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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.08.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

CrI.O.P.No.26476 of 2017

and

CrI.M.P.No.15236 of 2017

1. Kaliyaperumal
2. Ramachandran
3. Arul Jothi

.. Petitioners / Accused 1 to 3

Vs.

1. State represented by
Sub Inspector of Police,
Thirunallar Police Station,
Thirunallar,
Karaikal District.

.. 1st Respondent / Complainant

2. Mahalakshmi

.. 2nd Respondent / Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the entire records pertaining to Crime No.121 of 2017 registered for alleged offences under Sections 120(B), 420, 468, 471 of I.P.C r/w 34 of I.P.C on the file of the Sub Inspector of Police, Thirunallar Police Station, Thirunallar, Karaikal District/first respondent and quash the same.

For Petitioners : Mr.R.Natarajan

For R1 : Mr.Bharatha Chakaravarthi
(Public Prosecutor, Pondy)

For R2 : No appearance

ORDER

Heard Mr.R.Natarajan, learned Counsel for the petitioners at length and also Mr.Bharatha Chakaravarthi, learned Public Prosecutor for the Union Territory of Puducherry for the first



respondent. There is no representation on behalf of the second respondent/defacto complainant.

2. At any rate, taking into account the nature of the order, that is now to be passed, absence of representation on behalf of the second respondent/defacto complainant would not be material. The petitioners herein had been arrayed as A1, A2 and A3 in F.I.R.No.121/2017, registered by the first respondent Police under Sections 120(B), 420, 468, 471 of I.P.C r/w 34 of I.P.C.

3. The first respondent did not register the said complaint based on the complaint given by the second respondent. Rather, they did so on a direction by the jurisdictional Magistrate, before whom a petition was filed under Section 156 (3) of the Code of Criminal Procedure and on appreciation of the facts stated therein, the jurisdictional Magistrate had directed registration of said First Information Report.

4. This is a cause for grievance by Mr.R.Natarajan, learned Counsel for the petitioners. He pointed out various facts and stated that the investigation would be a futile exercise and therefore this Court must curtail investigation on the First Information Report and as a matter of fact, quash the First Information Report.

5. The learned Counsel stated that O.S.No.132 of 1992 had been filed by the father of the second respondent / defacto complainant before the Principal District Munsif Court, Karaikal, seeking partition and separate possession of 1/3rd share in two items of property, namely A and B items of the property. The suit went to trial and during the course of trial, learned Principal District Munsif, Karaikal, found that the plaintiff therein namely, the father of the second respondent / defacto complainant herein was not entitled to any share in the A schedule property and gave a decree as sought for only with respect to B schedule property.

6. Subsequently, an application for final decree was also filed and an Advocate Commissioner had been appointed and I am informed that necessary procedure in accordance with law had also been complied with.

7. The matter should have rested there. However, it again came up for consideration owing to a complaint given by the



defacto complainant before the Sub-Inspector of Police, Thirunallar Police Station, Thirunallar / first respondent herein. This was on 31.12.2016.

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8. Among other statements made in the said complaint, the defacto complainant/second respondent herein had also alleged that her father was non-suited in O.S.No.132/1992 with respect to A schedule property primarily because, there had been some irregularities which had occurred with respect to the patta of the said land. She alleged forgery among other offences. This complaint was enquired into by the Station House Officer of the Thirunallar Police Station who had invited both the defacto complainant / second respondent herein and also the accused and examined the documents and had finally stated that "matter is purely civil in nature, hence, both the parties are advised to seek remedy through Court, revenue or survey department. And both parties are advised not to create any law and order problem."

9. The matter should have rested there.

10. However, the second respondent / defacto complainant then approached the jurisdictional Magistrate namely, the Judicial Magistrate No.II, Karaikal and as stated filed a complaint under Section 156(3) of Code of Criminal Procedure.

11. The learned Magistrate had thereafter directed registration of First Information Report and accordingly, the first respondent had registered First Information Report in Crime No.121 of 2017 on 24.08.2017 under Sections 120(B), 420, 468, 471 of I.P.C r/w 34 of I.P.C. All the three named accused are before this Court, seeking to quash the said First Information Report.

12. One reason advanced by Mr.R.Natarajan, learned counsel for the petitioners is that the defacto complainant had not informed the Judicial Magistrate that as a matter of fact an earlier complaint given by her had been dropped, holding that the allegations indicate a civil dispute. It is strongly argued by Mr.R.Natarajan, learned counsel that had this information been disclosed in the petition filed under Section 156(3) Cr.P.C., then, there is every possibility that the Magistrate would not have directed registration of the First Information Report.



13.It is also pointed out by Mr.R.Natarajan, learned counsel that the defacto complainant had not filed an affidavit as is required and there is a deliberate suppression of material facts.

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14.In the complaint preferred before the Judicial Magistrate No.II, Karaikal, the second respondent/defacto complainant had stated actually that she had given a complaint on 27.12.2016, before Thirunallur Police Station and thereafter, the officials of the said Police Station had not taken any action and inspite of further complaint given to higher officials, no effective action was taken. Whether this is a material fact to be examined or not, I would leave it to the wisdom of the learned Magistrate.

15.It is also pointed out by Mr.R.Natarajan, learned counsel that there are documents to establish that the patta had been lawfully obtained. As a matter of fact, the third petitioner herein / third accused and the second petitioner / second accused are actually spouses and the third accused is the subsequent purchaser of the property. It is alleged that there is no foul play in the entire transaction. This is an aspect, which again have to be examined by the concerned Investigating Officer.

16.Let the Investigating Officer come to a satisfaction on the basis of the documents presented on the basis of the statements of the witnesses examined by him and on the basis of his independent application of mind to the materials on record. This Court cannot interfere with the said investigation or give any directions as to the nature in which the investigation has to proceed.

17.I would, repose full confidence on the first respondent to conduct investigation in manner known to law and in also inviting the accused herein, by serving them proper notice as contemplated under the Code of Criminal Procedure and thereafter, take a decision with respect to the nature of the final report to be filed before the concerned Judicial Magistrate Court. Let the investigation proceed in manner known to law. It would be highly inappropriate on the part of this Court to examine the facts in detail to examine whether any offence has made out or to examine whether investigation should be proceeded with or not.

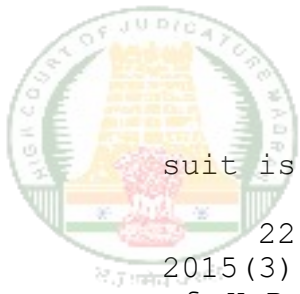


18.The learned Counsel for the petitioners referred to AIR 1998 SCC 1132, Tirumala Tirupati Devasthanams Vs. K.M. Krishnaiah, wherein the Hon'ble Supreme Court was examining a matter with respect to a judgment not inter parties and its admissibility in evidence. It had been stated that a judgment rendered earlier is admissible in evidence even though the plaintiff was not a party. This point had been urged owing to the fact that in the earlier suit in O.S.No.132 of 1992, though the de-facto complainant was not a party, her father was actually the plaintiff therein and therefore the finding in the said judgment which had attained finally would be a factor to be considered during the course of investigation by the Investigation Officer. I am confident that the Investigating Officer would consider the facts of the earlier suit in their true prospective.

19.The learned Counsel then referred to (2020) 3 SCC 794, Rajeshbhai Muljibhai Patel and others Vs. State of Gujarat and another. That was a case where the Hon'ble Supreme Court examined a complaint alleging commissioner of offences under Sections 406, 420, 465, 467, 468, 471 and 114 of IPC particularly with respect to the ingredients of cheating and forgery and had examined when criminal proceedings on those charges would not be sustainable. It was stated that one of the key issues is whether such issue was pending before the Civil Court.

20.In the instant case, Mr.R.Natarajan, learned counsel pointed out that O.S.No.137 of 2020 had been filed before the Subordinate Court, Karaikal, by the third accused herein, wherein, the defacto complainant is the first defendant. The relief sought was for declaration of title and for permanent injunction with particular reference to the item A schedule property in O.S.No.132 of 1992.

21.It is therefore urged by Mr.R.Natarajan, learned counsel that since the Civil Court is now seized of the entire issue, continuation of investigation on the criminal side in an allied manner may not be proper and necessarily will have to be interfered by this Court. But, I would like to pointed out one fact that the First Information Report in Cr.No.121 of 2017 had been registered on 24.08.2017. The present Criminal Original Petition had been filed in the year 2017. The suit in O.S.No.137 of 2020 had been filed after about three years, post the registration of the First Information Report. Therefore, let the investigation continue de-hors pendency of O.S.No.137 of 2020. Whether there was a cause to institute the said suit is a matter to be considered by the competent Court where the said



suit is pending.

22.The learned Counsel for the petitioner then relied on 2015(3) CTC Page 103, Priyanka Srivastava and another Vs. State of U.P and others, wherein, the procedure to be followed by a Magistrate while examining an application under Section 156(3) had been given.

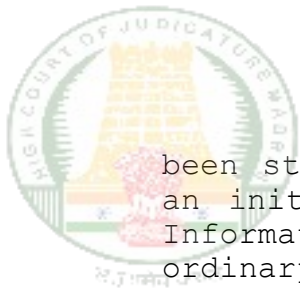
23.The present petition now before me is not a complaint against the procedure adopted by the learned Judicial Magistrate No.II, Karaikal, in referring the matter to the jurisdictional police for registration of First Information Report. Rather, it is for stay of all further investigation pursuant to the First Information Report.

24.As already indicated, I am confident that the Investigating Officer would follow necessary procedure, during the course of investigation. With respect to the procedure already adopted, notwithstanding anything stated in the course of the order, the petitioners herein are at liberty to point out any lacuna in the procedure adopted before the Judicial Magistrate.

25.The learned Counsel for the petitioners then referred to (2019) 16 SCC 739, Prof. R.K. Vijayasathya and another Vs. Sudha Seetharam and another. It was stated that in an application under Section 482, particularly to quash the criminal proceedings it has to be examined whether there is an attempt to cloak a civil dispute with criminal nature despite absence of ingredients necessary to constitute a criminal offence. That was a case where the First Information Report had been registered under Sections 405, 415 and 420 of IPC.

26.In the instant case, the First Information Report had been registered under Sections 120(b), 420, 468 and 471 of I.P.C., r/w 34 of IPC. The question of forgery is a matter of investigation. That cannot be an element of civil nature in a complaint alleging forgery. That is an aspect which has to be examined only by the Investigating Officer. I would, therefore, state that the facts of the present case are distinguishable.

27.Let me now cite 2021 SCC online 315, Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and others, where the Hon'ble Supreme Court had come down very heavily on the practice of courts in thwarting investigation of cognizable offences. Directions have been given and it had been stated that quash can be done only in rarest of rare cases. It had



been stated the criminal proceedings should not be curtailed at an initial stage and that quashing of a complaint or a First Information Report should be an exception rather than an ordinary rule.

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28.This being the position of law, I would dismiss the present Criminal Original Petition, but, at the same time, direct the first respondent to conduct the investigation in manner known to law, adopting the procedures as established by law and examine all necessary documents and also issue notice, if deemed necessary to the petitioners, and then proceed further with filing of final report on the basis of materials collected and statements recorded.

29.With the above observations, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

smv/grs

To

1. The Sub Inspector of Police,
Thirunallar Police Station,
Thirunallar,
Karaikal District.

2. The Public Prosecutor,
High Court, Madras.

Copy to:

The Judicial Magistrate-II, Karaikal.

+2ccs to Mr.R.Natarajan, Advocate, S.R.No.43161

Cr1.O.P.No.26476 of 2017
and
Cr1.M.P.No.15236 of 2017

PMK(CO)
SU(20/09/2021)