



CRL.O.P.No.14421 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.No. 14421 of 2020
and Crl.M.P.Nos. 5500 and 5501 of 2020

1. M.Vijayarajan
S/o. Mr. Marimuthu,
Senkadu Boodhapadi Post,
Kurichi Village, Bavani Taluk,
Erode District.
Now residing at
Pukkampatti Village,
Mecheri Via Mettur Taluk, Salem District.

2. H.M.Maheswari
W/o.M.Vijayan,
Senkadu, Boodhapadi Post,
Kurichi Village, Bavani Taluk, Erode District.
Now residing at
Pukkumpatti Village,
Mecheri Via, Mettur Taluk,
Salem District.

... Petitioners

Vs.

1. The State rep. by
The Inspector of Police,
Ammamet Police Station, Ammapettai, Erode District.
Crime No. 205 of 2018

2. A.Govindaraj,
S/o. Arumugam,
No.315, Poosariyur, Patlur Village, Anthiyur Taluk,
Erode District.

... Respondents



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PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the charge sheet filed in S.T.C.No.21 of 2019 on the file of the learned Judicial Magistrate No.I, Bhavani, Erode District and quash the same.

For Petitioners : Mr.M.R.Jothimanian

For Respondents

For R1 : Mr. A.Gopinanth
Government Advocate (Crl. Side)

For R2 : No appearance.

ORDER

This Criminal Original Petition has been filed to quash the proceedings in STC.No.21 of 2019 on the file of learned Judicial Magistrate No.I, Bhavani, Erode District.

2. On the complaint lodged by the second respondent, the first respondent registered FIR in Crime No.205 of 2018 for the offences under Sections 294(b), 323, 341, 427, 447 and 506(2) IPC. The 1st respondent after completion of the investigation, final report has been filed and the same has been taken cognizance in STC No.21 of 2019. The 2nd respondent lodged a complaint alleged that there was previous enmity between the petitioners one



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Zahir Hussain in respect of property. While being so, on 25.07.2018, the petitioners trespassed to the land belongs to the said Zahir Hussain and prevented the persons who were constructed the building. That apart, they also damaged some portion of the land. They also scolded the 2nd respondent in filthy languages and attacked him by their hands. They also threatened him with dire consequences.

3. It is seen that that petitioners owned the agricultural property comprised of Survey No.44/1, 44/3 and 44/4 situated at Kurichi village, Bavani Taluk, Erode District. They are husband and wife and they gave birth to four children, in which, three children are deaf and dumb. Due to financial crisis, they borrowed a sum of Rs.10 lakhs from one D.Sakthivel and executed agreement for sale for security purposes in respect of the subject property. They also sort for another loan for a sum of Rs.10 lakhs. Therefore, the said D.Sakthivel introduced one Zahir Hussain to avail loan. For which, he demanded to furnish the signed stamp papers for security purpose and the same was used for execution of sale deed in favour of his wife namely S.Shakila Banu on 08.01.2018. Thereafter, the sale deed executed in her favour with an intention to cheat the petitioners. Whenever the petitioners are ready



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and willing to repay the amount which was borrowed by them, it was refused

and cheated the petitioners. Therefore, the petitioners were constrained to issued legal notice on 22.01.2018. Thereby, they call upon the said Zahir Hussain and Shakila Banu to cancel the sale deed on receipt of the amount which was borrowed by them by way of Demand Draft. However, they failed to cancel the sale deed and forcibly taken possession of the subject property on the strength of the sale deed. Therefore, the petitioners filed a Suit in O.S.No.7 of 2018 on the file of learned IV Additional District Judge, Bhavani, for a declaration that the sale deed dated 08.01.2018 is null and void. The said property is measuring to an extent of 2.77 acres worth about nearly Rs.50 lakhs. Infact, on the influence of the Inspector of Police one Mr.Kumaravel, the said Zahir Hussain had taken forcible possession of the property from the petitioners. Infact, the petitioners also have filed petition seeking police protection in Crl.O.P.No.8220 of 2018 before this Court.

4. However, an interim injunction application filed in I.A.No.436 of 2018 in O.S.N.7 of 2018 before the learned IV Additional District Judge, Bhavani and the same was dismissed by the Trial Court. Aggrieved by the same, the petitioners filed an appeal before this Court in C.M.A.No.1797 of



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2018 in which by order dated 16.08.2018, this Court ordered status quo to be maintained in respect of the said property by the petitioners and the said Shakila Banu. For the similar set of allegations, the said Zahir Hussain and Shakila Banu through their servants lodged a complaint and the same was registered with the influence of the 1st respondent in Crime Nos.103 of 2018, 205 and 300 of 2018 against the petitioners and also against the daughters of the petitioners. Infact, the 2nd petitioner also lodged a complaint against the 2nd respondent and others which was registered in Crime No.204 of 2018 and the same is pending without any progress. Whereas, the counter complaint, registered in Crime No.205 of 2018 against the petitioners was investigated and final report has been filed by the 1st respondent.

5. Learned counsel also produced an order of acquittal made in S.C.No.75 of 2019 arising out of one of the complaint lodged by the servant of said Shakila Banu and Zahir Hussain, in which, the Trial Court had observed that the Complainant is a coolie by profession and how he came to know that the 1st accused induced the other accused thereby other accused conspired together and committed the offence is not known. In his deposition, he stated neither A1 induced the other accused nor the other accused conspired



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together and committed the offence. Further observed that, thought the case of

the prosecution that the 1st accused entered into an agreement for sale with one

Sakthivel and received a sum of Rs.25 lakhs as advance and after receipt of

sale consideration from Shakila Banu, A1 repaid the amount to the said

Sakthivel. Therefore, involvement of the Sakthivel in this case is spoken by

P.W. 3 to 6 and therefore, it cannot be said that Sakthivel is not a material

evidence in respect of the money transaction. That apart, the petitioners were

paid Rs.13,01,000/- by way of Demand Draft after deducting first month

interest to be payable by the Shakila Banu and the same was not encashed by

the petitioners immediately. The said demand draft was returned to her and call

upon her to execute the cancellation of the sale deed. The original sale deed

was deposited in the suit and therefore no sale consideration was passed to the

petitioners.

6. As stated supra, similar complaints as if the petitioners trespassed into

the property and threatened the person who were working in the subject land

ended in acquittal. Therefore, the said complaint is nothing but clear abuse of

process of law and all the allegations are civil in nature and no offence is made

out as against the petitioner.



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7. On perusal of the entire complaint would reveals that dispute is civil

in nature and no criminal intimidation as alleged by the 2nd respondent herein.

The entire complaint is totally malafide with an intention to ulterior motive to wreck the vengeance. Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner and is liable to quash.

8. In this regard, it is relevant to extract the judgement reported in **(1992) SCC Crl. 426** in the case of **Bajanlal v. State of Haryana**, wherein the Hon'ble Supreme Court of India has listed out the following category of case in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:

"102.....

.....

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."



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9. Accordingly, this Criminal Original Petition stands allowed and proceedings in STC.No.21 of 2019 on the file of learned Judicial Magistrate No.I, Bhavani, Erode District is hereby quashed. Consequently, connected miscellaneous petitions are closed.

23.06.2022

Index : Yes / No
Speaking / Non Speaking order

nr/sma

To

1. The Inspector of Police,
Ammamet Police Station,
Ammapettai, Erode District.
2. The Public Prosecutor
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

nr/sma

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