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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.12.2021

CORAM

THE HONOURABLE MR.JUSTICE N.SATISH KUMAR

CRL.O.P.NO.12366 OF 2017

&

CRL.M.P.NOS.8076 & 8077 OF 2017

1.Palanivel
S/o.Nalla Gounder

2.Nallammal
W/o.Palanivel

3.Sampathkumar
S/o.Palanivel

4.Saraswathi
W/o.Sampathkumar

...Petitioners / Accused

Vs.

Thiyagarajan

...Respondent / Complainant

Prayer : Original Petition filed under Section 482 Cr.P.C to call for records in C.C.No.17 of 2017 on the file of Judicial Magistrate, Rasipuram, Salem and quash the same.

For Petitioners : Mr.V.V.Sairam

ORDER

This Criminal Original Petition has been filed to quash the private complaint filed against the petitioners in C.C.No.17 of 2017 pending on the file of Judicial Magistrate, Rasipuram, Salem for the alleged offences under Sections 294 (b), 341, 323, 326 and 506(ii) IPC.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) appearing on behalf of the respondent.

3. It is the case of the complainant that there is a civil dispute between the parties and that on 01.10.2014 at about 11.30am, the accused entered the disputed land and attacked the mother of the de facto complainant due to which the mother of



the de facto complainant sustained fracture in the right hand, besides causing other injuries resulting in the filing of the private complaint. However, the police has closed the case as mistake of fact.

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4. The learned counsel appearing for the petitioners submits that the civil dispute has already attained finality and the second appeal filed by the first petitioner in S.A.No.934 of 2015 was disposed of by this Court vide judgment and decree dated 19.01.2017 permitting the defendants to use the common pathway situated in S.No.95/1 for laying a pipeline to take water from the common well. The operative portion of the aforesaid order reads as follows:

'8. Thus, there is no controversy, that exists any longer. Accordingly, while confirming the judgment and decree of the Courts below, it is hereby clarified that,

(i) the defendants are permitted to use the common pathway situated in S.No.95/1 for laying a pipeline to take water from the common well situated in S.No.95/1 to only those lands mentioned in Ex.A1;

(ii) the defendants can lay a pipe line and continue with the same to take water to their lands, owned by them under Ex.A1 and also the one purchased by them, situated in S.No.146/2D, subject to the rider that, in respect of the land situated in S.No.146/2D, water from the common well situated in S.No.95/1 shall not be used; and

(iii) the defendants can use the common pathway in S.No.95/1 to take water either from S.No.96/5 or S.No.96/3 to S.No.146/2D and viceversa.

Therefore, the learned counsel for the petitioners contended that since second appeal has already reached finality, the private complaint, which has been pressed into service in respect of the same issue and hence, the same is liable to be quashed.

5. This Court perused the entire materials placed before this Court. If the Court finds that the very complaint itself is result of motivation or allegations in the complaint do not constitute any offence, there is no difficulty in quashing the private complaint at the threshold, however, if the allegations in the complaint indicate that there are violence unleashed which resulted in grievous hurt, the same could be proved only after examining the parties and therefore, this Court is not inclined to quash the private complaint. At this stage, learned counsel for the petitioners seeks indulgence of this Court to dispense with the personal appearance of the petitioners.



Accordingly, this Criminal Original Petition is dismissed. However, taking note of the nature of the dispute, personal appearance of the petitioners is dispensed with except for receiving copies and answering the charges u/s.313 Cr.P.C questioning and any other hearing that may be fixed by the trial Court. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar

gpa/gba

To

1.The Judicial Magistrate
Rasipuram, Salem

2.(do through) The Chief Judicial Magistrate,
Salem.

+1cc to Mr.V.V.Sairam, Advocate SR.No.64095

Cr1.O.P.No.12366 of 2017 &
Cr1.M.P.Nos.8076 & 8077 of 2017

PM(CO)
RVM(17/12/2021)