



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26.11.2021

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

CrI.OP(MD)No.10457 of 2017

and

CrI.M.P.(MD)Nos.7146 and 7147 of 2017

1.Ganesan
2.Manikandan
3.Thamodharan
4.Kumar @ Suthanthirakumar
5.Balan

... Petitioners/Accused

Vs.

Ganapathy

... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in P.R.C.No.26 of 2014, on the file of the Principal District Munsif-cum-Judicial Magistrate Court, Eraniel, and quash the same as against the petitioners.

For Petitioners : Mr.S.Deenadhayalan

For Respondent : Mr.C.Sankar Prakash

ORDER

This Petition is filed to quash the private complaint filed by the respondent, namely, Ganapathy against the petitioners herein alleging that they have trespassed into his land, used filthy language, including the caste name and cut the coconuts from the trees owned by him. Hence, the offence under Sections 147, 294(b) and 506(ii) of I.P.C. and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act is made out.

2.In the present petition filed by A1, A3, A4, A6 and A9, it is contended that there is a civil dispute regarding the land in which the alleged occurrence took place and the complainant herein has filed a Suit in O.S.No.71 of 2005 on the file of the District Munsif Court, Eraniel, and has obtained an interim order of permanent injunction in respect of pathway. In the said suit pending between the respondent/complainant and one Saroja Ganesan, the wife of the first petitioner, in respect of pathway and 'A' schedule property, over which, the respondent/complainant claims title.



3.As far as pathway is concerned, the respondent has claimed declaration regarding right of passage and injunction restraining the first petitioner's wife or her men and agent from preventing or restraining the petitioners from using the pathway. In such circumstances, it appears that the first petitioner herein, claiming a right over the coconut tree standing on the pathway, had tried to harvest the coconuts along with his men, who are arrayed as accused in the private complaint.

4.In fact, the complaint given to the Police was enquired in Crime No.118 of 2010 and the same has been closed as 'mistake of fact'. Thereafter, the present private complaint under Section 200 of Cr.P.C. has been filed for the alleged offence under Sections 120-B, 147, 148, 294(b), 506(ii) and 379 of I.P.C. read with Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The learned Principal District Munisif-cum-Judicial Magistrate, Eraniel, has taken the private complaint on file and assigned P.R.C.No.26 of 2014 and has caused summons. The cognizance of the said complaint is challenged in this quash petition on the ground that the right over the coconut tree and ''B'' schedule property is subject matter of the civil suit and there is no material evidence to show that there was unlawful assembly or conspiracy to commit any theft.

5.In the light of the civil proceedings pending, just to wreak vengeance, the present private complaint has been filed in spite of the fact that the Police after due investigation closed the earlier complaint as ''mistake of fact''.

6.The learned counsel for the respondent/complainant would submit that on 26.10.2010 at 11.30 a.m., at the instigation of the first accused Ganesan, the other accused viz., A2 to A9 assembled unlawfully in front of complainant's house and started plugging the coconuts standing in the disputed land and that when the same was prevented by the complainant, they used abusive language and called the complainant by his caste name.

7.The learned counsel for the petitioner would submit that the first accused, against whom, the main allegation is made, for instigating and conspiring with other accused, is no more and the fight between the neighbouring land owners is an outcome of the pending civil suit.

8.On perusing the records and statement of the complainant, this Court finds that there is no substantial evidence which will lead to the conviction of the accused, even if the statements and the complaint is taken as to be proved. On the face of the record, there are discrepancies regarding the time of occurrence and place of occurrence.



9.Hence, the proceedings in P.R.C.No.26 of 2014, on the file of the Principal District Munsif-cum-Judicial Magistrate Court, Eraniel, against the petitioners shall stand quashed. Accordingly, this Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

The Principal District Munsif -cum-Judicial Magistrate,
Eraniel.

+1 CC to M/s.S. DEENADHAYALAN, Advocate (SR-36605[F] dated
30/11/2021)

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