



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 06.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.14446 of 2020

and

Crl.MP(MD)No.6775 & 6776 of 2020

WEB COPY

Abdul Kader ... Petitioner/Sole Accused
Vs.

1.The State Represented by
The Inspector of Police,
Kadayanallur Police Station,
Kadayanallur,
Tenkasi District.
(Crime No.32 of 2016) ... 1st Respondent/Complainant

2.S.A.Sarpudeen ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the charge sheet filed in C.C.No.257 of 2020 on the file of the learned Judicial Magistrate Court, Tenkasi and quash the same as illegal.

For Petitioner : Mr.R.Karunanidhi
For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

For R2 : No Appearance

ORDER

This Criminal Original Petition is filed to quash the charge sheet filed in C.C.No.257 of 2020 on the file of the learned Judicial Magistrate Court, Tenkasi.

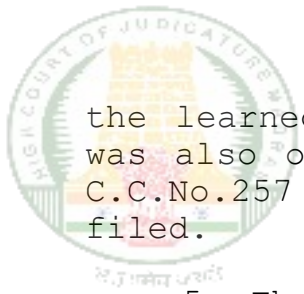
2.The case of the prosecution :-

On 06.07.2015, the defacto complainant has given house key to the petitioner's father, namely, Fazuludin, and left for Chennai. On 15.01.2015, he asked Fazuludin through mobile phone about the key and at that time, the petitioner scolded the defacto complainant and threatened him with dire consequences. Thereafter, on 12.11.2015, it appears that the petitioner trespassed into the house and damaged the door and steel bureau worth about Rs.2,500/-.

3. On the basis of the complaint given by him, on 19.01.2016, investigation was undertaken and found that it is a false case in Crime No.32 of 2016. So, it was closed as 'mistake of fact' on 28.01.2016.

4. After that, the petitioner filed a protest petition before

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the learned Judicial Magistrate, Tenkasi and further investigation was also ordered. Based upon that, final report has been filed in C.C.No.257 of 2020. Seeking quashment of that, this petition is filed.

5. The case of the petitioner is that since earlier complaint given by the defacto complainant was found to be false on the ground of 'mistake of fact' without collecting further materials, further investigation has been undertaken and final report has also been filed. So, the case of the defacto complainant is not improved by way of further investigation. On this ground, he seeks quashment.

6. Heard both sides.

7. It is seen that one Abdul Majeeth was a former Minister during the year 1962 - 1967. He had several properties at Kadayanallur, Chennai and other areas. He had four sons and two daughters. Dispute arose between them over the property left by their father. A Will was under dispute. So, the matter was referred to Mediator, namely, the Hon'ble justice S.A.Kader, who is the Former Judge of this Court and Arbitration Award was passed, against which, one of the sons of Abdul Majeeth, namely, Mohideen, filed suits in O.S.No.59 of 2012 and O.S.No.173 of 2014 before the Madras High Court.

8. Further, it is seen from the final report filed by the earlier Investigation Officer that pending the challenge of Arbitration Award, this Court has passed the order to the effect that till further orders, the properties must be continued to be enjoyed by those persons, who were in physical possession. So, on that basis, the disputed house was stated to be in the possession of the defacto complainant.

9. Even though the property was in possession of the defacto complainant, it was kept vacant. So, the petitioner demanded the key of the house. So, because of that, trouble arose between them.

10. So, during the course of investigation, it was found that the occurrence that has been made in the complaint is not true and only to prevent this petitioner, from making any claim over the property, the complaint has been given falsely. So, on that ground, final report was filed before the learned Judicial magistrate, Tenkasi, on 28.01.2016.

11. Now, further investigation has been taken, based upon the protest petition, filed by the defacto complainant. During the course of further investigation, statements of Abdul Wahab and Abdul Malik have been recorded. It appears that they have given a statement to the effect that on the particular date of occurrence, they saw the petitioner entering into the house and heard the noise. They returned from the house. Except these two persons



statements, no other further materials have been collected during the course of further investigation about the alleged occurrence.

12. The defacto complainant has given a statement before the Investigating Officer to the effect that he has also handed over the photographs showing the articles that have been damaged by the petitioner. So, these are the materials that have been collected during the course of further investigation. According to the learned counsel for the petitioner, those photographs were available even at the time of first investigation and those things would have been brought on record. Photographs taken after a lapse of three years will not show the real occurrence. So, the belated statements given by the above said Abdul Kader and Abdul Malik as well as handing over the photographs, cannot be accepted, at this stage. Moreover, it was found to be false.

13. I have gone through the entire records available from the facts and circumstances of the case, it is clearly seen that the second respondent has indulged in giving false complaint against the petitioner only for the purpose of safeguarding his interest in the disputed property. Except that, I find no other genuine reason or cause in the complaint. The further materials that have been collected during the course of further investigation do not inspire any confidence and reliability. Only for the sake of filing a positive final report, it appears that the further investigation has been undertaken. I find that it is a clear case of *malafidness* on the part of the second respondent and there is some force in the argument of the learned counsel for the petitioner and so, this petition is liable to be allowed.

14. In view of the above conclusion, the charge sheet filed in C.C.No.257 of 2020, on the file of the learned Judicial Magistrate Court, Tenkasi, is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitioners are closed.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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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.

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



1. The Judicial Magistrate Court,
Tenkasi.
2. The Inspector of Police,
Kadayanallur Police Station,
Kadayanallur,
Tenkasi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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