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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.NO.6460 OF 2017

&

CRL.M.P.NOS.4753 & 4754 OF 2017

M.K.Vedhambal

... Petitioner

.Vs.

A.Subramanian

... Respondent

PRAYER:- Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records and quash the criminal proceedings against the petitioner/1st Accused in C.C.No.697 of 2017 pending on the file of the learned X Metropolitan Magistrate, Egmore, Chennai.

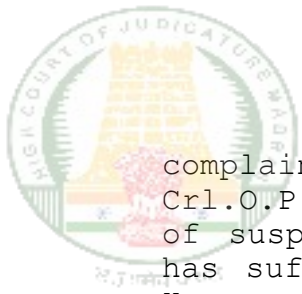
For Petitioner : Mr.P.H.Aravind Pandian
Senior Counsel
For Mr.R.Rajesh

For Respondent : Mr.S.P.Sudalaiyandi

O R D E R

The above petition has been filed to quash the private complaint taken on file for the offences under Section 500 of I.P.C.

2. The crux of the allegation in the complaint is that the mother of defacto complainant took possession of certain Government poramboke land in the year 1979 and after her death, the property was in continued possession of the de facto complainant. The further allegation is that the petitioner had purchased the property vide Sale Deed dated 31.10.1988 by creating false documents. Thereafter, the petitioner had lodged a complaint against the de facto complainant for trespass, creation of false documents and criminal intimidation. Based on the above complaint, FIR has been registered and the de facto complainant has been arrested. The further case of the de facto



complainant is that the FIR has been quashed by this Court in CrI.O.P.No.3338 of 2012. As the arrest lead to the consequence of suspension of the defacto complainant from the service, he has suffered loss of reputation and he has also filed a suit. Hence, it is his contention that the complaint filed by the present petitioner which lead to the filing of FIR is nothing but malicious and lowered the reputation of the de facto complainant. Accordingly, he sought to prosecute the petitioner herein. The Trial Court has taken cognizance of the private complaint in C.C.No.697 of 2017 on the file of the learned X Metropolitan Magistrate. The present petition has been filed to quash the above private complaint.

3. The main contention of the learned Senior Counsel appearing for the petitioner is that the mere filing of FIR to vindicate his right may not be construed to mean that he has harmed the reputation of the defacto complainant. Therefore, it cannot be said that the FIR has been lodged only to lower the reputation of the de facto complainant.

4. It is his contention that in the private complaint itself the defacto complainant has admitted that his mother has encroached the property and he has continued his possession in the property. Whereas the present petitioner has purchased the property by a valid sale deed by lawful means. At no stretch of imagination, such legal remedy constitute the offence of defamation merely because of FIR has been quashed on technical grounds. It is further submitted that even assuming that filing of the FIR gave rise to cause of action for the offence under Section 500 of Indian Penal Code, the alleged FIR was given on 07.12.2011. In that case, the private complaint ought to have been taken on file within a period of three years, whereas the learned Magistrate took cognizance of the offence after the period of three years which is barred under Section 468 of Code of Criminal Procedure. At any event, it is his contention that the lodging of the complaint cannot be construed as publication of the defamatory statement. At the most, the remedy is only for claiming damages, if any, and not criminal prosecution. In support of his submissions, he relied on the judgments in A.N.Shanmugam & Others Vs. G.Saravanan reported in [2015] 1 L.W. 806, P.M.Kathiresan Vs. Shanmugam, Retired Captain reported in [1995] 2 MWN (Criminal) and Mohd.Khalid Khan Vs State of Uttar Pradesh and another reported in [2015] 15 Supreme Court Cases 679.

5. Whereas the learned Counsel for the respondent submits that already the petitioner has filed a suit in the year 2002 for declaration of title and the above suit was rejected on 23.10.2013. Thereafter, the complaint has been filed on 25.10.2013. It is his further contention that the learned



Magistrate while taking cognizance has condoned the delay and thereafter, the suit has been rejected. After filing of the suit, the present complaint has been filed with a delay of more than three years which is the reason for quash of the FIR by this Court. It is his further contention that based on FIR, the respondent was arrested and he was placed under suspension. Therefore, it clearly shows that FIR is nothing but false prosecution and has lowered his reputation. Therefore submitted that merely because civil suit is pending for damages, the same is not a ground to quash the private complaint. In support of his submissions, he relied on the judgment in the case of Shivaji Rao Gaikwad @ Rajinikanth Vs. S.Mukunchand Bothra reported in [2020] 1 MWN Criminal 436.

6. At the outset, this is a case where the criminal prosecution has been launched under Section 500 of Indian Penal Code mainly on the ground that accused was arrested based on the FIR that has been quashed. It is not in dispute that the civil suit between the parties is pending. Though the suit was filed for declaration of title which was rejected on the ground of delay, the same has been challenged and pending before this Court in Criminal Revision Petition No.1968 of 2014.

7. It is to be noted that the de facto complainant himself admitted in the complaint stating that the subject Government poramboke property was originally encroached by his mother and thereafter, the defacto complainant continued the possession after her death. Whereas the contention of the present petitioner is that he has purchased the property from his predecessor in title, from one Mir Mohammed Hussain in the year 1988 by way of Sale Deed dated 31.10.1988. The allegation in the FIR indicates that the de facto complainant in the FIR is an absentee landlord at that point of time. Therefore, there is a delay and he has filed a complaint stating that the property has been encroached. It is to be noted that based on the complaint, FIR has been registered and the law was set in motion for various offences and the respondent was arrested. Based on his arrest, he was also placed under suspension by the Department, since he is a Government servant.

8. Now the crux of the issue is whether mere lodging of the complaint to vindicate the rights based on the title deeds will amount to criminal offence. It is to be noted that to attract the offence under Section 500 of IPC any action of the respondent must have been done by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted to defame that



person. Therefore, to bring within the ambit of the offence under Section 500 of IPC, it must be established that the reputation has been lowered with intention by the person who caused such imputation and such imputation would have harmed. Merely because FIR is filed based on the title deeds which resulted in filing of FIR by investigating agency, it cannot be said that the very complaint itself is lodged with the intent to lower the reputation of the persons. The FIR has been quashed by the Court on technical ground of delay. Therefore, when a person sets the law in motion on the basis of title deeds to vindicate his right over the property he has purchased, such an action cannot be construed as a criminal offence unless it is shown that such lodging of the complaint itself was intended to harm the reputation of the other, which is not in this case.

9. In this case, the law was set in motion only to vindicate the right of the petitioner based on the title deeds. Whereas the respondent claims to be in occupation of the property. In his private complaint, he has admitted that the property was originally encroached by his mother and he has continued possession after her death. Having admitting in the private complaint about his status in the subject property, now, he has taken 'U' turn in the counter before this Court that his mother has purchased the property in the year 1979. In that situation when the law was set in motion by the parties to establish their rights based on a registered sale deed, such a conduct cannot be construed as a criminal offence, particularly, defamation. Even the Court while quashing the FIR filed on the basis of complaint, quashed the FIR mainly on the ground of delay, after filing of the suit. The Court has never recorded anything that complaint itself was filed with intent to harm the reputation of the respondent.

10. Another contention of the learned Counsel for the respondent is that pursuant to the lodging of the FIR, he has been arrested and therefore his reputation is lowered. Admittedly the civil suit is pending between the parties. Whether the prosecution is malicious or not, it has to be gone into only after full trial. The main grievance of the defacto complainant is that he was arrested and his suspension has been published in the news paper, therefore, private complaint has been filed. The publication of the news in the news paper is not connected to the petitioner herein. The news agencies, the editor published what was recorded in the complaint and just published arrest made by the investigation officer. Such a publication was never made by the petitioner herein. Therefore, for publication of the news item in the news paper, the petitioner cannot be brought under Section 500 of IPC. If the allegations in the FIR was made with an intent to lower the reputation, then it is different scenario. But on a perusal of



the FIR, this Court is of the view that there is no material even to infer that the complaint was lodged only to lower the reputation. Primarily, FIR has been lodged only to vindicate the right of the petitioner over the immovable property on the basis of the title deed. Therefore, this Court is of the view that continuation of criminal prosecution is certainly nothing but abuse of process of law.

11. The respondent had also filed a suit for damages. It is for him to establish the damages suffered by him on account of the proceedings. In a judgment in the case of P.M.Kathiresan Vs. Shanmugham, Retired Captain reported in [1995] 2 MWN (Criminal), this Court has held that taking cognizance almost four years after the commission of the alleged offence under Section 500 of I.P.C. is not proper as per law. This Court has held that the period of limitation has to be recurred from the date of offence. The learned Magistrate has taken cognizance beyond the period of three years.

12. In the case of Mohd. Khalid Khan Vs. State of Uttar Pradesh and another, the Apex Court has held that -

3. Suffice it to say at this stage that while rejecting the applications filed under Section 482 Cr.P.C., the High Court had considered certain facts which prima facie might not be correct. Some observations with regard to the oral gift (Hiba) have been made which, according to us, are not correct, as we do not find the same in the sale deed which had been executed in favour of the present appellants.

4. Looking at the aforesaid facts, we are of the view that at this stage no case has been made out against the present appellants for initiating any criminal proceedings. Therefore, we set aside the impugned order so far as the present appellants are concerned and quash the process issued against them and also the charge-sheet filed against the present appellants in pursuance of First Information Report No.332 of 2005 dated 31st October, 2005 lodged at Police Station, Wazirganj District, Lucknow.

13. In the case of A.N.Shanmugam & Others Vs. G.Saravanan, this Court has held as follows :

"a proper consideration of the above said averments found in the plaint will make it clear that the plaint averments are not enough to spell



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out a cause of action for suing the petitioners for damages for the alleged commission of the tort of defamation. Furthermore, the filing of the suit, claiming damages to the tune of Rs.10,00,000/- for the respondent, his brother and his family members who were facing the criminal trial will make it clear that the suit itself has been filed as an abuse of process to escape from the criminal prosecution and also to make the second petitioner to come to terms in the matrimonial cause that is pending before the Family Court at Chennai. If every complainant, who lodges a complaint with the Law Enforcing Agency for imputation against the persons accused are to face civil cases for defamation on the premise that the imputations, according to the accused, are false, many people fearing such actions on the part of the accused, may not come forward to lodge a complaint to the Law Enforcing Agency. When an imputation has been made in a complaint made to the Law Enforcing Agency with the belief that such Agency would take criminal action against the persons against whom such imputation are made, the same will provide a valid exception taking such act outside the scope of tort of defamation. Besides, the lodging of the complaint with the police could not be considered to be a publication of a defamatory statement. If at all any wrong is committed by lodging a false complaint with the police and thereby setting the criminal law in motion, it may amount to malicious prosecution, for which action can be taken only after the disposal of the criminal case, wherein a specific finding shall be given to that effect."

14. In the case of Shivaji Rao Gaikwad @ Rajinikanth Vs. S.Mukunchand Bothra reported in [2020] 1 MWN Criminal 436 this Court has held that filing of a private complaint against the imputation made in the civil suit is not legally barred. At the same time, this Court has also recorded in paragraph 6 that the allegations made by the accused person in the civil proceedings are relevant to the issues and are absolutely necessary to be pleaded in order to substantiate the case of the accused in the civil proceedings. Sometimes the character and conduct of the person may also become necessary and important to be pleaded to substantiate the case. Ultimately what is required to be seen is whether the allegation made is totally unconnected or unwarranted to decide the issues involved in the suit.



15. Having regard to the above judgment and also the fact that the complaint has been filed only to vindicate the civil right of the petitioner based on the title deed and there is no material available on record to show that the same has been made only to lower the reputation that too with intention and certainly Section 500 of IPC will not be attracted. Admittedly, Civil Suits are pending and it is for the respondent to establish his right in the Civil Suits and claim damages, if any, after establishing damages suffered on account of the loss of reputation.

16. Accordingly, this Criminal Original Petition stands allowed and the C.C.No.697 of 2017, pending on the file of the learned X Metropolitan Magistrate, Egmore, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vrc/kbs

To

The X Metropolitan Magistrate,
Egmore, Chennai.

+1cc to Mr.R.Rajesh, Advocate, S.R.No.60322

CRL.O.P.NO.6460 OF 2017 &
CRL.M.P.NOS.4753 & 4754 OF 2017

SS (CO)
PBS/16/12/2021