purpose, he had gone for a negotiation at that time, the petitioners used abusive language and assaulted the defacto complainant, civil suit and arbitration proceedings were pending between the petitioners and other family members. The business premises of both petitioners and defacto complainant are within the same compound. Now taking advantage of the same, the petitioners want to project as though, the occurrence took place in some other place. The defacto complainant sustained injuries, got admitted as in patient in Government Mohan Kumaramangalam Medical College, Salem and took treatment for two days and thereafter got discharged. The medical reports produced.

10.The learned counsel appearing for the petitioners relied upon the following citations:

- "1.Indian Oil Corporation Vs. NEPC India Pvt. Ltd., reported in (2006) 6 SCC 736;
- 2.Mohd. Ibrahim Vs. State of Bihar reported in (2009) 8 SCC 751;
- 3.R.K.Vijayasathya Vs. Sudha Seetharam reported in (2019) 16 SCC 739; and
- 4.Ahmad Ali Quraishi Vs. State of U.P. reported in (2020) 13 SCC 435."

He further submitted that the quashing of the FIR can be done, if found the complaint is motivated, to wreck vengeance and to settle private civil dispute, false complaints are filed.

11.Considering the submissions and on perusal of the materials, it is seen that the dispute between the petitioners and the defacto complainant is for sharing of family property. The respondent police during investigation found offence under Section 307 IPC not made out had dropped the charge. During investigation, the respondent police finds the name of the first accused falsely implicated in this case and his name now deleted, and further finding injuries sustained are simple in nature, the offences were altered to Section 294(b) and 323 IPC. Further the points raised by the petitioners and the counter points raised by the second respondent/defacto complainant are



factual in nature and making acquisition and counter acquisition, which can not be decided in a quash petition. In view of the same, this Court is not inclined to entertain this Criminal Original Petition.

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12. Accordingly, this Criminal Original Petition stands dismissed, at this stage. Consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-VI)

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
C-2 Police Station,
Hasthampatty, Salem,

2. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr. B. Vijay, Advocate sr 52498

+1 CC to Mr. E. Veda Bagath Singh, Advocate sr 52246.

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and CrI.M.P.No.1241 of 2021

SS (CO)
SP (01/11/2021)