



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 31.03.2021

DATE ON WHICH PRONOUNCED : 30.04.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD)No.13610 of 2017

and

Crl.MP(MD)Nos.9144 & 9145 of 2017

Muthukumar ... Petitioner/First Respondent/Accused
Vs.

1.T.Ramasamy ... 1st Respondent/Petitioner/Defacto
complainant

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Inspector of Police,
S.S. Colony Police Station,
Madurai. ... Respondents 2 & 3/Complainants
Crime No.1297 of 2014.

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the Calendar Case in C.C.No.3 of 2017 on the file of the Judicial Magistrate No.V, Madurai and quash the same.

For Petitioner : Mr.J.Barathan
For R2 & R3 : Mr.M.Ganesan
Government Advocate (Crl.Side)
For R1 : No Appearance

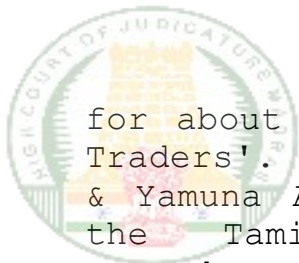
ORDER

This Criminal Original Petition has been filed to quash the Calendar Case in C.C.No.3 of 2017, on the file of the Judicial Magistrate No.V, Madurai.

2. The case of the first respondent before the Trial Court in the private complaint:-

i) The first respondent is a tenant in Shop No.1 situated at Tamil Nadu Housing Board Commercial Complex, Ellis Nagar, Madurai

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



for about 30 years, he is running a business called 'M/s.Lakshmi Traders'. The first accused is the owner of the Flat No.26, Ganga & Yamuna Apartment, Ellis Nagar, Madurai. There are six shop in the Tamil Nadu Housing Board Commercial Complex, which were rented out by the Tamil Nadu Housing Board to various persons and the petitioner is one among them. Behind Shop Nos.2 and 4, there is a common toilet, which has been in existence for more than 30 years. For heading that toilet, there is a Compound Wall on the northern side of Shop No.1. On the northern side, the father of the accused by name, Shunmugam is owning Flat No.26.

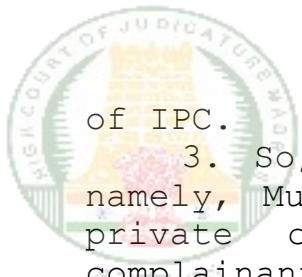
ii) On 13.09.2014, at about 2.45 p.m, the accused namely, Muthukumar attempted to demolish the Compound Wall and pull it down towards the said common pathway. It was objected by one Chinnu. But, the accused abusing him in filthy language and also criminally intimidated him with a crow bar. It was intimated to others and about 10 rowdy elements arrived at the spot and demolished the compound wall and pull it down towards the common pathway. They also criminally intimidated and threatened him. It was intimated to the Police and the accused were called to the Police Station for an enquiry. Later, the accused Muthukumar tied two big dogs on the compound wall in order to prevent the movements of the petitioner and the other tenants.

iii) On 13.09.2014, said Chinnu and others, lodged a complaint with the Inspector of Police, S.S. Colony Police Station, Madurai. But, no case was registered and on 10.10.2014, at about 10.00 a.m, the accused and others abused him in filthy language and also criminally intimidated him. They also threatened his wife in filthy language.

iv) Again on 10.10.2014, at about 10.30 a.m, they made a complaint. On the very same day itself, at about 04.50 hours, four rowdy elements, went to the shop Nos.2 and 4 with knife and aruval. Again, they lodged a complaint, But, no case was registered. So, the complainant and the other tenants have filed a petition in Crl.OP.No.19177 of 2014 and Crl.OP.No.19178 of 2014 before this Court for a direction to file a First Information Report based upon the complaint dated 13.09.2014 and 10.10.2014.

v) Thereafter, the second respondent police, registered a case in Crime No.1297 of 2014. Even after filing of the First Information Report, there was no action. So, the Crl.OP.No.3805 of 2015, was filed by the defacto complaint, for a direction to file a final report. On 07.11.2014, a notice was received by him stating that the matter has been closed as 'mistake of fact'.

vi) The tenant in Shop Nos.2 and 4 filed a suit in O.S.No.629 of 2014 for permanent injunction in respect of pathway and toilet. But, there was no proper investigation, in the above said Crime number. So, the accused have committed the offences punishable under Sections 147, 148, 341, 294 (b), 427, 506 (i) and 506 (ii)



of IPC.

3. So, challenging the private complaint, the first accused namely, Muthukumar, filed this petition seeking quashment of the private complaint mainly on the ground that the defacto complainant, who is the sub-lessee of Shop No.1, put up some temporary and permanent constructions thereby, obstructed the right of light, air and ventilation of the residence of Block No.5. The Tamil Nadu Housing Board issued a notice on 28.02.2017, directing the defacto complainant to remove the construction put up in the open place. That was challenged by the defacto complainant by filing WP(MD)No.5597 of 2017. An Advocate Commissioner was appointed and he found that the defacto complainant had encroached 603 sq.ft, one Chinnu, occupant of Shop No.2 had encroached 656 sq.ft, the occupant of Shop No.3 had encroached 312 sq.ft and Chinnu, the occupant of Shop No.4 had encroached 657 sq.ft.

4. Based upon that the Hon'ble Division Bench of this Court had directed the Tamil Nadu Housing Board to remove the encroachment. But, before removing the encroachment, police complaint as well as this private complaint has been filed.

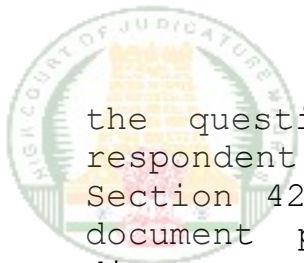
5. The short point, which arises for consideration is whether the private complaint filed by the first respondent herein is an abuse of the process of the law.

6. According to the learned counsel for the petitioner, in respect of the removal of encroachment made by the first respondent as well as the other tenants of the Shops was ordered to be removed on 03.08.2017 in WP(MD)No.5597 of 2017, which was filed by one Tamilthai, challenging the communication issued by the Tamil Nadu housing Board, as mentioned above, dated 28.02.2017, wherein, this petitioner was added as second respondent.

7. In that case, an Advocate Commissioner was appointed for finding out the encroachment made by the said petitioner and the other people and ordered to remove the same, within three months from the date of receipt of a copy of that order.

8. According to the learned counsel for the petitioner, the alleged occurrence said to have taken place in various dates mentioned in the petition are false, in view of the subsequent judgment of this Court, in the above said writ petition, dated 03.08.2017.

9. So, According to him, the first respondent is an encroacher, in respect of which, a dispute arose between the accused and the other shop owners, who made an encroachment. So,



the question of unlawful assembly, rioting and abusing the respondent in filthy language will not attract the offence under Section 427 I.P.C and criminal intimidation will not arise. The document produced by the petitioner, clearly shows that the dispute arose between them over the alleged encroachment made by the first respondent herein, over the common pathway, which was leading to the common toilet and they have made an encroachment in the common area, which was objected to by the petitioner herein and the others, who were using the common pathway. So, this clearly shows that the police, after going through the dispute, recording the statement of various persons have dropped further action. Later, this private complaint came to be filed. The first respondent and the other persons, who encroached upon the common pathway, are the law violators.

10. Moreover, in the complaint, mere vague allegations have been levelled. So, continuing the criminal proceedings will amount to clear abuse of process of the Court and accordingly, the same is liable to be quashed.

11. In the result, this Criminal Original Petition is allowed. Calendar Case in C.C.No.3 of 2017, on the file of the Judicial Magistrate No.V, Madurai, is quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

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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.

To

1.The Judicial Magistrate No.V,
Madurai.

2.The Commissioner of Police,
Madurai City, Madurai.



3.The Inspector of Police,
S.S. Colony Police Station,
Madurai.

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

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-18449[F] dated
04/05/2021)

Crl.O.P. (MD)No.13610 of 2017
30.4.2021

ARK(CO)
TR(17.05.2021) 5P 6C