



Crl.O.P.No.7318 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.11.2022

Pronounced on : 17.11.2022
CORAM

THE HON'BLE **Dr.JUSTICE G.JAYACHANDRAN**

Crl.O.P.No.7318 of 2019

and

Crl.M.P.No.4042 of 2019

A.Palanivel

... Petitioner

Vs.

K.Saranya

... Respondent

Prayer:- Criminal Original Petition has been filed under Section 482 of Cr.P.C., praying to call for the records made in C.C.No.141 of 2018 on the file of the Judicial Magistrate-IV, Salem and quash the same as illegal.

For Petitioner : M/s.R.Sankarasubbu

For Respondent : Mr.J.Hariharan @ Harish

ORDER

The petitioner is the sole accused facing trial in C.C.No.141/2018 on the file of the learned Judicial Magistrate-IV, Salem for offences under Sections 445, 453, 456 and 506(ii) of I.P.C., being



taken cognizance on a private complaint filed by the respondent.

2. The gist of the complaint runs as below:-

The property, which is the subject matter of the complaint, was purchased by the complainant on 13/03/2012. To improve her business, she borrowed Rs.1,50,000/- for interest at the rate of 48% p.a., from the accused. Though she has paid the entire principal with interest, the accused, in order to fraudulently grab her property, had created a sale deed dated 16/12/2013 in the name of Santhakumari, as if the complainant had sold the property through Power Agent Mr.Karthikeyan. The fabrication of deeds had been presumed to be done by misusing the documents given to the accused as security while borrowing the loan. On 23/07/2015, the accused along with his henchmen came to the subject property and forced her to vacate the property, which she own and enjoying since the year 2012. Fearing unlawful dispossession, the complainant instituted a civil Suit against the defendants (including the accused) for permanent injunction and the Suit in O.S.No.846/2015 is pending on the file of the learned Additional District Magistrate-I, Salem. The accused contesting the suit by filing written statement



Crl.O.P.No.7318 of 2019

and counter in the I.A.No.1172/2015 filed for interim injunction. The accused has also filed petition for eviction in R.C.O.P.No.4/2016 and same is pending. These facts goes to show that admittedly the complainant is in possession of the property.

3. While fact being so, the accused and his henchmen on 04/05/2018 at about 11.50 pm dispossessed the complainant and her tenant Joseph forcibly and taken possession of the property under threat. In this regard written complaint given to the Kannangurichi Police on 05/05/2018 and to the Higher police Officers. The Police instead of probing the complaint fairly, without registering the complaint threatened the complainant to withdraw the complaint or to face dire consequence.

4. The Judicial Magistrate, after taking the sworn statement of the complainant and on perusal of the complaint dated 05/05/2018 given to the Kannangurichi police by post, the postal acknowledgment card, Plaint copy of the Suit in O.S 846/2015 and the written statement filed by the accused, petition copy of R.C.O.P.No.4/2016 filed by the



Crl.O.P.No.7318 of 2019

accused, the title deeds of the respective parties, being satisfied that *prima facie* case for offence under Sections 294(b), 456, 506 (ii) IPC took cognizance and issued summons to the accused for appearance on 01.09.2018.

5. The said complaint is sought to be quashed, on the ground that, the complaint is abuse of process of law and no case made out on the reading of the complaint. The petitioner purchased the property under sale deed dated 16/12/2013 from the complainant and the deed duly registered as Doc No.4770/2013 at Joint Registrar, Salem- West. The petitioner was put in possession of the property after receiving the sale consideration. The complainant who sold the property to the accused and executed the above sale deed in addition borrowed Rs.14,50,000/- and gave a cheque to discharge the debt. The said cheque got dishonoured and private complaint against the complainant under section 138 of Negotiable Instruments Act is pending in S.T.C.No.1337/2015 and S.T.C.No.1782/2015. In order to counter blast and to intimidate the petitioner, the impugned private complaint filed with malice. In fact the



Crl.O.P.No.7318 of 2019

complainant was never in possession of the property. In the complaint, it is specifically alleged that the property was let out to the tenant by name Joseph. The said Joseph who was occupying the property, vacated on his own and handed over the possession to the accused being the owner and titleholder of the property. The said Joseph has not given any complaint. Therefore, the private complaint does not make out any criminal offence as alleged hence to be quashed.

6. Heard the learned counsel for the petitioner/accused and the Learned counsel for the respondent/complainant.

7. The complaint on reading indicates that pending Suit for permanent injunction in O.S.No.846/2015 and Petition for eviction in R.C.O.P.No.4/2016, the complainant and one Joseph, who was a tenant under the complainant were dispossessed. Though the learned counsel for the Petitioner urged that the complainant was not in possession of the property and the person who was in possession has vacated on his own and not given any complaint, if that be the fact, the petitioner/accused



Crl.O.P.No.7318 of 2019

need not have filed R.C.O.P.No.4/2016 against the complainant for vacant possession. Further, when a civil Suit seeking protection of complainant possession is pending, without due process of law it is alleged that the complainant has been evicted by force and threat at wee hours on 04/05/2018. Thus, there is no illegality found in taking cognizance of the complaint C.C.No.141/2018 on file by the learned Judicial Magistrate -IV Salem. The criminal complaint which has made out *prima facie* case to try offences under sections 294(b), 456 and 506(ii) IPC cannot be quashed exercising power under section 482 Cr.P.C.

8. In the result, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petition is also dismissed.

17.11.2022

rpl
Index: Yes/No
Speaking Order/Non Speaking Order

To

6/8



Crl.O.P.No.7318 of 2019

WEB COPY The Judicial Magistrate-IV, Salem.



WEB COPY



Crl.O.P.No.7318 of 2019

Dr.G.JAYACHANDRAN, J.

rpl

Pre-Delivery Order made in
Crl.O.P.No.7318 of 2019

17.11.2022