



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.07.2021

PRONOUNCED ON : 06.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G. ILANGO VAN**

Crl.O.P. (MD) No.8824 of 2021

A.George

... Petitioner

Vs.

- 1.Ramesh
- 2.Shobia
- 3.Selva Kumar
- 4.Anitha
- 5.Thai
- 6.State rep by

Sub Inspector of Police,
M.Pudhupatti Police Station,
Virudhunagar District.

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to direct the sixth respondent to comply the order passed by the Judicial Magistrate Court No.II, Sivakasi on 07.01.2021 and act in accordance with law.

For Petitioner : Mr.M.Jothibasu
For R6 : Mr.R.M.Anbunithi
Additional Public Prosecutor.

ORDER

This petition is filed seeking a direction to the sixth respondent herein to comply the order passed by the Judicial Magistrate No.II, Sivakasi, dated 07.01.2021.

2.The case of the petitioner in brief is as follows:-

The petitioner is the owner of the property in Survey Numbers 850/3, 850/4, 850/5, 850/7, 850/8, 850/10, 850/11 and 850/12 Sevalur Village, Kunnur Sub Registrar Office, Virudhunagar District to an extent of 12.75 Acres and the same was purchased by this petitioner and one Mrs. Meenakshi jointly on 04.04.1996 and 23.09.1996. The petitioner is in possession of the above said property ever since the purchase. The respondents 1 to 5 attempted to make disturbance to the possession of the petitioner in 2019. On verification of records, it came to know that co-owner Mrs. Meenakshi has created a false document to grab the entire property, executed a power of deed in favour of the third respondent herein on 12.04.2018. So the petitioner filed a Suit in O.S.No.107 of 2019 before the District Munsif Court, Virudhunagar for declaration and permanent injunction and the suit is pending.



2.1. On 12.05.2019 at about 2.30 hours, the respondents 1 to 5 entered into the property and destroyed the sola crop. Hence a complaint has been registered in CSR No.48 of 2019. After issuing CSR Receipt, there is no action. Hence, the petitioner filed a complaint under Section 156(3) Cr.P.C before the Judicial Magistrate Court No.II, Sivakasi seeking a direction and the same was allowed and the direction was also issued. On 29.01.2020, the Sub Inspector of Police, Pudupatti filed an interim report and finally Final Report was also filed on 08.02.2020 by closing the complaint. Without conducting proper investigation, it came to be closed, even though offences mentioned in the petition are cognizable in nature. The closure report filed by the police is not valid under law. Hence, this petition.

3. Heard the learned counsel for the petitioner, the learned Additional Public Prosecutor(Crl.side) for the official respondent.

4. The point for consideration is that whether the request made by this petitioner in the petition can be complied or not?

5. The petitioner wants the case has to be registered and First Information has to be filed by the sixth respondent herein by complying the order passed by the Judicial Magistrate No.II, Sivakasi in Crl.M.P.No.500 of 2019.

6. A simple point has been raised by the petitioner in this matter. By order dated 07.01.2021, the Judicial Magistrate No.II, Sivakasi directed the respondent herein to make an enquiry on the basis on the complaint and file a detailed report and the second direction is that if any prima facie case is made out, case must be registered and must file a report. So, based upon that direction, enquiry has been undertaken by the sixth respondent herein and file a report dated 16.03.2021. In the report, the sixth respondent has stated that it is purely civil dispute between the parties and the complaint has been given by exaggerating the facts. So, it is purely not only civil dispute but also a false case with regard to the allegation of damage to the motor and craft and theft of motor.

7. Now, the learned counsel for the petitioner would submit that as per the order passed by the learned Judicial Magistrate, the only option available to the sixth respondent is to file First Information Report and investigate the matter. No option or choice is available to the sixth respondent to make a preliminary enquiry. So, according to the learned counsel for the petitioner, the sixth respondent must be directed to register the First Information Report and then investigate the matter.

8. But, Honourable Supreme Court in Lalita Kumari Vs Government of UP and others has stated that the preliminary enquiry

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



has also been taken and conducted by the Investigating Officer before registering the First Information Report, in what category of cases, the preliminary enquiry can be undertaken has also been set out. Here, the facts and circumstances of the case clearly shows that the preliminary enquiry was required. Only on that basis, the sixth respondent has conducted the preliminary enquiry and during the course of enquiry, he found that the facts narrated in the complaint are exaggerated and factually false. But, however the learned counsel for the petitioner would submit that the respondent indulged in creating the forged document and tried to claim wrong title over the property. But I am unable to agree with the arguments advanced by the learned counsel for the petitioner. These are disputed facts which cannot be gone into in this matter. If any observation or discussion is made with regard to the right over the property, then it will have adverse impact upon the proceedings that may be initiated in future through civil process. So, the petitioner has also filed a suit in O.S.No.107 of 2019, on the file of the Principal District Munsif, Virudhunagar, arraying the third respondent as the second defendant in the suit. In the complaint, this petitioner has stated that the property was jointly purchased by this petitioner and the first defendant through sale deeds dated 04.04.1996 and 23.09.1996. In respect of this specific averment, the Investigating Officer has found that taking advantage of similarity of the name of the purchaser, this petitioner has raised false claim over the property. As stated earlier, whether it is a false claim over the property or genuine claim can be decided only during the course of trial in the above said suit. So, I am of the considered view that in the facts and circumstances of the case, required preliminary enquiry, which was rightly undertaken by the sixth respondent. I find no reason to interfere with the course adopted by the sixth respondent. The only point available to the petitioner is to redress his grievance through appropriate proceedings before the concerned Court.

9.This Criminal Original Petition is dismissed with a liberty to the petitioner to file appropriate protest petition before the concerned Court, as per law.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn



NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate Court No.II, Sivakasi

2.The Sub Inspector of Police,
M.Pudhupatti Police Station,
Virudhunagar District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.JOTHI BASU, Advocate (SR-25585[F] dated 09/08/2021)

order made in
Crl.O.P. (MD)No.8824 of 2021
06.08.2021

PS (CO)

KB(06.10.2021) 4P 5C