



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2021

CORAM

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.6739 of 2017
and Crl.M.P.Nos.4926 & 4927 of 2017

1.Ramya

2.Manikandan

3.Karthikeyan

4.Thirugnana Sambandam

..Petitioners

Vs.

Chandramohan

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.36 of 2017 on the file of the learned District Munsif-cum-Judicial Magistrate, Vedaranyam, Nagapattinam District and quash the same.

For Petitioners : Mr.Swami Subramanian

For Respondent : No appearance

ORDER

This Criminal Original Petition has been filed to call for the records in C.C.No.36 of 2017 on the file of the learned Judicial Munsif-cum-Judicial Magistrate, Vedaranyam, Nagapattinam District and quash the same.

2. Heard learned counsel for the petitioners. Despite service of notice, none appeared on behalf of the respondent.

3. Learned counsel for the petitioner submitted that 4th petitioner died on 04.06.2021 and he also produced a copy of death certificate before this Court, which is not disputed by the prosecution. The said submission is recorded.



4. It is the contention of the learned counsel for the petitioner that the entire complaint is nothing but motivated. Due to the previous FIR lodged against the 3rd petitioner herein by the defacto complainant and others for the alleged damages caused to the shop of the defacto complainant on the same day on 05.10.2006, the private complaint has been filed on 10.01.2017. It is the contention that based on the FIR lodged against the defacto complainant, he was arrested only after the release of the bail.

5. The present complaint came to be filed and the entire complaint clearly shows that the defacto complainant has no knowledge of so called alleged occurrence, it is only a hearsay from his wife and his contention that wife of the defacto complainant has filed a suit in respect of same shop on 07.10.2016 before the Judicial Magistrate, Vedaranyam and for permanent injunction against the petitioners herein. In the above suit, there was no mention whatsoever made with regard to the alleged occurrence said have been taken place on 05.10.2006. Hence, it is his contention that the entire private complaint is off suit of the complaint filed by the defacto complainant and others. Hence, prayed to quash the petition.

6. Learned Government Advocate(Crl.Side) submitted that FIR has been filed against the defacto complainant for the offences under Sections 147, 450, 294(b), 457, 380 and 506(ii) of IPC for the alleged occurrence said to have been taken place on 06.10.2016 at 03.00 a.m. in the morning, which is not disputed by the prosecution. It is also admitted fact that the defacto complainant and others were arrested based on the above FIR. After release of accused from the prison, the private complaint came to be filed on 10.01.2017. The entire allegation in the private complaint is that the defacto complainant is not an eyewitness and was not present at the time of alleged occurrence and entire allegation was pressed into service as if his wife has told him. It is relevant to note that the wife of the defacto complainant infact filed a civil suit prior to that private complaint.

7. Be that as it may, the copy of the plaint filed by the wife of the defacto complainant also placed on record, the same indicate that on 07.10.2016, she filed a suit for injunction in respect of the shop. There was no whisper what so ever made as to the alleged occurrence said to have been taken on 06.10.2016 at 03.00 a.m. If really, there was any such offence or destruction of the property made, certainly, there would have



been mentioned in the plaint filed for injunction, whereas cause of action alleged as if the accused made an attempt on 06.10.2016, whereas in the private complaint now filed, it is alleged that the accused made an attempt on 05.10.2016 at 06.00 a.m. In this regard, it clearly indicate that the complaint is nothing but motivated and filed only to not suit earlier FIR filed against the defacto complainant and others. In such view of the matter, it clearly established the fact that the private complaint is nothing but motivated.

8. In view of the above, continuing the prosecution is nothing but abuse of process of law. Accordingly, the same is quashed and this Criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

//True Copy//

Sub-Assistant Registrar

msv/nr
To

The Judicial Magistrate,
Vedaranyam, Nagapattinam District

+1 CC to Mr.Swami Subramanian, Advocate sr 60895.

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VSNII (CO)
SP (22/12/2021)