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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.21139 OF 2017

AND

CRL.M.P.NO.12484 OF 2017

A.Kamali

... Petitioner

.Vs.

1. The State rep. By its
The Inspector of Police,
E-1, Mylapore Police Station,
Chennai - 04

2. P.Senthilkumar

... Respondents

PRAYER:-

Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records redating to First Information Report in Crime No.1246 of 2014 dated 13.09.2017 on the file of the 1st respondent Police and quash the same.

For Petitioner : Mr.E.C.Ramesh

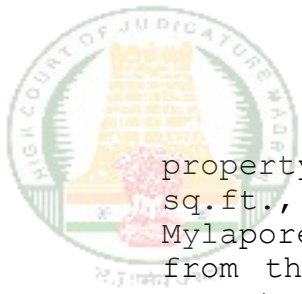
For Respondents : Mr.E.Rajthilak for R1
Government Advocate (Crl.Side)

Mr.P.Kamarasu for R2

O R D E R

The present Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to First Information Report in Crime No.1246 of 2014 dated 13.09.2017 on the file of the 1st respondent and quash the same.

2. The brief facts of the case is that the defacto complainant, is the power agent of the petitioner's brother. The petitioner and her brother, namely, Prabhu Anantham, who is settled in USA are the legal heirs of petitioner's parents. The



property comprised in land and building of admeasuring of 1160 sq.ft., situated in New No.53, Old No.33, R.K.Mutt Road, Mylapore, Chennai - 4 was ancestral property devolved on father from their grand father, namely, Annamalai Mudaliar and he had executed Will in Document No.8 of 1955 in favour of petitioner's late father and his brother, thereafter partition took place on 21.04.1983. Thereafter, by obtaining loan and pledging her jewels, the petitioner obtained advance amount and reconstructed present building in the year 1997. The petitioner's father expired on 01.06.2016 and her mother expired on 25.06.2016. After the death of parents, petitioner's brother tried to evict the petitioner from the suit property by assaulting, crushing her neck and pushed her out of the house and gave life threat, out of her cry, the general public called 100, thereafter, police safeguarded the petitioner, for which she lodged a complaint against her brother and the same is numbered as CSR No.766 of 2016 dated 03.07.2016 and the petitioner's brother proceeded to USA on next day, 04.07.2016.

3. It is the case of the petitioner that the petitioner filed a suit in O.S.No.4001 of 2016 and I.A.no.9905 of 2016 on the file of V Assistant Judge, City Civil Court, Chennai for permanent injunction as well as partition, the court granted Interim Injunction in favour of the petitioner on 04.08.2016. In consequence, the petitioner's brother gave power of attorney in favour of the 2nd respondent on 12.08.2016. But the 2nd respondent has filed complaint against the petitioner that she had trespassed into the property. However the same is apparently error on the part of the 2nd respondent, the learned Government Advocate without looking into the factual aspect, given wrong opinion for filing case against the petitioner in Crime no.1246 of 2017 on 13.09.2017.

4. According to the petitioner, the respondent police has no locus standi and no jurisdiction to interfere into the civil matter between her and her brother. When same came to knowledge of the petitioner that her father executed settlement deed 2328/2010 in favour of her brother, on 18.09.2010 for the suit property, she was surprised and filed subsequent suit challenging the settlement deed in O.S.No.6041 of 2016 to declare the said settlement deed as null and void and for further reliefs. Without assigning any reasons, the learned V Assistant Judge, City Civil Court, Chennai vacated injunction against the petitioner on 30.11.2016, immediately, she had filed C.M.A.No.20 of 2017 on the file of learned IV Additional Judge, City Civil Court, Chennai. Pending O.S., and C.M.A., for adjudication, the petitioner's brother and his power agent attempted to attack the petitioner with knife. Though complaint was lodged and CSR No.906 of 2017 was assigned, no case has been registered till date. The respondent police by receiving opinion



from Government Advocate has registered a case against the petitioner under Sections 448, 453 and 294(b) of IPC., in Crime No.1256 of 2017, seeking to quash the same, the petitioner is before this Court.

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5. The learned counsel for the petitioner submits that the dispute between the petitioner and his brother are purely civil in nature and the respondent police converted as criminality, therefore, offence under Sections 448, 453, 294(b) IPC are not attracted against the petitioner. Even in the complaint, the 2nd respondent admitted that the petitioner was in possession. The respondents collude to vacate the petitioner from possession of 1st and 2nd floor and frivolous complaint against the petitioner.

6. The learned counsel for the petitioner also submits that the allegations levelled in the criminal complaint are the questions directly involved in the suit pending between the petitioner and the 2nd respondent in a competent civil court. Hence pleaded to call for the records in FIR No.1246 of 2017 dated 13.09.2017 and quash the same.

7. The learned Government Advocate appearing for the respondent-police submitted that only based on the complaint, FIR has been registered and there is a family dispute between the parties and several civil cases pertaining to their disputes are pending and prayed that all these disputed facts can be decided only by way of trial and prayed that the FIR need not be quashed under Section 482 of Cr.P.C.,

8. Heard the learned counsel on either side and perused the documents placed on record.

9. The present case pertains to a family dispute with regard to the property devolved around the sister and brother and the same is civil in nature. According to the petitioner, the FIR is not supported with proper materials and does not disclose any offence as alleged. Further, the investigation on the complaint has not been justified by police officer. It is also clear that the subject property is an ancestral property owned by petitioner's father from grand father, namely, Annamalai Mudaliar and he executed Will in Document No.8 of 1955 in favour of Peitioner's late father,namely Ananthan and his brother, namely, N.Ranganathan. Based on the Will, the Petitioner's father and his brother partitioned the suit property on 21.04.1983 as Document No.532 of 1983. The petitioner and her brother are legal heirs of Ananthan, hence without a partition, the Settlement deed no.2328 of 2010 executed in favour of petitioner's brother is not valid and the petitioner, also being a legal heir has a right of coparcener.



The petitioner has filed a complaint against her brother on 03.07.2016 before the respondent police, as he had gone to USA on the very next day, i.e., 04.07.2016, she filed a suit for permanent injunction and an injunction was also granted to her. The petitioner's contention is that she was with her parents raising her child and she is the owner of the property and she is in possession of the property, but the contention of the respondent is that the petitioner had trespassed into the property. The statement of the respondent that the petitioner is not in possession is to be proved.

10. It is to be noted that on 06.08.2017, a complaint has been lodged by the 2nd respondent [cousin brother of the petitioner and the petitioner's brother] who is a Power of attorney stating that the petitioner has trespassed into the said house and the petitioner had abused him with filthy language and on 13.09.2017, the court has taken the said complaint of the 2nd respondent against the petitioner on file and charged under Sections 448, 453 and 294(b) of IPC.

11. In the case of Inder Mohan Goswami Vs. State of Uttaranchal reported in (2007) 12 SCC 1, the Hon'ble Supreme Court has observed and held that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

12. Applying the said decision to the present case on hand, it is pertinent to point out that on 04.08.2016, the petitioner had obtained an injunction by way of I.A.No.9905 of 2016 in O.S.No.4001 of 2016. It is contended that the settlement deed was executed on 18.09.2010, by the petitioner's father, while he was alive in favour of petitioner's brother. On 27.10.2016, a suit in O.S.No.6041 of 2016 was filed by the petitioner to declare the said settlement deed as null and void and for other reliefs mentioned therein and on 30.11.2016 the injunction was also vacated. When the Power itself was given to the 2nd respondent by the petitioner's brother only on 12.08.2017, the complaint of the 2nd respondent on 06.08.2017 stating that the petitioner is in possession of the property and abused him with filthy language, cannot be accepted and the said complaint is liable to be quashed.

13. Since several suits and settlement deed pertaining to the property in question are pending for adjudication and that the present case is purely civil in nature and by applying the decision of the Hon'ble Supreme Court mentioned supra to the present case on hand, the complaint in Crime No.1246 of 2017 dated 13.09.2017 is liable to be quashed.



Accordingly, the present Criminal Original Petition is allowed and the First Information Report No.1246 of 2017 against the petitioner is quashed. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd

To

1. The Inspector of Police,
E-1, Mylapore Police Station,
Chennai - 04.
2. The Public Prosecutor,
High Court, Madras.

Copy To:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.E.C.Ramesh, Advocate, S.R.No.47054

CRL.O.P.NO.21139 OF 2017 AND
CRL.M.P.NO.12484 OF 2017

PCH(CO)
PBS/07/10/2021