



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.03.2021

DATE ON WHICH PRONOUNCED : 19.04.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.4726 of 2017

and

Crl MP(MD)Nos.3343 of 2017 & 2977 of 2019

1.Mithilainathan
2.Ramesh
3.Muthukumar

... Petitioners/Accused Nos.1, 2 & 4

Vs.

1.State rep by
The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.
Crime No.208 of 2017.

... 1st Respondent/Complainant

2.Thiyagarajan

... 2nd Respondent/Defacto
Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Crime No.280 of 2017 dated 29.03.2017 on the file of the 1st respondent police and quash the same.

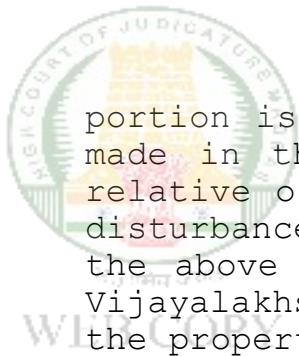
For Petitioners : Mr.Antony Arulraj
For R1 : Mr.M.Ganesan,
Government Advocate (Crl.Side)
For R2 : Mr.M.S.Jeyakarthick

ORDER

This Criminal Original Petition has been filed to quash the proceedings in proceedings in Crime No.280 of 2017, dated 29.03.2017, on the file of the 1st respondent police.

2. The defacto complainant along with his family is residing in the property mentioned in the complaint. The wife of the defacto complainant by name, Chellammal is the owner of the property situated in T.S.No.104, 105, Ward-G, Block-10. In that property, in

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



portion is enjoyed by them as vacant site. A tin enclosure is also made in the said vacant site. One Ayyasamy @ Subramanian is the relative of Chellammal, claiming right over the property and caused disturbance. On 28.03.2017, at about 1.00 p.m at the instigation of the above said Ayyasamy @ Subramanian, one Mithilainathan, Ramesh, Vijayalakshmi, Muthukumar, Mareeswaran and known 20 persons came to the property; broke open the lock; demolished the tin enclosure; and accused Muthukumar, threatened the defacto complainant that he would kill him with hammer and damaged the tin sheet and iron rods worth about Rs.20,000/-. Immediately, it was informed to the Police. But, even before arrival of the Police, the said Muthukumar, threatened the defacto complainant that he must vacate the house otherwise he would kill him. The total damages caused by the accused persons was worth about Rs.40,000/-.

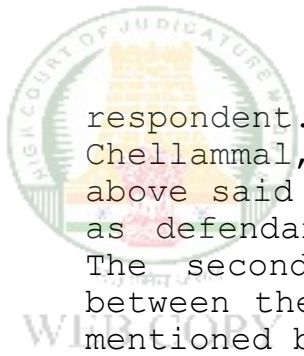
3. On the basis of this complaint, a case in Crime No.208 of 2017 for the offence under Section 147, 294(b), 447, 427, 379 and 506 (ii) IPC was registered. Seeking quashment of the First Information Report, accused No.1, 2 and 4 have preferred this original petition mainly on the ground that it is out and out a civil dispute, which has been given a criminal colour by the defacto complainant and none of the allegations made in the complaint attract any of the ingredients of the offence mentioned in the First Information Report.

4. It is the contention that the property measuring an extent of 2340 sq.ft in T.S.No.105 originally belongs to Backiyam @ Parvathammal. In that, 856 sq.ft was settled in favour of Ayyasamy @ Subramanian on 14.03.1974, the remaining extent of 1484 sq.ft was bequeathed in his favour through a unregistered 'Will' dated 25.05.1995. Subsequently, patta was issued. After that, the first and second petitioners herein, purchased the properties from the wife of Ayyasamy @ Subramanian.

5. Apart from that, property measuring an extent of 1210 sq.ft in T.S.No.104 is also lying adjacent to the property purchased by the petitioners 1 and 2 is covered by the 'Will' dated 25.05.1995, in respect of which, now the dispute is existing. The gift deed was covered by the sale deed dated 21.10.2016 and the same was purchased by the petitioners 1 and 2 and it is only a vacant site having an extent of 2352 sq.ft.

6. Heard both sides.

7. From the argument advanced by the parties as well as from the petition and the counter statement, it is seen that the dispute existed between the defacto complainant and the petitioners 1 and 2 over T.S.No.105. In respect of the dispute, a suit has also been filed in O.S.No.36 of 2017, on the file of the Additional District Court, Paramakudi. A clean copy of the gift deed as well as the copy of the sale deed for T.S.No.104 and 105 are filed by the second



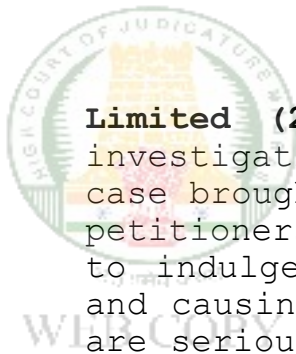
respondent. So, in the suit in O.S.No.36 of 2017, the plaintiff is Chellammal, who is the wife of the defacto complainant herein. The above said Ayyasamy @ Subramanian and others are rival parties added as defendants. The suit was filed for declaration and injunction. The second schedule is T.S.No.105, which is now under dispute between the parties and the third item in T.S.No.104, which is also mentioned by the petitioners in their petition.

8. In the light of this rival claims, the occurrence said to have been taken place. Now, according to the petitioners, when a civil dispute is pending, a criminal action, will not lie. The defacto complainant would rely upon the following judgments reported in i) **Dharmaraj and others Vs. Thillainathan (1976) 21 MLJ (crl) 300** ii) **M.Krishanan Vs. Vijay Singh and Another (2001) 8 SCC 645** iii) **Sau.Kamal Shivaji Pokarnekar Vs. State of Maharashtra and others AIR (2019) SC 847** iv) **Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners Private Limited (2009) 11 SCC 529** v) **Dineshbhai Chandubhai Patel Vs. State of Gujarat and Others (2018) 1 MLJ (Crl) 529 (SC)** vi) **State of Haryana and Others Vs. Bhajanlal and Others (1992) Supp (1) SCC 335** for the purpose of argument that simply because civil proceedings are pending, there is no bar for initiating criminal action, when an offence of grievous nature is alleged as against one of the parties.

9. It is settled law that a civil dispute may also involve criminality and there is no complete bar for initiating a criminal action. Even though civil proceedings are initiated and pending here, according to the defacto complainant, when he was in possession of the disputed property, the petitioners and the others trespassed into their property and caused damage to the property to the tune of Rs.40,000/- and also he was criminally intimidated. In whose possession, the property was decided in S.O.No.36 of 2017, which ended in favour of the second respondent's wife namely, Chellammal. From this, the contention on the part of the petitioners that no occurrence as stated in the complaint took place cannot be accepted. Whether the occurrence really took place or not, can be bought out only during the course of investigation.

10. Soon after, filing of the First Information Report, stay has been granted on the petition filed by the petitioners. During the course of the investigation, the Investigating Officer, may also take into account the result of the civil litigation between the parties and if the Investigating Officer found that no offence as alleged by the second respondent took place, he can very well file a final report, on that ground.

11. Moreover, it is also basic settled principles of law that quashing of the First Information Report will amount to killing a still born child. The Hon'ble Supreme Court in **Ravindra Kumar Madhanlal Goenka and Another Vs. Rugmini Ram Raghav Spinners Private**



Limited (2009) 11 SCC 529, stated that only in extreme cases, investigation can be quashed. But, here, I find no such extreme case brought on record by the petitioners. Even if consider that the petitioners 1 and 2 have purchased the property, they have no right to indulge in criminal activities such as damaging the properties and causing threat to the defacto complainant. When the allegations are serious in nature, I am of the considered view that this is not a fit case to quash the First Information Report and the investigation must be carried to its logical conclusion.

12. In the result, this Criminal Original Petition is dismissed. Since the matter is of the year 2017, the Investigating Officer is directed to complete the investigation within a period of six months from the date of receipt of a copy of this order and file a final report. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

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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 Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.

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

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-16655[F] dated 20/04/2021)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-16892[F] dated 21/04/2021)

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and

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