



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.04.2021
Delivered On : 21.05.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGOVAN

Crl.O.P. (MD) No.17766 of 2017
and
Crl.M.P. (MD) No.11615 of 2017

1.V.M. Velayutham Chettiar
2.S.K. Velayutham Chettiar ... Petitioners/Accused

Vs.

1. The Inspector of Police,
Ponnamaravathi Police Station,
Pudukkottai District. ... 1st Respondent/Complainant
2. K.Ramasamy ... 2nd Respondent/
Defacto Complainant

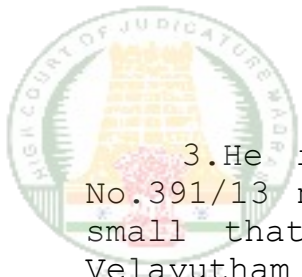
Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet, dated 05.03.2017, in P.R.C No. 8 of 2017 on the file of the District Munsif Cum Judicial Magistrate, Thirumayam in Crime No. 215 of 2013 (District Munsif Cum Judicial Magistrate Court, Thirumayam) and to quash the same.

For Petitioners	: Mr.S.Anand Chandrasekar for M/s.Sarvabhauman Associates
For R1	: Mr.M.Ganesan Government Advocate (crl.side)
For R2	: Mr.M.Saravanakumar

ORDER

This Criminal Original Petition is filed seeking for quashment of P.R.C.No.8 of 2017, pending on the file of the District Munsif cum Judicial Magistrate, Thirumayam.

2.The case of the prosecution before the trial Court is that the second respondent herein, who is the defacto complainant, lodged a complaint with the first respondent herein on 06.11.2013 with the following allegations:



3.He is in possession and enjoyment of a property in Survey No.391/13 measuring 1 Acre 16 Cents by putting fencing and also a small thatched house. In respect of that property, one V.M. Velayutham Chettiar and another S.K. Velayutham Chettiar made trouble. So, he filed a suit in O.S.No.138 of 2013 before the District Munsif Court, Thirumayam. On 12.02.2012, his grand daughter's marriage was performed. So, he was attending the marriage and away from the place and at that time, on 20.12.2012, at about 10.00 p.m., the above said two Velayutham Chettiyar along with henchman trespassed into the property and damaged about 200 stone pillars and other stones worth about Rs.20,000/- (Rupees Twenty Thousand only) and they also damaged the thatched house. On getting the information from the employee, he went to the place of occurrence and questioned the same and at that time, Velayutham Chettiyar, son of Muthiah Chettiar @ Sundaram abused him in filthy language and also criminally intimidated him stating that they will kill him in the same place. After damaging all the properties, they also took away 200 stone pillars and fencing worth about Rs.30,000/- (Rupees Thirty Thousand only) and the stones about Rs.20,000/- (Rupees Twenty Thousand only) through a lorry. So, based upon this complaint, a case in Crime No.215 of 2013 was registered on 06.11.2013 and the investigation was taken up, materials were collected and the statements of the witnesses were recorded and finally, filed the final report before the District Munsif cum Judicial Magistrate, Thirumayam, which was also taken on file in P.R.C.No.8 of 2017.

4.Seeking quashment of the same, both the accused have filed this Criminal Original Petition.

5.Heard both sides.

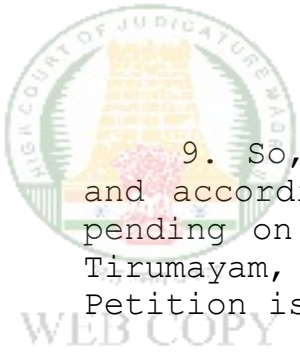
6.A perusal of the records and as well as the hearing of the learned counsel for the petitioners and the learned Government Advocate (criminal side) and the second respondent, it is seen that there was a property dispute between the defacto complainant and these petitioners in respect of a property situated in Survey No.391/13 measuring about 1.16 acres. In respect of that property, a case in O.S.No.138 of 2011 was filed by the second respondent before the District Munsif, Thirumayam. In that case, these petitioners were arrayed as defendants 1 and 2. In that case, it is stated by the second respondent that even though the property belongs to these petitioners, based upon a sale agreement, dated 21.11.2002, they allowed him to be in possession. He also sought for a relief of permanent injunction. So, it is seen that based upon the alleged sale agreement, the second respondent claims right of possession over the disputed property. Pending the suit, both the parties have filed the petitions for temporary injunction in I.A.Nos.390 of 2011 and 360 of 2011. I.A.No.390 of 2011 was filed by these petitioners and I.A.No.360 of 2011 by the second respondent. After hearing the



parties, the trial Court dismissed the petition for temporary injunction filed by the second respondent (i.e. I.A.No.360 of 2011), but allowed the petition filed by these petitioners (i.e. I.A.No.390 of 2011), on 14.08.2013. So, from the document, it is clear from the records that possession of these petitioners are admitted by the trial Court. So, the present complaint has been lodged on 06.11.2013, that means, after three months from the date of disposal of the above said Interlocutory Applications by the District Munsif, Thirumayam. The date of occurrence is mentioned as 20.02.2012, but, when the matter came up for hearing before the District Munsif cum Judicial Magistrate, it appears that the second respondent has not made any allegation that these petitioners trespassed into the land and damaged the articles and took away the articles worth about several lakhs on 20.02.2012. So, it shows that the second respondent has not made the complaint with genuine grievance.

7.The next aspect is that these petitioners had moved Criminal Original Petition in Crl.O.P.(MD)No.14767 of 2015, seeking quashment of the F.I.R in this case. At that time, there was a representation by the first respondent that after enquiry, the case was closed as 'mistake of fact'. When that being so, how the investigation took place subsequent to 31.07.2015 is not clear on record. Perusal of the records shows that the statements of the witnesses were recorded even before 31.07.2015, that is, statements of the witnesses were recorded on 06.11.2013 and Observation Mahazer (ghh;it kf[h;) was prepared on that date itself. When that being so, how a wrong information has been given to the Court, is not clear on record.

8.On the previous occasion, the second respondent has given a complaint before the first respondent police which was registered in Crime No.159 of 2004, under Section 420 I.P.C. It was also investigated and final report was filed before the District Munsif cum Judicial Magistrate, Thirumayam, in C.C.No.176 of 2005, seeking for discharge of the offence and these two petitioners filed C.M.P.No.2795 of 2005 and that petition after enquiry, was allowed on 23.02.2007. Against which, the second respondent filed a Criminal Revision in Crl.R.C.No.10 of 2009 before the Additional District Court (Fast Track), Pudukkottai and that petition was dismissed, by order, dated 11.03.2010. Later, the suit in O.S.No.138 of 2011 has been filed by the second respondent. Subsequent to that, the present complaint has been preferred. So, the sequence of events clearly shows that one way or the other, the second respondent is continuously making efforts to fix the petitioners and even, the suit filed by him came to be dismissed on 09.08.2016 by the District Munsif cum Judicial Magistrate, Thirumayam for non prosecution. So, I am of the considered view that this case is nothing but, an abuse of process of the Court and the law, which squarely falls under the limb of Bajanlal Case, namely, one of the grounds for which, the criminal complaint can be quashed as per the judgment of the Hon'ble



9. So, this Criminal Original Petition is liable to be allowed and accordingly, allowed. The proceedings in P.R.C.No.8 of 2017, pending on the file of the District Munsif cum Judicial Magistrate, Tirumayam, stands quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (AS)

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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.

To

1. The District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District.
2. The Inspector of Police, Ponnamaravathi Police Station, Pudukkottai District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

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LS
TE : 03/06/2021 : 4P/4C