



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.10465 of 2022
and Crl.M.P.No.6282 of 2022

1. G.Balakrishnan

2. Raju

...Petitioners

-Vs-

1.State Rep.by
Inspector of Police,
K3 Police Station, Amenjikarai,
Chennai.
Cr.No.124 of 2021.

2.M.M.Sanker

... Respondents

Prayer: Criminal Original petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the impugned FIR in Crime No.124/2021 on the file of the 1st respondent police and quash the same as illegal and pass such further or other orders.

For Petitioners: Mr.R.Subburaj

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for the records relating to the impugned FIR in Crime No.124/2021 on the file of the 1st respondent police and quash the same.

2. The case of the petitioners are that due to financial circumstances, the first petitioner mortgaged his property in favour of the second respondent M.M.Sanker under a simple mortgage deed dated 20.11.2018 and the same was registered as Document No.4016 of 2018 on the file of Sub Registrar Office, Sembiam for a mortgage amount of Rs.35,00,000/-. The entire mortgage amount together with interest was paid through RTGS



transfer and discharged the entire mortgage amount. Thereafter the first petitioner made several request to the second respondent for cancellation of mortgage deed but he had not come forward for cancellation. The second respondent failed to fulfil the terms and conditions of the mortgage deed. Though a legal notice was issued to the second respondent he was not ready to cancel the mortgaged deed. Hence the petitioner filed a suit for redemption in O.S.No.2840 of 2021 on the file of XIV Assistant, City Civil Court, Chennai as against the defacto complainant and the same is pending. The second respondent entered into the mortgaged property and attacked the watchmen, thereafter the second petitioner gave a complaint and the defacto complainant and a case was registered as CSR No.87 of 2021 and the same is pending for enquiry. Instead of complying the demand made in the notice, the second respondent made a false complaint against the petitioners as if the petitioners have received Rs.25,00,000/- for securing a job for his son.

3. Heard both sides.

4. The contention of the learned counsel for the petitioners are of factual in nature, it cannot be decided at this stage by conducting roving enquiry, it requires appreciation of facts or atleast proper investigation by the respondent police. That apart the Hon'ble Supreme Court in (Neeharika Infrastructure P Ltd., Vs. State of Maharashtra and others) reported in 2021 (2) MWN Cr.90 (SC) has issued guidelines and has held that quashing of an FIR should be an exception and a rarity than an ordinary rule.

5. This Court is not inclined to quash the FIR at this stage, accordingly the Criminal Original Petition stands dismissed. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

dpq

To

1. Inspector of Police,
K3 Police Station, Amenjikarai,
Chennai.



2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Subburaj, Advocate, S.R.No.32869

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RSV(CO)
SB(30/06/2022)