

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2021

PRONOUNCED ON : 23.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.12113 OF 2021 AND
CRL.M.P.NOS.6843 & 6844 OF 2021

Sivarasan @ Sivaraj

... Petitioner

Vs.

1. State rep by,
The Sub Inspector of Police,
Cheyur Police Station,
Cheyur - Post,
Tiruppur - District.
(Crime No.85 of 2016).

2. Ammasai Gounder

... Respondents

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the charge sheet in C.C.No.89 of 2016 on the file of the Judicial Magistrate, Avinashi, Tiruppur - District and quash the same in respect of the petitioner.

For Petitioner : Mr.D.Veerasekharan

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Mr.Nandha Kumar,
Legal Aid Counsel

ORDER

The petitioner/A2, who is facing trial before the learned Judicial Magistrate, Avinashi, Tirupur (trial Court), for offence under Sections 294(b), 324, 427 and 506(ii) IPC in C.C.No.89 of 2016, has filed this Quash Petition.

2.Despite notice served to the 2nd respondent and his name printed in the cause list, he failed to appear before this Court either in person or through any counsel. Hence, this Court, by order, dated 08.10.2021 has appointed Mr.Nandhakumar as Legal Aid Counsel for the 2nd respondent herein.

3.The brief facts of the case is that on 07.02.2016, at about 01.00 p.m., when the 2nd respondent, his wife and grandchild were at home, they heard abusive words from outside. When they came out from the house, the petitioner/A2 along with his elder brother/A1 and his cousin/A3 scolded them using filthy language. Thereafter, all the accused took stones threw on the 2nd respondent, his wife and their daughter. Due to which, they sustained simple injuries, roof tiles of the house got damaged and the 2nd respondent informed the happenings to his son-in-laws. On 08.02.2016, at about 04.00 p.m., a complaint was lodged by the 2nd respondent, which was registered in Crime No.85 of 2016, for offence under Sections 294(b), 324, 427 and 506(ii) IPC. On completion of investigation, charge sheet was filed before the trial Court, listing 10 witnesses as LW1 to LW10 and documents and the same was taken on file as C.C.No.89 of 2016, as against which the present Quash Petition has been filed by the petitioner/A2.

4.The learned counsel for the petitioner/A2 submitted that the petitioner/A2 is an Engineering graduate, due to the pendency of the above case, his future prospects is put on hold and his dream of getting job in Government and public sector is not possible. A1 is his elder brother and A3 is his relative. The petitioner's forefathers and the 2nd respondent's wife are adjacent land owners. There was some dispute over the boundaries of the property between the accused and the 2nd respondent. Now, the petitioner's side succeeded the property in question. The learned counsel further submitted that earlier, the petitioner's grandfather was taking steps to resist the encroachment of the 2nd respondent on the Government land. Enraged over the same, the 2nd respondent lodged a complaint as though the petitioner along with other accused assaulted and abused him.

5.The learned counsel further submitted that a suit in O.S.No.45 of 2015 filed by the 2nd respondent before the learned District Munsif, Avinashi, seeking the petitioner and his family not to interfere with his peaceful possession and enjoyment of the property, notice was sent to the petitioner and others for appearance. Taking advantage of filing of the suit in O.S.No.45 of 2015, the 2nd respondent attempted to further encroach upon the Government land, which was resisted by the petitioner, his brother/A1 and his cousin/A3 and hence, a false complaint given

by the 2nd respondent. Now, the suit in O.S.No.45 of 2015 got dismissed for non prosecution on 31.08.2021 by the learned District Munsif, Avinashi. He further submitted that only at the instance of the petitioner's elder brother/A1, the Tahsildar, Avinashi took steps to survey the Government land and removed the encroachment of the 2nd respondent. Immediately, the 2nd respondent filed Writ petition before this Court in W.P.No.42738 of 2016 seeking restraint of the action of the Tahsildar, Avinashi, Tirupur, wherein, this Court, by order, dated 07.12.2016, disposed the Writ Petition, giving liberty to the Tahsildar, Avinashi, Tirupur to proceed in accordance with law, if the property in possession of the 2nd respondent is found to be a Government Land, and purchased illegally or without any basis. Thereafter, the 2nd respondent filed another Writ Petition in W.P.No.5861 of 2017 seeking to quash the records pertaining to the order, dated 27.02.2017 in Na.Ka.No.172/2017/A5 passed by the Sub Collector, Tirupur. This Court, by order, dated 09.03.2017, disposed of the Writ Petition with a direction to the 2nd respondent herein to approach the Taluk Committee and to file appeal on the claim made by him. Following the same, the Revenue Divisional Officer, Tirupur, by order, dated 31.03.2017 in Na.Ka.4169/2017/A3 confirmed the encroachment of the Government land by the 2nd respondent and consequently, the District Collector, Tirupur, vide Urgent Memo dated 03.07.2017, directed the Revenue Officials to remove the encroachment of the 2nd respondent from the Government land and to give compliance report. Thereafter, the Revenue Officials removed the encroachment of the 2nd respondent on the Government land, which was at the instance of the petitioner's elder brother/A1. Due to which, the 2nd respondent had strong enmity and lodged the above criminal case to brook vengeance.

6.The learned counsel for the petitioner further submitted that the entire complaint is highly artificial for the reason that on the date of occurrence, the 2nd respondent received summons from the civil Court for a case initiated by the petitioner's elder brother/A1, which infuriated the 2nd respondent to lodge the above false complaint. The specific case is that the petitioner, his elder brother/A1 and their cousin/A3 had thrown stones on the 2nd respondent, his wife and their daughter, due to which, they sustained, some injuries. But no medical record to prove that the 2nd respondent and his family had sustained any injury. Further, there is delay in lodging the complaint and no reason given for the same. During investigation, the 1st respondent Police not examined any independent person, who have seen the occurrence. LW1 to LW3 are 2nd respondent, his wife and their daughter; LW4 and LW5 are neighbours and relatives of the 2nd respondent; LW6 and LW7 are son-in-laws of the 2nd respondent. Thus, the 1st respondent Police not conducted proper investigation in this case and

prayed for quashing of the proceedings against the petitioner.

7.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that the 1st respondent police already informed the 2nd respondent about the pendency of this petition, for which, the 2nd respondent informed that due to his fragile health, he is not interested in participating in this proceedings. The learned Additional Public Prosecutor filed counter and made his submissions that on the complaint of the 2nd respondent on 08.02.2016, the 1st respondent Police registered a case in Crime No.85 of 2016, for offence, under Sections 294(b), 324, 427 and 506(ii) IPC, visited the scene of occurrence, examined the witnesses present in the scene, prepared Observation Mahazar and Rough Sketch in the presence of LW8 and LW9, recovered stones and tiles from the scene.

8.It is further submitted that the accused in this case are relatives to the 2nd respondent. There was some dispute over the encroachment of the Government land by the 2nd respondent, for which, A1 in this case had taken steps to remove the encroachment by sending representation to the Revenue Officials and others. The 2nd respondent filed Writ petition before this Court in W.P.No.42738 of 2016 seeking restraint of the action of the Tahsildar, Avinashi, Tirupur, wherein, this Court, by order, dated 07.12.2016, disposed the Writ Petition, giving liberty to the Tahsildar, Avinashi, Tirupur to proceed in accordance with law, if the property in possession of the 2nd respondent is found to be a Government Land, and purchased illegally or without any basis. Thereafter, the 2nd respondent filed another Writ Petition in W.P.No.5861 of 2017 seeking to quash the records pertaining to the order, dated 27.02.2017 in Na.Ka.No.172/2017/A5 passed by the Sub Collector, Tirupur. This Court, by order, dated 09.03.2017, disposed of the Writ Petition with a direction to the 2nd respondent herein to approach the Taluk Committee and to file appeal on the claim made by him. On completion of investigation, the 1st respondent Police filed charge sheet before the trial Court. The trial Court on perusal of the charge sheet, found prima facie material and took the case on file and issued summons to the accused for their appearance. The petitioner, for one reason or other, has been delaying the progress of the trial from the year 2016. Hence, he prayed for dismissal of the Quash Petition.

9.The learned counsel for the 2nd respondent submitted that on 07.02.2016, at about 01.00 p.m., when the 2nd respondent, his wife and grandchild were at home, they heard abusive words from outside. When they came out from the house, the petitioner/A2 along with his elder brother/A1 and his cousin/A3 scolded them using filthy language. Thereafter, all the accused threw stones on the 2nd respondent, his wife and their daughter. Due to

which, they sustained simple injuries and the roof tiles of the house got damaged and the 2nd respondent informed the happenings to his son-in-laws. On 08.02.2016, at about 04.00 p.m., a complaint was lodged by the 2nd respondent, which was registered in Crime No.85 of 2016, for offence under Sections 294(b), 324, 427 and 506(ii) IPC. On completion of investigation, charge sheet was filed before the trial Court and the same was taken on file as C.C.No.89 of 2016. The submission of the learned counsel for the petitioner that since the petitioner's elder brother/A2 had taken steps to remove the 2nd respondent from the encroachment of the Government land, the 2nd respondent lodged the above complaint against the petitioner and others, is false. The other points raised by the learned counsel for the petitioner to quash the proceedings against him, are factual in nature, which are to be decided during trial and not in this Quash Petition. Hence, he prayed for quashing of this petition.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is seen that since the 2nd respondent encroached upon the Government land, there is continuous animosity between the accused and the 2nd respondent. The petitioner's elder brother/A1 approached the revenue officials and retrieved back the Government land from the 2nd respondent. Due to which, the 2nd respondent had strong motive against the accused. On the date of alleged occurrence, on 07.02.2016, the 2nd respondent got infuriated on receipt of Court summons from the civil Court initiated by A1. In this case, no independent witness has been examined by the prosecution. LW1 to LW3 are 2nd respondent, his wife and their daughter; LW4 and LW5 are neighbours and relatives of the 2nd respondent; LW6 and LW7 are son-in-laws of the 2nd respondent; LW8 and LW9 are witnesses to the Observation Mahazar and Rough Sketch and LW10 is the Investigating Officer. Admittedly, in this case, the 2nd respondent, his wife and their daughter (LW1 to LW3) did not take any treatment for the injuries sustained by them and there is no medical record to show that they had sustained injuries on the assault of the accused. Further, there is no material to show that the accused caused damage to the roof tiles of the 2nd respondent's house.

12.On perusal of the charge sheet, it could be seen that the 2nd respondent encroached upon the Government land, which at the instance of the petitioner's elder brother/A1, the Government land was retrieved by the revenue authorities. Due to which, the 2nd respondent had strong animosity against the accused. Thus, the 2nd respondent is maliciously lodged a criminal complaint against the accused with an ulterior motive for wreaking vengeance and with a view to spite him due to private and personal grudge.

13.Thus, the allegations made in the charge sheet, even if taken at face value and accepted in entirety, then to no prima facie materials to constitute any offence or make out a case against the accused. Further, the allegations made in the charge sheet are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground to proceed against the accused.

14.In view of the above, this Quash Petition is allowed and the proceedings in C.C.No.89 of 2016 on the file of the Judicial Magistrate, Avinashi, Tirupur is hereby quashed against all the accused/A1 to A3. Consequently, the connected Criminal Miscellaneous Petition is closed.

15.This Court appreciates Mr.Nandha Kumar, Legal Aid Counsel for the 2nd respondent for meticulous preparation and presentation of the case.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Judicial Magistrate Court,
Avinashi, Tiruppur.
2. The Chief Judicial Magistrate,
Tiruppur - District.
3. The Sub Inspector of Police,
Cheyur Police Station,
Cheyur - Post,
Tiruppur - District.
4. The Public Prosecutor,
High Court, Madras.

Copy To

- 1 The Secretary,
Tamilnadu Legal Services Authority,
High Court, Madras-104.
- 2 Mr.Nandha Kumar,
Legal Aid Counsel,
High Court, Madras-104.
(Through Legal Services Authority)

1cc to Mr.D.Veerasekharan, Advocate, S.R.No.69326

Cr1.O.P.No.12113 of 2021

GSM(CO)
PM/05/01/2022