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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.9461 of 2018

and

Crl.M.P.No.4879 of 2018

- 1.P.Rajamani
- 2.S.Thottikattu Duraisamy
- 3.Chinnadurai
- 4.Sumathi
- 5.T.Manikandan
- 6.P.Arunachalam
- 7.D.Selvakumar
- 8.R.Subramani
- 9.Muthusamy
- 10.Kalamani
- 11.Subburaj (Palkarar)

... Petitioners/Accused 1 to 6,8,9,11,12,14

Vs.

Kandasamy

... Respondent/Complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C, prayed to call for records and quash all the proceedings in C.C.No.106 of 2017 on the file of the Judicial Magistrate No.II, Namakkal.

For Petitioners : Mr.B.Vasudevan

For Respondent : M/s.R.Nalliyappan

ORDER

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.C.No.106 of 2017 on the file of the Judicial Magistrate No.II, Namakkal.

2. The facts of the case is that the first petitioner is the daughter-in-law of the respondent-complainant. The respondent-



complainant has 55 cents of land adjacent to his house, in which the complainant had constructed six shops and let them out for rent. The first petitioner due to property dispute had filed a suit in O.S.No.13 of 2008 on the file of the Sub Court, Namakkal for permanent injunction against the respondent-complainant and the same is pending. While so, on 04.09.2012, the first petitioner along with other accused persons came and demolished the six shops constructed by the respondent in the 55 cents of land with deadly weapons and bulldozer. On 05.09.2012, the respondent's daughter gave a complaint to Puduchatram Police by way of telegram and then the respondent also gave a complaint to the Namakkal Police. As there was no action taken, the respondent filed a private complaint in C.C.No.19 of 2013 against the first petitioner and 3 others. Since there was no progress in the case, the petitioners have filed a petition in C.M.P.No.1763 of 2017 to split up the case and the same was allowed on 26.05.2017 and a case against the petitioners was split up on 04.07.2017 as C.C.No.106 of 2017 and thereafter the case was adjourned to several times, however, the respondent-complainant did not appear before the Trial Court. Hence, the petitioners have filed this petition to quash the proceedings in C.C.No.106 of 2017 on the file of the Judicial Magistrate No.II, Namakkal.

3. The learned counsel appearing for the petitioners would submit that the property in question belonged to the first petitioner's husband, namely, Balasubramaniam and the said property was allotted in favour of the first petitioner's husband as per the partition suit, which was decreed on 26.02.2001 in O.S.No.398 of 2000. After the decree, the said Balasubramaniam died on 12.08.2001 leaving behind the first petitioner-Wife and his four children, namely, Mohanram, Madurambika, Kaviyam and Gokulavani and his mother Saraswathi as his legal heirs. Prior to his death, the first petitioner's husband executed a Will dated 02.08.2001 in favour of his wife and 4 children. Suppressing the above said decree and the Will, the defacto complainant filed a false complaint against the petitioners, which is not sustainable. Earlier, the first petitioner made a complaint before the Land Grabbing Prevention Division and based on the complaint, the respondent-complainant was arrested and remanded to judicial custody. As a counter blast, the present case is filed against the petitioners. The learned counsel further submitted that admittedly, the relationship of the first petitioner and the respondent/de facto complainant is not in dispute. The private complaint is a counter blast as against the suit filed by the first petitioner and the criminal case lodged by the first petitioner. A perusal of the complaint itself reveals that except the complaint sent by the respondent no document is produced to prove that 55 cents



of land belonged him. The dispute in the present case is civil in nature and the civil suit in O.S.No.13 of 2008 is pending. Without participating in the said suit for proper adjudication, filing the present false complaint for the very same cause of action is unsustainable. Accordingly, he prayed for allowing this petition.

4. The learned counsel appearing for the respondent complainant submits that the relationship between the first petitioner and the respondent/de facto complainant is not disputed. Admittedly, the first petitioner and other accused persons came on 04.09.2012 and demolished 6 shops constructed by the respondent/de facto complainant and immediately telegram message was sent to the law enforcing agency, but they have not taken any action. Therefore, the private complaint was filed for the above said offences, which is legally sustainable. Hence, he prayed for dismissal of this petition.

5. Heard the learned counsel appearing for the petitioners as well as the learned counsel appearing for the respondent.

6. Admittedly, the relationship of the petitioners and the respondent/de facto complainant is not in dispute. It is also not in dispute that the first petitioner already instituted a suit against her father-in-law/respondent herein in O.S.No.13 of 2008 for permanent injunction not to interfere with the peaceful possession and enjoyment of the property. However, the present complaint is filed for the very same dispute as if the petitioners entered the property and demolished 6 shops with other accused persons. The perusal of the complaint itself reveals that the respondent admitted that there is a suit pending in O.S.No.13 of 2008 and on earlier occasion the respondent/de facto complainant was arrested in connection with a land grabbing case. All these facts clearly shows that in order to wreak vengeance against the first petitioner, the respondent complainant had filed private complaint against the first petitioner and her family. The respondent/de facto complainant claims that the petitioner and other six persons demolished six shops, however no title deed, approval of building and photographs were annexed in the private complaint except the complaint sent to the law enforcing agency. A mere complaint is not sufficient to implicate the petitioners in the above said crime.

7. For the reasons aforesaid, this Criminal Original Petition is allowed and C.C.No.106 of 2017, on the file of the



Judicial Magistrate No.II, Namakkal, is quashed. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.II,
Namakkal.
2. The Public Prosecutor,
High Court, Madras

CrI.O.P.No.9461 of 2018
and
CrI.M.P.No.4879 of 2018

CA (CO)
SU (12/10/2021)