



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 19.02.2021

DATE ON WHICH PRONOUNCED : 19.03.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.17228 of 2017

and

Crl MP(MD)No.11290 of 2017

Sumathi ... Petitioner/Accused No.5
Vs.

Selvam ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the Private Complaint in C.C.No.110 of 2017 on the file of learned Judicial Magistrate Court No.II, Kulithalai and quash the same as illegal so far as the petitioner is concern.

For Petitioner : Mr.R.Gandhi
For Respondent : Mr.K.Prabhu
(Legal Aid Counsel)

ORDER

This Criminal Original Petition has been filed to quash the Private Complaint in C.C.No.110 of 2017, on the file of learned Judicial Magistrate Court No.II, Kulithalai.

2. Case of the complainant before the Trial Court in brief:-

The complainant owning an agricultural land in Sivayam Village, Pambanoor. The accused Nos. 1 to 4 claimed title over the property, disputing the title of the complainant, making trouble to him. Two years back, the accused and the others assaulted the complainant and so, he lodged a complaint before the Kulithalai Police Station. In pursuance of which case in C.C.No.59 of 2015 was filed before the learned Judicial Magistrate No.II, Kulithalai. In that case, some of the persons were let out. So, the complainant filed a petition under Section 319 of Cr.P.C to include those persons, which is pending enquiry in Crl.MP.No.1468 of 2015, on the file of the Trial Court.

3. Later, the complainant filed a suit in O.S.No.151 of 2015 against the accused and some other persons, which is also pending. In the year 2016, the accused trespassed into the complainant's land and assaulted him and his wife. As a result of which, a complaint was lodged and case in C.C.No.228 of 2016 is now pending before the



Judicial Magistrate No.II, Kulithalai.

4. Again, on 03.02.2017, at about 11.30 a.m, the accused damaged the crop, the shed and fence. So, the complainant suffered loss worth about Rs.5,000/-. They have also threatened the complainant that they will kill him, also abused them in a filthy language. So, again, a complaint was filed by the complainant on 03.02.2017 before the Kulithalai Police Station. On 04.02.2017, at about 09.00 a.m, at the instigation of the 5th accused, the other accused persons abused the complainant and also stated that the complainant cannot do to anything since the 5th accused is their relative. So, the defacto complainant gave a complaint to the Deputy Superintendent of Police, Kulithalai and Superintendent of Police, Karur. But, there was no action. So, a private complaint was filed for punishing the accused for having commit that the offences punishable under Sections 441, 294(b), 323 506 (ii) and 107 r/w Section 4 of Tamilnadu Public Property Damage Act.

5. Heard both sides.

6. Seeking quashment of the complaint, the 5th accused before the Trial Court had filed this petition, mainly, on the ground that no ingredients of the offence mentioned in the complaint are attracted against this petitioner and she is in no way connected with the dispute pending between the complainant and other accused persons.

7. The entire records from the Trial Court were called for and perused. A perusal of the records would show that the Trial Court took cognizance of the offences punishable under Sections 441, 294 (b), 323, 506 (ii) IPC. It appears that no cognizance was taken by the Trial Court under Section 107 IPC and for the offence under Section 4 of Tamilnadu Public Property and Damage Act. So, in the light of the cognizance by the Trial Court, the involvement of this petitioner required to be analysed.

8. Reading of the complaint shows that the allegation against this petitioner is that only at her instigation, the other accused persons went to the house of the complainant and threatened them stating that since this petitioner is working as Sub Inspector of Police and also relative of the other accused persons, they cannot do any thing. So, except this bald allegation, no other allegations are levelled against this petitioner. At the time of argument, it was brought to the notice of this Court that this petitioner did not take any action, when complaint was given by the complainant, in respect of the occurrence took place on 03.02.2017. But, in the complaint, no such allegations have been levelled. Even if we take that the argument as correct, the complainant would have taken proper steps as per law. But, it is seen that no such, steps were taken and instead of taking the matter to higher officials, a private complaint has been filed.



9. There is no material placed before the Trial Court to show that this petitioner had instigated the other accused to commit the offence of abusing and criminal intimidation.

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10. As mentioned earlier, mere bald allegations are made against this petitioner. It is clear that the complainant taking advantage of the position of the petitioner has made baseless allegations. The other offences punishable under Sections 441, 294 (b), 323 and 506 (ii), are not attracted against this petitioner.

11. I am of the considered view that it is a clear case of abuse of process of the Court. During the recording of statement, some improvements have been made by the complainant and by his wife to the effect that the other accused persons are making trouble and indulged in commission of criminal offence only at the instigation of this petitioner. So, as mentioned earlier, absolutely, there is no material placed by the complainant before the Trial Court for taking cognizance against this petitioner to prove the abetment. So, it appears that only on this ground, the Trial Court did not take cognizance of offence under Section 107 IPC against this petitioner. But, however, the Trial Court has issued summons to all the accused persons.

12. The contention raised by the petitioner deserves acceptance and accordingly, the complaint filed by the complainant against the petitioner, is quashed since it is nothing, but, a clear case of abuse of process of the Court. So, the Trial Court, may proceed against the other accused persons as per law. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

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/ /2021

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 Chief Judicial Magistrate,
Karur.

2.The Judicial Magistrate Court No.2,
Kulithalai

+1 CC to M/s.R.GANDHI, Advocate (SR-6571[F] dated
22/02/2021)

Crl.O.P. (MD) No.17228 of 2017
and
Crl MP (MD) No.11290 of 2017
19.03.2021

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