



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 09.03.2021

DATE ON WHICH PRONOUNCED : 08.04.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.11828 of 2017

and

Crl MP(MD)Nos.8144 & 8145 of 2017

1.Alagesan
2.Christy Alagesan
3.Prabhu

... Petitioners/Accused No.1 to 3
Vs.

1.State rep by
The Inspector of Police,
South Police Station,
Thoothukudi.
Crime No.489 of 2015

... Respondent/Complainant

2.Jeyakumar
Complainant

... Respondent/Defacto

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.237 of 2017 on the file of the Judicial Magistrate No.1, Thoothukudi and quash the same.

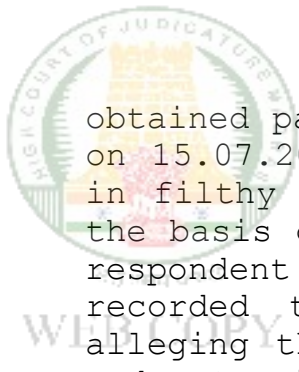
For Petitioners	: Mr.R.Subramania Adhityan
For R1	: Mr.M.Ganesan, Government Advocate (Crl.Side)
For R2	: Mr.S.Pandiyaraj

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.237 of 2017, on the file of the Judicial Magistrate No.1, Thoothukudi.

2. The case of the prosecution of the first respondent before the Trial Court:-

The first and second petitioner herein are husband and wife and the third petitioner is their son. The second respondent, who is the defacto complainant had purchased 10 cents of land comprised in S.No.4074/2E situated at Sivanthakulam, First Street. The petitioners herein are the adjacent land owners to the defacto complainant's land. It is further alleged that the defacto complainant has



obtained patta from the Corporation and paying the tax regularly and on 15.07.2015, when he visited the land, the petitioners abused him in filthy language and threatened him that they would kill him. On the basis of the complaint given by the second respondent, the first respondent police took up the investigation, collected materials and recorded the statements of witnesses and filed a final report alleging that the petitioners have committed the offence punishable under Section 294 (b), 448 and 506 (ii) IPC.

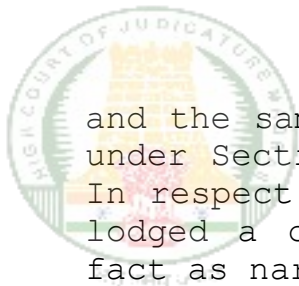
3. Seeking quashment of the final report, the petition is filed mainly on the ground that it is a purely a civil dispute pending between the parties and the second respondent had lost a civil suit in O.S.No.146 of 1984, on the file of the Sub Court, Tuticorin on 20.08.1990. One of the plaintiff in O.S.No.146 of 1984, sold this land to one Karunakaran on 23.03.1998 and he in turn, had executed a general power of attorney in favour of one Mahesh. He in turn, executed a general power of attorney in favour of the first petitioner for maintenance and enjoyment of the said land on 27.07.2009. The second respondent has tried to give a criminal colour to a civil dispute.

4. It is further contended that in respect of the same alleged occurrence, both the parties have launched a complaint. In pursuance of which, Crime No.488 of 2015 and Crime No.489 of 2015 were registered.

5. Heard both sides.

6. According to the learned counsel for the petitioners, the fifth plaintiff in O.S.No.146 of 1984, sold the property, in respect of which, the alleged occurrence taken place, which was already declared to be the property of the fifth plaintiff in the above said suit as per the judgment in the above said case. It is the further contention that Section 294 (b) IPC will not be attracted since the occurrence is said to have taken place in a private land and also the further contention that the offence under Section 506 (ii) will not be attracted since even as per the complaint given by the second respondent, no weapon was used.

7. Records perused. From the perusal of records, it is seen that in respect of the same occurrence, both the parties have given a complaint, which were registered in Crime No.488 of 2015 and Crime No.489 of 2015, on the file of the first respondent police. In Crime No.488 of 2015, the informant was one Alagesan, who is the first petitioner herein, wherein, he stated that on 15.07.2015, at about 11.30 a.m, the second respondent herein, along with some known persons numbering about 50, trespassed into the land in his possession and damaged the watchmans' quarters worth about Rs.5 lakhs. When he attempted to prevent the offence, he was assaulted and so, on that basis, he lodged a complaint



and the same was registered in Crime No.488 of 2015, for the offence under Sections 294(b), 448, 506(ii) IPC and Section 3 of TNPPDL Act. In respect of the same occurrence, the second respondent herein, had lodged a complaint registered in Crime No.489 of 2015 stating the fact as narrated above.

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8. It is seen that the land dispute is pending between the parties and according to the petitioner, the disputed land was in his possession and enjoyment, in pursuance of the power of attorney, executed by one Mahesh. It is a factual aspect, which cannot be gone into by this Court in this petition. In whose possession, the property was lying, at the time of occurrence is a matter for evidence before the Trial Court in the light of judgment of the Civil Court in O.S.No.146 of 1984. The arguments on the side of the petitioners that since the disputed property was under his possession, the offence of trespass will not be attracted cannot be decided at this stage. Moreover, whether Section 506 (ii) and 294 (b) IPC will be attracted is a matter for evidence.

9. The contention on the part of the petitioners that the Investigating Officer has not followed Section 588 of Tamilnadu Police Standing Order, may also be not relevant at this stage. Who were aggressors is also a point for consideration during the trial proceedings. So, the argument on the side of the petitioners that the second respondent had tried to give criminal colour to a civil dispute is also not appealing at the stage.

10. I am of the considered view that this is not a fit case to quash the criminal proceedings. It has to be followed to its logical of question based upon the evidence. So, the petition is liable to be dismissed and accordingly, the same is dismissed and the Trial Court is directed to dispose of the matter on its own merits, without being influenced by any of the observations made by this Court in this petition. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.



1. The Judicial Magistrate No.1,
Thoothukudi.

2.The Inspector of Police,
South Police Station,
Thoothukudi.

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

+1 CC to M/s.ANTONY S.PRABAHAR, Advocate (SR-15571[F]
dated 09/04/2021)

Crl.O.P. (MD)No.11828 of 2017
and
Crl MP (MD)Nos.8144 & 8145 of 2017
08.04.2021

dss
AM/29.04.2021/4P/5C