



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 16.04.2021
DELIVERED ON : 21.05.2021
CORAM:

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THE HON'BLE MR.JUSTICE G.ILANGO VAN
Crl.OP(MD)No.5323 of 2021 &
Crl.MP(MD)No.3077 of 2021

1.Mohamed Kabeer

2.Alfaniya ... Petitioners/Accused No 1 & 2
Versus

1.The State Represented through,
The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District. ... 1st Respondent/Complainant

2.Sainul Abdeen ...2nd Respondent/ Defacto Complainan

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records of the FIR No.34 of 2021 dated 16.01.2021 on the file of the first respondent and quash the same by allowing the Criminal Original Petition.

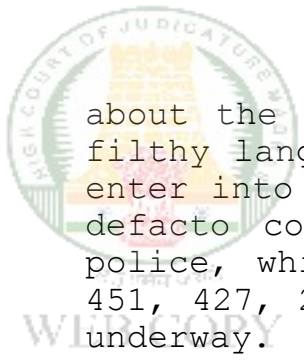
For Petitioners : Mr.S.Vashik Ali
For R1 : Mr.R.Anandharaj,
Additional Public Prosecutor
For R2 : No notice was ordered.

O R D E R

This petition is filed seeking quashment of FIR.No.34 of 2021 dated 16.01.2021 on the file of the first respondent police.

2. The case of the second respondent in the complaint is that he is a tenant in Door Nos.2-167A/1, 2-167A/2, 2-167A/4 and 2-167A/5. The shop belongs to one Sahul Hameed. He paid advance amount of Rs.1,50,000/- and the monthly rent is fixed as Rs.8,000/-. Date of agreement is 25.02.2017. He made alteration in the shop for the purpose of running a business. The agreed lease period is 10 years. As per the terms of the lease agreement, if the lessor dies within 10 years from the date of agreement, the legal heirs of the lessor have no right to object his lease holding right. On 13.01.2021, at about 09.00 PM, the defacto complainant locked the shops and went home. On 14.01.2021, at about 09.00 AM, he found that new locks were put up for the shops. On enquiring the neighbours, the defacto complainant came to know that the first petitioner, namely, Mohamed Kabeer who is the son of the lessor by removing the locks put by the complainant, had put up new locks in the shops. So he went to the first petitioner's house and enquired

<https://hdservices.hds.gov.in/hdservices/>



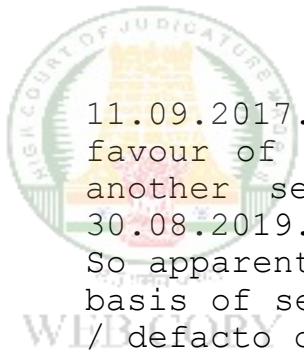
about the same. At that time, the first petitioner abused him in filthy language and criminally intimidated him that if he happen to enter into the shop, he will be killed. With these allegations, the defacto complainant made a complaint before the first respondent police, which was registered in Crime No.34 of 2021 under Sections 451, 427, 294(b) and 506(1) of IPC on 16.01.2021. Investigation is underway.

3. Now, this petition is filed seeking quashment of the First Information Report mainly on the ground that the original landlord executed settlement deed dated 21.04.2005 in favour of the first petitioner. Thereafter, the first petitioner in turn executed settlement deed on 30.08.2019 in favour of the second petitioner. The defacto complainant has also filed a suit in OS.No.8 of 2021 before the learned Additional District Munsif, Padmanabhapuram. So, the dispute is civil in nature. The lease agreement relied on by the defacto complainant is an unregistered one. According to the petitioners, there was no legal agreement on 25.02.2017.

4. Heard both sides, at the time of admission, for final disposal on merits.

5. The facts that are brought on record and on hearing the learned counsel for the petitioners and the learned Additional Public Prosecutor are that the second respondent / defacto complainant claims that he is a lessee in the disputed shops in Door Nos. 2-167A/1, 2-167A/2, 2-167A/4 and 2-167A/5. It is admitted by the defacto complainant that the shops belong to the father of the first petitioner herein namely, Sahul Hameed. The defacto complainant is a lessee for a period of 10 years and Sahul Hameed specifically agreed that within this time, if he happen to die, his legal heirs may not object the defacto complainant's lease holding right. So, according to the defacto complainant, he is entitled to be in possession as a lessee for a period of 10 years from the date of agreement ie., 25.02.2017. Reading of the previous lease agreement shows that only 11 months time is mentioned. So, lease would have come to an end on the expiry of 11 months from 09.07.2014. However, the defacto complainant would say that it is 10 years as per lease agreement, dated 25.02.2017. In this regard, the defacto complainant also filed a suit before the learned Principal District Munsif, Padmanabhapuram which was later transferred to Additional District Munsif, Padmanabhapuram and now it is pending in OS.No.8 of 2021.

6. Reading of the plaint would show that a fresh agreement was entered on 25.02.2017 for 10 years, but, the lease agreement is not available before this Court, since the second respondent / defacto complainant is not served. Only the lease agreement dated 09.07.2014 has been filed by the petitioners. But the lease agreement dated 25.02.2017 is denied by the petitioners. But, it is admitted that Sahul Hameed died on



11.09.2017. During his lifetime, he executed settlement deed in favour of the first petitioner on 21.04.2005, who in turn executed another settlement deed in favour of the second petitioner on 30.08.2019. Date of the lease agreement is stated to be 09.07.2014. So apparently, it is seen that the petitioners claiming right on the basis of settlement deed, trying to dispossess the second respondent / defacto complainant from the lease hold right by force.

7. It is seen from the First Information Report that by removing the locks put up by the second respondent, new locks were put up by the first petitioner during the night hours. The facts have been mentioned by the second respondent / defacto complainant in the aforesaid suit itself. The defacto complainant, on the above said grounds, sought relief of permanent injunction, not to evict him otherwise than under due process of law. In the circumstances, whether the alleged occurrence stated by the second respondent / defacto complainant in the First Information Report is true or not is a matter for investigation and trial. The factual aspects cannot be gone into at this stage. So, the ground raised by this petitioners cannot be considered now. No legal ground has been made out by the petitioners warranting the exercise of jurisdiction under Section 482 of Cr.P.C. to quash the First Information Report. None of the points mentioned in the petition are worth considering in this preliminary stage and so, petition deserves dismissal and accordingly dismissed.

8. However, from the facts and circumstances of the case, there shall be a direction to the first respondent herein to conclude the investigation and file final report before the concerned Court within a period of five months from the date of receipt of a copy of this order. With these direction, this petition stands dismissed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

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/ /2021

Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.MURUGAN, Advocate (SR-18603[F] dated 24/05/2021)

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Order in
CrI.OP(MD)No.5323 of 2021 &
CrI.MP(MD)No.3077 of 2021

21.05.2021

CN(21.06.2021) 4P 4C