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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.20205 of 2017
and
Crl.M.P.No.12135 of 2017

1.P.Vadivel
2.Santhi
3.Venkatesh
4.M.S.Palanisamy

...Petitioners

Vs.

1.State rep by the Inspector of Police
Modakurichi Police Station
Erode District.
Crime No.179 of 2017
2.C.Thamaraiselvan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records relating to the Crime No.179 of 2017 on the file of the Modakurichi Police Station, Erode and quash the same.

For Petitioners : Mr.M.Guruprasad

For Respondents : Mr.R.Kishore Kumar for R1
Government Advocate (Crl.Side)

Mr.P.Valliappan for R2.

ORDER

This Criminal Original Petition has been filed to call for the records relating to the Crime No.179 of 2017 on the file of the Modakurichi Police Station, Erode and quash the same.



2. The crux of the allegations in the FIR indicate that the 1st petitioner and the defacto complainant had entered into a registered agreement on 11.10.2012 to use the alleged 20 feet common pathway, the same is in respect of path way in Survey No. 1299/3 and the defacto complainant had laid a pipeline in the underground of the path way for fetching the water. The petitioners herein alleged to have damaged the said pipeline worth about one lakh with the JCP machine. Further, it is alleged that on 19.07.2017 at about 5 pm, the petitioners had fenced the property and violated the agreement. Thereby, they committed an offence.

3. Learned counsel for the petitioners submitted that the petitioners alleged to have removed the pathway and damaged the pipeline. Besides, it is alleged they have also put up fence and abused the defacto complainant in filthy language. At any event, there is no materials available against the petitioners that they had removed the path way before one month prior to 19.07.2017. He further submitted that in respect of path way, already civil suit is pending in O.S.No.504 of 2017 before the Sub Court, Erode. Prior to that, the defacto complainant has already filed a suit in O.S.No.511 of 2012, which was already dismissed by the Civil Court. Hence, it is his contention that when civil suit is pending, only the Civil Court can go into the issue. Moreover, there is no other allegation made against the petitioners except contending that the petitioners allegedly abused the defacto complainant and destroyed the pipeline. Hence, it his contention that the entire case is nothing but motivated and criminal colour is given in the civil dispute. Hence, prayed for quashing the F.I.R.

4. Learned counsel for the respondent submitted that the accused in order to grab the property had put up the fence, thereby opposed this petition.

5. This Court is of the view that the allegation in the F.I.R is vague and no materials are available on record to show the complicity of the accused with the crime and continuing the prosecution against A1 to A4, namely, the petitioners herein is nothing but abuse of process of law. Admittedly, civil suit is also pending between the parties in respect of path way in O.S.No.504 of 2017 before the Sub Court, Erode.

6. In the facts and circumstances of the case, the proceedings in Crime No.179 of 2017 on the file of the Modakurichi Police Station, Erode is quashed and accordingly,



this Criminal Original Petition is allowed. Consequently,
connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

msv

To

1. The Sub Court,
Erode.
2. The Inspector of Police
Modakurichi Police Station
Erode District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.Guruprasad, Advocate, S.R.No.66465

+1cc to Mr.Valliappan, Advocate, S.R.No.66710

Cr1. O.P. No.20205 of 2017
and Cr1.M.P.No.12135 of 2017

MG (CO)
SU (07/01/2022)