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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

Cr1.O.P.No.28274 of 2017
and Cr1.M.P.No.16074 of 2017

1.Yacoob Ali

2.Absal Ahamed

3.Ahamed Rasheed

.. Petitioners/Accused Nos.1 to 3

Vs.

1.The State rep. by

The Inspector of Police,
Kelampakkam Police Station,
Kancheepuram District.
(in Crime No.612 of 2017)

.. 1st respondent/complainant

2.Raja Sekar

.. 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the F.I.R in Crime No.612 of 2017 on the file of the 1st respondent Police and quash the same as illegal.

For Petitioners : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For R1 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R2 : Mrs.D.Chitra Maragathan
for Mr.H.Manojan
(Legal Aid Counsel)



ORDER

This petition has been filed seeking to interfere with the investigation in F.I.R in Crime No.612 of 2017, registered by the Inspector of Police, Kelampakkam Police Station, Kancheepuram District, under Sections 447, 431 of I.P.C, on a complaint given by the second respondent herein.

2. The second respondent claims to be a realter, but, for reasons best known to him, he had not appeared before this Court, though notice was served. This Court had, therefore, sought assistance of a Legal Aid Counsel to represent the second respondent. Mr.H.Manojan, learned Legal Aid Counsel, assisted by Mrs.D.Chitra Maragathan, learned Counsel, had appeared for the second respondent.

3. Heard arguments advanced by Mr.Ajmal Khan, learned Senior Counsel on behalf of the petitioners, Mr.E.Raj Thilak, learned Additional Public Prosecutor on behalf of the first respondent and Mr.H.Manojan, learned Legal Aid Counsel, assisted by Mrs.D.Chitra Maragathan, learned Counsel on behalf of the second respondent.

4. The main thrust of the arguments advanced by the learned Counsel for the petitioners is that a reading of the First Information Report would clearly indicate that the dispute is civil in nature. To reinforce that particular fact, the learned Senior Counsel also placed reliance on a common order passed in W.P.Nos.29027 and 26591 of 2017, dated 01.10.2019, by a learned Single Judge of this Court. Both the Writ Petitions were filed with respect to encroachment of a particular area, which the second respondent has alleged, has been trespassed by the petitioners herein. This has led to lodging of a complaint and registration of First Information Report and which First Information Report is now sought to be quashed.

5. The Writ Petition No.29027 of 2017 had been filed by the second respondent, seeking a direction to remove the encroachment from a pathway/road in Survey No.370/153A1 in Padur Village No.18, Tiruporur Taluk. For good measure, the first petitioner herein had also filed Writ Petition No.26591 of 2017.



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The respondents therein also included the present first respondent, namely the Inspector of Police, Kelambakkam Police Station. The primary relief sought in that particular Writ Petition was that a Mandamus should be issued forbearing the second respondent/the Inspector of Police/first respondent herein from in any way interfering with the civil dispute between the petitioner therein and petitioner in W.P.No.29027 of 2017.

6. A learned Single Judge, after hearing arguments, passed a common order and had thought it fit to observe that the parties may ventilate their grievances before the competent Civil Court. It was stated there were disputed questions of facts with respect to the extent of encroachment and also with respect to the area, which is said to be encroached, namely, whether it is public place or private place.

7. Once a learned Judge has delivered a judgment, indicating that the issues are all civil in nature, it would only be advisable that the parties are moved away from the criminal forum, which would, naturally, only aggravate the issues between them, and they are advised to go before the civil forum, wherein, if prudence prevails, they can also be offered an opportunity to settle the issues between themselves.

8. A perusal of the First Information Report also reveals that the second respondent, in his complaint, had stated that the petitioners herein had encroached a public road. The issue therefore arises that if at all there has been an encroachment, whether such encroachment was on a public road or in a place over which the second respondent can reasonably contend that he is in possession and also in lawful possession. These issues, as observed by the learned Single Judge, can only be settled in a civil forum.

9. Moreover, the defining clause for offence under Section 447 of I.P.C, namely Section 441 of I.P.C stipulates that whoever enters into or upon property in the possession of another with the intention to commit an offence, then he can be stated to have committed criminal trespass. The provision, therefore, necessitates that the property should be in the



possession of the particular person, who complains of such trespass. By no stretch of imagination, can the second respondent herein state that he is in exclusive possession of a public road and that he has every authority to restrain everybody else even from accessing the public road. Whether that particular place is a public road or not, is an issue which can be resolved only in a civil forum, as stated by the learned Single Judge in the aforesaid two Writ Petitions.

10. The second provision, which has been invoked as against the petitioners is Section 431 of I.P.C, which is mischief by injury to public road, bridge, river or channel.

11. While Section 447 of I.P.C requires trespass on a private place or rather, place in possession of the complainant, Section 431 of I.P.C indicates mischief of a public road.

12. Again, the fundamental aspect to be established by the prosecution, if at all the First Information Report is pushed for investigation, is whether the particular place, in which the second respondent alleges that the petitioners had encroached, is in possession of the second respondent to the exclusion of everybody else or whether it is a public road or private place. If it is construed to be a place in the exclusive possession of the second respondent, the first respondent could not have invoked Section 431 of I.P.C. If it is construed to be a public road, then the first respondent could not have invoked Section 447 of I.P.C.

13. Either way, a responsible officer, having registered First Information Report, invoking two contradictory provisions, will naturally have to fall back on determination of the nature of the place, where the encroachment had been alleged. The proper forum for such determination had already been indicated by the learned Single Judge. I would also respect such order. Therefore, it would be only advisable that the present F.I.R is interfered with and quashed, leaving the parties to agitate the matter before the civil forum.

14. With the above said observations, the present Criminal Original Petition is allowed. The F.I.R in Crime

