

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.09.2020

PRONOUNCED ON : 22.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.4869 of 2017

D.Thomas Selvam

... Petitioner

Vs.

1.The Superintendent of Police,
O/o the Superintendent of Police,
CBCID-Kancheepuram Division,
Kancheepuram.

2.The Superintendent of Police,
O/o the Superintendent of Police,
Kancheepuram District,
Kancheepuram.

3.The Inspector of Police,
G-3, Melmaruvathur Police Station,
Kancheepuram District,
(Crime No.99/2016).

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to grant an order of direction directing the respondents 2 & 3 to transfer the investigation in Crime No.99 of 2016, pending on the file of the 3rd respondent, to the file of the 1st respondent for further investigation in accordance with law.

For Petitioner : Mr.R.Gopinath

For Respondents : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to transfer the investigation in Crime No.99 of 2016 from the file of the 3rd respondent to the file of the 1st respondent.

2.The case of the petitioner, who is the defacto complainant in Crime No.99 of 2016, is that on 26.03.2016 the grand mother of the petitioner had gone to attend the temple festival at about 10.30 p.m., and the petitioner was alone at

home and he decided to go to temple festival at about 11.00 p.m. When the petitioner was alone at home, he heard the noise of the bike and the persons who came in the bike closed the door outside. Sensing fear, the petitioner did not come out from the house and he heard the noise of setting fire to the house. When the petitioner attempted to open the door, the door was locked and the accused persons set fire to his house. The petitioner escaped from the house via roof and called his neighbours to extinguish the fire. Thereafter, the information was sent to the local Fire Station and EB office. Prior to the occurrence, the accused persons were assaulted the mother of the petitioner with regard to dispute in the common pathway. Hence, a complaint, dated 15.03.2016 was lodged before the Melmaruvathur Police Station and a C.S.R.No.97 of 2016 was issued to that effect. Due to the above dispute, the accused persons set fire to the house of the petitioner. Hence, the petitioner lodged a complaint before the 3rd respondent Police and the same was registered in Crime No.99 of 2016, for offence under Sections 436, 342 and 506(ii) IPC. On completion of investigation, the respondent Police filed the final report as 'Mistake of Fact' on 12.04.2017 before the learned Judicial Magistrate, Madurantakam.

3.The learned senior counsel appearing for the petitioner submitted that the accused persons with a view to usurp the common passage which is lying in front of the petitioner's house as well as one Shantha tried to raise obstruction to the passage by constructing a compound wall. It was found that the survey number in the assignment of patta granted in favour of Shantha has been wrongly mentioned as Survey No.95/23 instead of Survey No.94, where the house of the said Shantha has been constructed and in her usage. Utilizing the mistake in the patta, the accused persons took undue advantage by obstructing the common passage which is in the usage of the villagers through the influence of their relative one Babu, who is the President of the village and a politically influential person in the petitioner's locality.

4.The learned senior counsel further submitted that the villager one Arul Marianathan gave representations dated 29.02.2016 and 01.03.2016 respectively to the District Collector, Kancheepuram and the Revenue Divisional Officer, Maduranthakam to cancel the patta issued in the name of the said Shantha with regard to the survey No.95/23 and to allot patta for the land in survey No.94. Since no steps was taken on the representations, the said Arul Marianathan filed a Writ Petition in W.P.No.10025 of 2016 before this Court and this Court, by order, dated 01.03.2016 directed the officials to conduct enquiry on the representation dated 01.03.2016 within a period of 4 weeks. While so, on coming to know about the same, the accused persons along with the said Babu, who is the President of the village, with an ulterior motive assaulted the mother of the petitioner and his aunt. The 3rd respondent

on information received a complaint dated 15.03.2016 from the mother of the petitioner and issued C.S.R.No.97 of 2016 for the same, but did not take any action on the said complaint. Thereafter, with an ulterior motive, knowing fully well that the petitioner was alone in the house, in order to murder the petitioner, the accused locked the house from outside and set fire to the house, as all the relatives of the petitioner were attending Ester function in the church, no one could come for the rescue of the petitioner. The petitioner escaped from the house via roof and all the household articles in the house to the value of Rs.9 lakhs were completely burnt. Hence, the petitioner lodged a complaint before the 3rd respondent, which has been registered in Crime No.99 of 2016, for offence under Section 436, 342 and 506(ii) IPC.

5.The learned senior counsel further submitted that even though a prima facie case was made out, the 3rd respondent Police hand in glove with the said Babu, who is the President of the Village, did not conduct the investigation in proper manner and simply filed the final report as 'Mistake of Fact' before the learned Judicial Magistrate, Madurantakam on 12.04.2017. Therefore, it is necessary to transfer the investigation in Crime No.99 of 2016 to the file of the 1st respondent, otherwise the petitioner will be put to irreparable loss and hardship.

6.The learned Additional Public Prosecutor appearing for the respondents submitted that due to common pathway dispute, the accused persons set fire to the house of the petitioner. Hence, the petitioner has lodged a complaint before the 3rd respondent Police and the same was registered in Crime No.99 of 2016, for offence under Sections 436, 342 and 506(ii) IPC. On completion of fair investigation by examination of witnesses and documents, the respondent Police filed the final report as 'Mistake of Fact' on 12.04.2017 before the learned Judicial Magistrate, Madurantakam. Now the remedy available to the petitioner is to file a protest petition before the concerned Court, but he filed the above petition for transfer of investigation which is bad in law. Hence, he prayed to dismiss the above petition.

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

8.This Court, by order, dated 06.08.2020, directed the learned Judicial Magistrate, Mathuranthakam to produce the protest petition filed by the petitioner along with its status. The learned Judicial Magistrate, Mathuranthakam, in D.No.594 of 2020, dated 25.08.2020 submitted a report along with the documents. On perusal of the same, though the defacto complainant had specifically named certain persons being the cause for burning the house, from the statement recorded under Section 161 Cr.P.C., of the defacto complainant, his brother, cousins, grand mother and other

relatives and also from the villagers, it could be seen that none of them have stated that they saw the named accused setting fire to the hut.

9.The neighbour Pushpa, who was examined as LW2 has clearly stated that at about 11.00 p.m., when she was sitting outside, she saw fire was emanating from the EB line and it was touching and passed over the hut. LW2 immediately rushed and informed others, who came to the scene of occurrence and informed the Fire Service. One Selin Marry, who is the cousin of the defacto complainant clearly stated that she only saw the burning house of the defacto complainant and not named any accused escaping from the scene in their two wheelers in an agitated mood. Further, the witnesses for the Observation Mahazar and Rough Sketch have stated about preparation of the respective documents. The villagers have stated that the defacto complainant has got separate house and he and his grand mother only on occasions used to visit the place. It was LW2/Pushpa, who was living in the adjoining hut, saw the fire emanating from the EB line.

10.All the witnesses examined during investigation clearly stated that the hut of the defacto complainant was not put to regular use. One Sakthivel/LW14, the Fire Station Officer, Acharapakkam has stated that on receiving information, he went to the place of occurrence and extinguished the fire and confirmed that the hut was burnt due to EB wire coming in contact with the hut. The Field Officer and the Line Man from the Electricity Department stated about disconnecting the power line passing above the hut.

11.Further, it is seen that the dispute was brewing between the defacto complainant and the named accused, there have been complaint and counter complaint lodged by both the groups and C.S.R.No.81, 90, 97 and 98 of 2016 were issued. Since both the groups were continuously creating problem between them, the 3rd respondent Police in Crime No.80/2016 initiated proceedings under Section 107 Cr.P.C., before the Revenue Divisional Officer, Madurantakam.

12.The 3rd respondent during investigation, has examined around 19 witnesses and collected documents, found that the complaint has been exaggerated one and closed the same as 'Mistake of Fact'. The notice for the closure report dated 24.08.2020 has been sent to Babu, Sridhar, Ramesh, Sankar and Velangani and no proof of service is found. Strangely the defacto complainant in this case Thomas Selvam, S/o.Domnic who is not served with any RCS notice and the same is required.

13.In view of the same, the learned Judicial Magistrate, Madurantakam is directed to serve the RCS notice to the defacto complainant. On receipt of the same, it is for the

defacto complainant to appear before the learned Judicial Magistrate, Madurantakam and file a protest petition on the RCS notice, if he so desires. If any protest petition is filed, the learned Judicial Magistrate, Madurantakam is directed to dispose of the same on its own merits and in accordance with law.

14. With the above observations, this Criminal Original Petition stands dismissed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

vv2

To

1. The Judicial Magistrate,
Madhrantakam.
2. The Superintendent of Police,
CBCID-Kancheepuram Division,
Kancheepuram.
3. The Superintendent of Police,
Kancheepuram District,
Kancheepuram.
4. The Inspector of Police,
G-3, Melmaruvathur Police Station,
Kancheepuram District,
5. The Public Prosecutor, सत्यमेव जयते
High Court, Madras.

WEB COPY

Cr1.O.P.No.4869 of 2017

RLD (CO)
GMY (22/06/2021)