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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CRL.O.P.NO.28225 OF 2017

AND

CRL.M.P.NO.16037 OF 2017

1. M.Kannappan

2. S.Mohan

...Petitioners / Accused Nos.1 & 2

Vs.

1.The State rep. by its
Inspector of Police,
Namakkal Police Station,
Crime No.842 of 2017,
Namakkal District.

2.N.Ponnusamy

...Respondents / Complainants

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the FIR in Crime No.842 of 2017 on the file of the 1st respondent police and quash the same.

For Petitioners : Mr.N.Manokaran

For R1 : Mr.E.Raj Thilak
Government Advocate (Crl Side)

For R2 : Mr.D.Vairamoorthy

ORDER

This Criminal Original Petition has been filed to call for the records relating to the FIR in Crime No.842 of 2017 on the file of the 1st respondent and quash the same.

2. The 1st respondent has registered a case in Crime No.842 of 2017 against the petitioners and another person for the offence under Sections 147, 148, 447, 341, 294(b) and 506(i) IPC on the basis of a complaint given by the 2nd respondent alleging that on 14.08.2017 at 11.00 a.m., nearly 100 persons came to the subject matter property and committed the offence.



3. The case of the petitioners is that the property measuring an extent of 20,000 sq.ft. comprised in S.No.475/12A corresponding to T.S.No.35, Ward D, Block 19, was owned by Salem District Tamil Baptist Mission (SBM). The said SBM Society passed two Resolutions dated 26.07.1985 and 24.08.1985 to sell the said property. Accordingly, the SBM society rep. by its Chairman Mr.Paul Enoch and Secretary Mr.M.Gnanathikkam executed a sale agreement dated 10.10.1985 in favour of the 1st petitioner for the total sale consideration of Rs.25,000/-. An advance of Rs.10,000/- was paid on the date of the agreement and parties therein had agreed to complete the terms of the contract on or before 09.10.2001 in view of the existing lease till 1999 in the name of V.K.Ramanathan and R.Jayapal. But, the vendor did not come forward to execute the sale deed, because the above named lessees have clandestinely inducted one P.Karuppanna Gounder as a sub-lessee. Immediately, after knowing the said fact, the 1st petitioner filed O.S.No.568 of 1998 on the file of the District Munsif Court, Namakkal, against the SBM Society for specific performance on the basis of the sale agreement dated 10.10.1985. The suit was decreed on 29.01.1999. The 1st petitioner filed E.P.No.77 of 1999 and got the sale deed through Court on 14.09.1999. In the mean time, in order to defeat the petitioners' claim under the sale agreement dated 10.10.1985, the above said Society executed a fraudulent sale deed dated 21.07.1993 in the name of one K.Rani, who again created a false document through her power of attorney V.K.Ramanathan in the form of a sale deed dated 14.06.1996 in favour of the 2nd respondent. The 2nd respondent, after purchasing the said property by misquoting the survey number, had filed O.S.No.520 of 2001 on the file of the District Munsif Court, Namakkal, to declare the earlier decree dated 29.01.1999 made in O.S.No.568 of 1998 as not binding on him and for permanent injunction. The 1st petitioner entered appearance and filed his written statement and the suit has been endlessly dragged by the 2nd respondent for an oblique motive.

4. The further case of the petitioners is that in order to defeat their right and title over the subject matter property, the 2nd respondent being the subsequent purchaser under the false document has let out a portion of the subject matter property for running a Tasmac shop and beer bar. The said Tasmac Shop No.5926 is located just 220 meters away from the National Highways. The said shop is surrounded by row of shops, residential colonies, besides that Kavignar Ramalingam Pillai Government Arts College for Women, Vasan Eye Care Hospital, Thangam Hospital, Government Veterinary Hospital and Research Centre are located within the radius of 500 meters. In view of the recent Judgment of the Hon'ble Supreme Court in K.Balu case 2017 (2) SCC 281, the District Manager decided to relocate the above said Tasmac Shop No.5926 from the existing place to some



other place. Accordingly, the shop was closed on 31.03.2017. Thereafter, the District Manager was not able to locate a suitable place to carry on their hazardous business. Hence, the District Manager has changed his decision and decided to reopen the Shop No.5926 in the very same place. After knowing the said proposal, the entire residents, shop owners and women's college students have opposed the said attempt made by the District Manager to reopen the said Tasmac shop since it would affect their well-being. The petitioners also submitted a representation dated 30.08.2017 to the District Collector, Namakkal, by opposing their decision to reopen the closed Tasmac No.5926. But neither the District Manager nor the other authorities have come forward to alleviate the grievance of the public at large.

5. It is also the case of the petitioners that 1st petitioner filed W.P.No.24869 of 2017 on the file of this Court for the relief of mandamus forbearing the District Collector and the District Manager of Tasmac from carrying on liquor business in the subject matter property, and this Court, after considering the seriousness of this issue, passed an order directing the District Collector, Namakkal, to inspect the Tasmac Shop in question and submit a report. Pursuant to the said order, the 2nd respondent herein has fraudulently created a complaint against the petitioners stating that on 14.08.2017 at about 11.00 a.m, more than 100 persons including the petitioners trespassed into the subject matter property and prevented him from doing any work. In fact, there was no such occurrence took place in the said place and the 2nd respondent has given a false complaint against them with an ulterior motive to overcome the legal hurdle against them.

6. Heard the learned counsel for the petitioners, learned counsel for R2 and the learned Government Advocate appearing for R1, and perused the materials available on record.

7. On perusal of the records, it is seen that the 1st petitioner has purchased the property in which the liquor shop is situated vide sale deed dated 14.09.1999 through the Court of District Munsif, Namakkal, pursuant to the decree granted by the said Court in O.S.No.568 of 1998 dated 29.01.1999. The 2nd respondent / complainant now claims that he is the owner of the said property and he purchased the same from one Rani, who purchased the same from the Baptist society. The 2nd respondent has filed O.S.No.520 of 2001, to declare the sale deed executed by the Court in favour of the petitioners as null and void, and the same is pending before the District Munsif Court, Namakkal. In the meanwhile, the 2nd respondent being the subsequent purchaser under sale deed dated 14.06.1996 has let out a portion of the subject matter property for running a liquor shop. The



petitioners along with some other persons have entered into the said property and abused the complainant in filthy language and threatened him with dire consequences. Hence, the complaint has been lodged.

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8. The learned counsel for the petitioners submit that the allegation made against the petitioners is a false one and they have not committed any offence as alleged by the prosecution.

9. On going through the complaint filed under Sections 147, 148, 447, 341, 294(b) and 506(i) IPC, it is seen that there are specific allegations against the petitioners to attract the offence under the Act. Further, it is seen that the charge sheet has been laid only after recording the statements of complainant and witnesses under Sections 200 and 202 Cr.P.C.

10. On going through the materials on record, it is absolutely made clear that there is already a civil dispute between the 1st petitioner and the 2nd respondent / complainant and on account of the same, the petitioners along with some other accused persons trespassed into the subject matter of the property and abused the complainant in filthy language and also threatened him with dire consequences.

11. The 1st petitioner has already filed a Writ Petition before this Court in W.P.No.24869 of 2017 seeking a direction upon the 2nd respondent from carrying on business in the Liquor Shop No.5926 attached in the property comprised in T.S.No.35 (S.No.475/12A), Namakkal Town, Namakkal District, for the reason that the shop infringes the distance Rule and it is situated within the prohibited distance of educational institutions, hospital, etc. This Court, after hearing the parties elaborately and perusing the materials placed on record, had dismissed the petition on 21.12.2017. In spite of the dismissal of the said petition, the petitioners have now come before this Court by reiterating the same facts and there is no valid ground in the petition to quash the complaint against the petitioners.

12. The petitioners have also relied on the judgments of this Court in Jayakumar Vs. State and Ors and M.Nithyanandam Vs. State and Ors, in support of their case, but the same will not apply to the facts of the present case, because in the said two judgments, there was no civil dispute between the parties. But, in the present case, there is already a civil dispute between the 1st petitioner and the complainant and on account of the same, the alleged occurrence has been taken place.

13. The 1st respondent, while preparing the FIR, has recorded a detailed statement from the complainant regarding the alleged occurrence on 14.08.2017 and further, nearly 10



witnesses have been examined in this case, in which, four are eye witnesses. The petitioners have not even raised a single ground in the petition to quash the complaint in Crime No.842 of 2017 on the file of the 1st respondent. Hence, this Court is of the view that the complaint given by the 2nd respondent shall be proceeded before the competent criminal court against the petitioners. The petitioners are at liberty to produce all the documents they rely upon to prove their case. The Magistrate is hereby directed to complete the trial within a period of six months.

14. In view of the above, this Criminal Original Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Namakkal Police Station,
Namakkal District.

2.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.56529

+1cc to Mr.S.Senthil, Advocate, S.R.No.57283

CRL.O.P.No.28225 of 2017
and
CRL.M.P.No.16037 of 2017

RSI (CO)
RVM(26/11/2021)