



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 13.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. Nos.25694 and 18291 of 2017
and
Crl.M.P.Nos.11166, 11167, 14775 and 14776 of 2017

1.Kamaraj
2.Ramachandran
3.Rengasamy
4.Sivasubrmanian

. . . Petitioners
(In Crl.O.P.No.25694/2017)

Kaviraj

. . . Petitioner
(In Crl.O.P.No.18291/2017)

Versus

1.State Represented by,
The Inspector of Police,
District Crime Branch,
Thiruvarur District.

2.Thamaraiselvam

. . . Respondents
(In both Crl.O.Ps)

COMMON PRAYER : Criminal Original Petitions filed under Section 482 Cr.P.C., to quash the charge sheet filed in S.C.No.60 of 2017 on the file of the District and Sessions Court at Thiruvarur District.

For Petitioners
(In both Crl.O.Ps)

: Mr.P.Sesubalan Raja

For Respondents
(In both Crl.O.Ps)

: Mr.R.Kishore Kumar
Govt.Advocate (Crl.Side) for R1

: No appearance for R2

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COMMON ORDER

These Criminal Original Petitions have been filed to quash the criminal proceedings, in S.C.No.60 of 2017, filed against the accused, for the offence punishable under Sections 147, 447, 427 IPC and Section 3(1) of PPDL Act, pending on the file of the District and Sessions Court at Thiruvarur District.

2. The crux of the prosecution case is that on 3/2/2014, the accused trespassed into the land belonging to the de facto complainant and destroyed the fence and saplings of trees worth about Rs.59,450/-.

3. Heard Mr.P.Sesubalan Raja, learned counsel for the petitioners and Mr.R.Kishore Kumar, learned Government Advocate (Criminal Side) for the first respondent. There is no representation on behalf of the second respondent.

4. The learned counsel appearing for the petitioners submit that originally the petitioners have purchased the property, to an extent of 1.77 acres, belong to one Jaya lakshmi, by a registered sale deed, through the power agent, on 4/9/2006, whereas, the de facto complainant claiming right over the property, on the basis of a sale deed, dated 3/4/2006. Hence, the defacto complainant had filed the suit for declaration. Similarly, the petitioners have also filed a suit for bare injunction. However, the suit for bare injunction was decreed after a delay of 497 days. An application has been filed to set aside the decree and judgment. Now it is the contention that trial court has disposed of both the suits, filed by the de facto complainant and accused. As against the same, appeal was filed by the de facto complainant and the same was allowed on 03.01.2019. Aggrieved against the same, present complaint has been filed.

5. It is his contention that now the first appeal went in favour of the de facto complainant also set aside by this Court in Second Appeal Nos.632 and 633 of 2014 and remanded the matter to the First Appellate Court. Hence it is his contention that the entire allegations in the final report is the result of civil dispute and complaint has been engineered only after the First Appeal was allowed in favour of the de facto complainant and submitted that even the entire materials collected by the prosecution would not show any damage to the trees or saplings or even to the fence. Hence submitted that this entire prosecution is motivated and result of the civil dispute and hence seeks to quash the proceedings.



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6. The learned Government Advocate (Criminal Side) appearing for the State submitted that the prosecution has examined the witnesses and filed a final report and therefore, opposed for quashing the proceedings.

7. Normally, this Court will not interfere with the final report when the investigation has been completed and final report has been filed. But, at the same time, when the Court finds that the entire prosecution is motivated or result of civil dispute and the materials collected by the prosecution itself do not constitute any offence, continuing the prosecution is nothing but a futile exercise and abuse of process of law and the same can be interfered by exercising power under Section 482 of the Code of Criminal Procedure.

8. Filing of two Civil Suits, viz., one by the accused and another by the de facto complainant, is not disputed by the first respondent. The law was set in motion. On the basis of First Information Report filed at the direction of this Court in Criminal Original Petition No.9102 of 2014. The very complaint itself indicate that as if on 03.02.2014 in the mid night, accused entered into the property and damaged the saplings of trees worth about Rs.59,450/-. The final report and the statements recorded by the prosecution clearly indicate that the witnesses said to have identified the accused only on the use of torch light in the midnight. It is to be noted that filing of the cases is not disputed and that this complaint was filed, after the first appeal went in favour of the de facto complainant. Originally the suits as submitted by the learned counsel appearing for the petitioners tried jointly and both the suits were dismissed by the trial Court only after the first appeal was allowed in favour of the de facto complainant.

9. It is also relevant to note that in the application filed to set aside the ex parte decree passed against the de facto complainant in O.S.No.133 of 2006, there was no whisper about the damages caused to the property by the present accused. The very affidavit placed before this Court itself indicate that there were dispute over the property and it is the contention of the defacto complainant that in a petition before the trial Court that only in April 2008 when she went to the property, she came to know that somebody has cultivated and there is no whisper whatsoever with regard to the alleged trespass made on 03.02.2014 and appeal was disposed of in the year 2014. After that the present complaint has been filed which has been investigated and filed final report.



10. Perusal of the records, particularly the observation Mahazar prepared by the investigation officer does not even show any damage to the property, particularly saplings and statements of the witnesses also indicate that they had identified with the help of torch light in the midnight which is highly improbable. All these facts clearly indicate that the prosecution is motivated and result of the Civil Dispute. In such a view of the matter this Court is inclined to quash the charge sheet filed in S.C.No.60 of 2017 on the file of the District and Sessions Court at Thiruvarur District.

11. Accordingly, these Criminal Original Petitions are allowed. Charge sheet filed in S.C.No.60 of 2017, pending on the file of the District and Sessions Court at Thiruvarur District is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

psa/mvs.

To

1. The District and Sessions Judge,
Thiruvarur District.

2. The Inspector of Police,
District Crime Branch,
Thiruvarur District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Sesubalan Raja, Advocate SR.No.66674

CrI. O.P. Nos.25694 and 18291 of 2017

SSN (CO)
CB (04/01/2022)