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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2021

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

Crl. O.P. No.2990 of 2017
and
Crl. M.P. No.2149 of 2017

K. Srinivasa ...Petitioner

Vs.

1. The state rep by
The Inspector of Police,
PCR Cell, Puducherry.

2. T. Kalaimaran

... Respondents

PRAYER:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records in Crime No.1 of 2016, on the file of the first respondent police herein. Viz. The Inspector police, PCR Cell, Puducherry and Quash the same.

For Petitioner : Mr. A. Thiagarajan
(For Mr. D. Senthil Kumar)

For Respondent-1 : Mr. Bharath Chackravarthi
(Public Prosecutor-Pondy)

For Respondent-2 : No Appearance

O R D E R

This Criminal Original Petition has been filed seeking to call for the entire records in Crime No.1 of 2016, on the file of the first respondent police herein. Viz. The Inspector police, PCR Cell, Puducherry and Quash the same.

2. The case of the prosecution is that one Sridharan S/o. Varadarajan claiming to be the owner of the immovable property situated at Thambu Naicker Street, Puducherry, comprised in TS No. 231 and Re- Survey No. 239 Part appointed the 2nd respondent herein namely T. Kalaimaran as his lawful power agent, by way of General of Power of Attorney dated



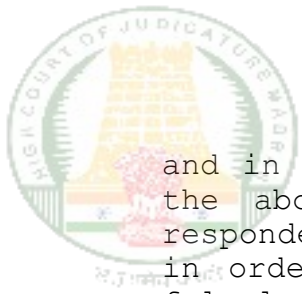
04.11.2015, registered as Document No.3033 of 2015, on the file of the SRO, Puducherry. Based on the said Power of Attorney, on 17.12.2015 at about 10.30 am, while the 2nd respondent herein accompanied by the Revenue surveyor to measure the aforesaid property, the petitioner threatened the 2nd respondent to face dire consequence and insulted him by using his caste name. On receipt of the complaint made by the complainant/2nd respondent herein, the 1st respondent police have registered the case in Crime No.1 of 2016 for the offence under Section 506(i) of IPC r/w Section 7(i) (d) of PCR Act 1955. Hence, the petitioner has filed the present Criminal Original Petition before this Court by invoking its jurisdiction under Section 482 Cr.P.C.

3. The learned counsel for the petitioner would submit that the aforesaid property was owned and possessed by the paternal Grand Father namely Mr. Seenivasa Udayar, of the petitioner and he had put up a building and was running rice mill originally in the name and style of "Thangam Rice Mill" and he was in absolute possession and enjoyment of the said property. After his demise, the grand mother namely Mrs. Kalaiammal, of the petitioner, their children Selvanathan@Audiappatham and Mr.Kuber@Krishnappan who is the petitioner's father entered into a Partition Deed on 31.03.1999 and the same was registered as Document No.2480 of 1999, on the file of Sub Registrar Office Pondicherry, in which the portion of the aforesaid property was allotted to petitioner's father Mr.Kuber@Krishnappan. Ever since the petitioner's father is in absolute possession and enjoyment of the said property and running the aforesaid rice mill and subsequently changed the name of the rice mill as "Srinivasa Flour Mill" and the same is functioning till this date. The Tahsildar, Pondichery also issued a patta bearing No. 785 and Extract Settlement Registrar for Land and Town in the name of petitioner's father and paternal uncle name to confirm their possession and enjoyment of the said property. While being so, suddenly on 17.12.2015 at 10.30 am, the 2nd Respondent who is the de-facto complainant came to the property along with few unidentified persons claiming that he is the General Power Agent of Mr.Sridharan S/o. Mr.Varadharajan, residing at Chennai-75, vide a Deed of General Power of Attorney dated 04.11.2015, registered as Document No.3033 of 2015, on the file of SRO Puducherry, as if the said Sridharan to be the owner of the said property which is belonged to the petitioner's father and had appointed him to deal with the same. To shock and surprise to hear the same, the petitioner has narrated the aforesaid facts to the 2nd respondent herein, but he did not consider petitioner's request. On the other hand, the 2nd respondent threatened the petitioner to demolish the building and vacate and hand over the same to him within a period of fifteen days failing which, he had



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threatened the petitioner that he would face dire consequences. In the mean time, on verification and perusal of the said legal heirship Certificate dated 18.07.2013 relied by the said Sridharan which claimed to be issued by Tahsildar, Pammal is absolutely false and the legal heirship certificate is fabricated and created in order to extort the property of the petitioner. Pammal comes within Kancheepuram district, vide RTI reply Ref. No. RC 3628/2016 dated 04.03.2016 wherein the Public information officer confirms that there is no Taluk office at Pammal at any point of time. Hence it is crystal clear that the said Mr. Sridharan had fabricated the Tamilnadu Government Seal and fabricated fraudulent document in order to grab the petitioner's family property by and through the fabricated power of attorney. Further, the Birth Certificate dated 27.10.2015 reference number B4819835160/2015 of Sridharan, enclosed along with alleged General Power of Attorney 04.11.2015 is also a fabricated document. Based on the fraudulent and fabricated documents, the 2nd Respondent and Sridhiran and others have Joined together with intent to extort the petitioner's family property. Hence on 30.03.2016, the petitioner herein had lodged a police complaint to the Inspector of Police, Grand Bazar Police station, against the 2 Respondent and others. On 04.12.2016 the said Grand Bazar Police station have registered FIR No.241 of 2016 punishable offence under Sec. 448, 468, 506 (i) r/w sec 34 against the 2nd Respondent and Sridharan and the same is pending for Investigation. Under such circumstances, the petitioner has filed W.P.No.3691 of 2016 before this Court against the Chief Secretary & others, wherein the 2nd Respondent herein was shown as the 8 Respondent, sought for a direction to the Director, Survey and Land Records Department, to conduct enquiry in respect of ownership and patta granted in the name of the petitioner's father, vide representation dated 25.01.2016. On 01.04.2016, after hearing either side, this Court was pleased to direct the Director, Survey and Land Records Department to conduct enquiry. After conducting enquiry with the Petitioner and 2nd Respondent, on 15.06.2016, the Director, Survey and Land Records Department have passed final order and opined that the legal heirship certificate produced by the 2nd Respondent is fake one and forged for the sole purpose of claiming right over the property. Thereafter, the petitioner herein had also filed another W.P.No 5888 of 2016 before this Court against the District Registrar, Puducherry and the 2nd Respondent sought for a direction to conduct enquiry of the alleged power of attorney dated 04.11.2015 in document No 3033 of 2015. After hearing either side, on 18.02.2016, this Court directed the District Registrar, Puducherry to conduct enquiry on either side and pass orders and accordingly on 05.10.2016, the District Registrar, Puducherry has passed an order in D.R.P.No 13 of 2016 and cancelled the Deed of General Power of Attorney dated 04.11.2015, registered as Document No.3033 of 2015 executed to



and in favour of the 2nd Respondent as fraudulent. Pursuant to the above, in view of the aforesaid circumstances, the 2nd respondent had developed enmity against the petitioner. Hence in order to revenge the petitioner, the 2nd Respondent herein falsely lodged the complaint to the 1st Respondent police belatedly after one year and got registered the FIR against the petitioner in FIR No.1 of 2016.

4. The learned counsel for the petitioner would submit that it is very evident that the de-facto complainant/the second Respondent herein had not come out with clean hands in preferring the complaint against the petitioner and hence this itself would be a ground for quashing the FIR registered against the petitioner herein. On perusal of FIR registered in Crime No.1 of 2016 on the file of 1st Respondent police, it can be seen that as if the alleged incident had taken place on 17.12.2015 at about 10.30 hrs but the 2nd Respondent have lodged the complaint and registered the FIR on 20.12.2016 after one year. If the alleged incident had really happened, the 2nd Respondent would have immediately approached the 1st Respondent police in order to take action against the petitioner. In order to revenge the petitioner for the aforesaid alleged incidents, the 2nd respondent wantonly made a complaint against the petitioner herein and the same is afterthought.

5. Further, it has been reiterated that there is no such alleged incident had taken place and the petitioner herein has never threatened and uttered or insulted the 2nd Respondent at any point of time. As per contents in the FIR, the day of occurrence on 17.12.2015 at about 10.30 a.m., but the FIR was registered only on 20.12.2016 viz., after 1 year with inordinate delay. It is pertinent to state that reason given by the 2nd Respondent for delay in filing FIR is stated as if his aunt died at France, hence he attended funeral and performed ritual, therefore he was unable to give police complaint is utter false. It is pertinent to state that if his passport is verified, it will disclose the true facts. On this ground and barred by limitation itself, the FIR filed by the 1st Respondent may be quashed.

6. The learned counsel for the petitioner would further submit that there is no specific allegation leveled by the second Respondent herein in his complaint against the petitioner and there is no specific overt act against the petitioner in the FIR grounds. Further, since the contents themselves in the criminal complaint, as lodged by the second respondent herein, would fully reveal only civil nature. Hence, the second respondent ought to have moved the Civil court. Per contra, in order to obtain his remedies deliberately short circuiting the same, the second respondent herein resorted to criminal



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proceedings with aid of the first respondent police, which is per se illegal and unlawful in the eye of law. The FIR was registered on 20.12.2016 for alleged occurrence said to have been taken place on 17.12.2015, after one year from the date of the alleged occurrence. Hence the complainant is barred by limitation and will not stand into judicial scrutiny. Hence, no cognizance can be taken by the court for the alleged offence stated in the FIR, as which is barred by the limitation under section 468 of Cr. P.C. Therefore it makes clear that the present case is clear abuse of process of law. The 1st respondent failed to consider the earlier disputes between the petitioner and the 2nd respondent regarding the properties and the orders passed by this Court in WP No. 3691 of 2016 and WP No. 3888 of 2016 and orders passed by the District Registrar in No.13 of 2016. The 1st respondent mechanically registered the FIR, knowing well no cognizance will be taken by the court for the alleged offence. Hence, it is a serious error of Law and therefore the FIR is liable to be quashed.

7. The learned counsel for the petitioner would further submit that the first information appears to be artificial and further no material to suggest the commission of offence by the petitioner herein and no material evidence to support the averments of the allegations was given by the second Respondent herein. The 1st respondent police failed to consider the facts on 07.12.2015 that revenue officials were very much present in the scene of the occurrence. The 1st respondent failed to enquire them to satisfy any such incident took place. While the petitioner was not aware of the cast of the second Respondent, uttering such word does not arise. The Petitioner came to know only when the first Respondent shown the FIR. Therefore the allegations made purposely by the second Respondent by misusing the benevolent law after suppressing the real fact and introduced his own persons as witness and lodged the complaint. As the second Respondent made a complaint and FIR is manifestly registered with mala-fide and the ulterior motive for wreaking vengeance against the petitioner herein due to private and personal grudge. Hence, the petitioner is left with no other option except to approach this Court by invoking inherent powers of this Court under Section 482 Cr.P.C. to prevent abuse of the process of Court and to secure the ends of justice. Hence, this Criminal Original Petition.

8. The learned Public Prosecutor, Pondicherry for the 1st respondent would submit that based on the complaint made by the 2nd respondent herein, the 1st respondent police have registered the case against the petitioner in Crime No.1 of 2016 and in this regard, investigation is going on. The final report is yet to be filed after the investigations.



9. Heard the learned counsel for the petitioner and the learned Public Prosecutor (Pondyicherry) for the 1st respondent as well as perused the material available on records.

10. On a perusal of the records, it is seen that based on the orders of this Court made in W.P.No.3691 of 2016, dated 01.04.2016, the Director of Survey and Land Records Puducherry, passed an order on the representation of the petitioner dated 25.01.2016 stating that the settlement extract in respect of the property concerned at T.S.No.231 and Re-Survey No.239 Part reflects the extent as 00.11.05 which is 11,899 square feet but the document produced by the eighth respondent, vide Donation deed No.33/67 R.V.379 tempo 6279 dated 23.09.1967 and the power deed No.3033 of 2015 dated 4.11.2015 mentions the extent of the property as 18,180 square feet which exceeds far more than the extent in the settlement extract and F.M.B. It is also found that the legal heir certificate produced by Sridharan is a fake one forged for the sole purpose of claiming right over the property. This was proved by the information furnished by the Public Information Officer Collector's office, Kancheepuram that there is no Taluk office at Pammal in Kancheepuram District. The respondent No.7 (viz., Sridharan) in the writ petition in W.P.No.3691 of 2016 also admitted the same, while deposing his statement on 8.6.2016 wherein it was stated by him that the General Power of Attorney deed No.3033/2015 dated 4.11.2015 was made based on the false legal heir certificate in favour of Sridharan and further more Kalaimaran has registered a Sale agreement deed in favour of Anandhasekaran vide document No.50/2016 in order to have it in the encumbrance certificate in his favour. After registering this sale agreement, an unregistered general power of attorney in favour of Kalaimaran was executed on 7.3.2016 by Madhusudhanan, Sridharan and Devi being the legal heirs of one Varadarajan. Therefore, the Director of Survey and Land Records Puducherry, directed the petitioner to request the District Registrar to cancel the power of attorney deed No.3033/2015 dated 4.11.2015 in accordance with the powers vested vide circular No.8969/REGN/C3/2014 dated 18.3.2015 of the Inspector General of Registration, Puducherry. Accordingly, the request of the petitioner, herein, not to transfer the patta in the name of T.Kalaimaran is taken note of.

11. It is also seen that the District Registrar, Puducherry, by his order, dated 5.10.2016 made in D.R.P.No.13 of 2016, filed by the petitioner for cancellation of certain fraudulent document vide No.3033/2015, dated 4.11.2015, had stated that it is clear that both T.Kalaimaran S/o.Thangaraj and Sridharan S/o.Varadharajan had played fraud by suppressing the facts before the Sub-registrar while registering the Power of attorney dated 14.11.2015. An element of fraud had been prima facie committed and once a document is proved to be sham before



the law, the subsequent documents would become null and void by default. Therefore, the District Registrar having satisfied that a clear case of fraud has been made out, it would be just and appropriate to invoke the inherent powers under Section 68(2) of the Registration Act and the strength of the circular issued by the Inspector General of Registration coupled with Supreme Court and High Court decisions the power deed registered in the sub-registrar office, Puducherry, vide D.No.3033/2015, dated 4.11.2015 stands annulled with immediate effect. The Sub Registrar Puducherry is directed to make relevant entries in the Indexes as envisaged under the circular and pursue criminal proceedings against all the concerned parties for suppressing material facts and playing fraud on the Sub registrar in the matter of legal heirship and other statements under Section 83(1) of the Act and an action taken report shall be complied forthwith to the District Registrar.

12. Further, this Court, by its order dated 4.7.2016 made in Crl.O.P.No.8533 of 2016, filed by the petitioner to direct the 3rd respondent therein to register the FIR based on the complaint of the petitioner, dated 30.3.2016, directed the Station House Officer, Grand Bazaar Police Station, Nehru Street, Puducherry, to conduct enquiry and during the course of enquiry, if any cognizable offence is made out, a regular case shall be registered, following the decision laid down by the Hon'ble Supreme Court in Lalita Kumari Vs. Government of Uttarpradesh and others reported in 2014 2 SCC 1, otherwise close the complaint under intimation to the petitioner.

13. Based on the complaint given by the petitioner a case in Cr.No.241/2016 under Section 448, 468, 471, 506(i) IPC read with 34 IPC was registered on 4.12.2016 and taken up for investigation against the second respondent Kalaimaran. Further, on 20.12.2016, based on the complaint given by the second respondent against the petitioner, a case in Cr.No.1 of 2016 was registered under Section 7(1)(d) of PCR Act 1955 and 506(i) IPC, which is challenged before this Court to quash the said FIR.

14. It is seen that the alleged incident taken place on 17.12.2015 and the FIR was registered on 20.12.2016 after a period of one year from the date of the alleged occurrence. Further, as the matter is in civil nature, the second respondent ought to have moved the Civil Court for appropriate remedy, but he resorts to criminal proceedings against the petitioner herein. Further, the petitioner is not aware of the second respondent and that being the case, the petitioner could not know what caste he belongs to and the said allegation is made purposely with the malafide intentions against the petitioner herein. Though the Revenue officials were present in the scene



of occurrence, the first respondent police failed to enquire them in this regard. Further, without conducting any investigation on the complaint of the petitioner based on the order passed by this Court and the order passed by the District Registrar in No.13 of 2016, the first respondent police has registered a counter complaint against the petitioner without any reasons. Therefore, the FIR registered against the petitioner is abuse of process of law. Hence, the Crime No.1 of 2016, on the file of the first respondent police herein. Viz. The Inspector police, PCR Cell, Puducherry is quashed.

15. In the result, the Criminal Original petition is allowed. Consequently, connected miscellaneous petition is also closed if any.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

lbm

To:

1. The Inspector of Police,
PCR Cell, Puducherry.
2. The Public Prosecutor,
Pondicherry.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+2ccs to Mr.D.Senthil Kumar, Advocate, S.R.No.54034

Crl. O.P. No.2990 of 2017
and
Crl. M.P. No.2149 of 2017

GPL (CO)
SU(15/11/2021)