



Crl.O.P.Nos.21156 & 21157 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 12.07.2022

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

Crl.O.P.Nos.21156 & 21157 of 2020 and
Crl.MP.Nos.9001, 9003, 9005 & 9006 of 2020

Crl.OP.No.21156 of 2020

D.Muthukumarasamy

... Petitioner/accused

Vs

1. The State,
Represented by the Inspector of Police,
Anti Land Grabbing Cell,
Ariyalur District

2.R.Chandru

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in CC.No.204 of 2019 pending on the file of the Judicial Magistrate Court-II, Jayankondam and quash the same.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondents
For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)



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For R2 : Mr.S.Mohan

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Crl.OP.No.21157 of 2020

D.Muthukumarasamy

... Petitioner/accused

Vs

1. The State,
Represented by the Inspector of Police,
Anti Land Grabbing Cell,
Ariyalur District

2.R.Rajan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records in CC.No.203 of 2019 pending on the file of the Judicial Magistrate Court-II, Jayankondam and quash the same.

For Petitioner : Mr.T.L.Thirumalaisamy

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : Mr.S.Mohan

COMMON ORDER

These petitions have been filed to quash the proceedings in CC.Nos.204 & 203 of 2019 on the file of the Judicial Magistrate Court-II,



Jayankondam, thereby taken cognizance for the offences under Sections 341, 447, 506(i), 294(b) of IPC, in Crime Nos.382 & 383 of 2012, as against this petitioner.

2. The case of the prosecution is that the defacto complainants purchased the property to an extent of 16.72 acres and 12.63 acres respectively and they are in possession and enjoyment of their respective properties. After purchase, the subject properties are under possession and enjoyment of their power agent, one, Rajamanickam. While being so, on 29.01.2011 at about 10.00 a.m., the accused person trespassed into the properties and threatened the said Rajamanickam with dire consequences and directed him to vacate the property. He also scolded him in filthy language.

3. The learned counsel for the petitioner would submit that the petitioner is in possession and enjoyment of the subject property. In fact, he filed suit for bare injunction in OS.No.46 of 2010 as against the vendor of the second respondent from whom the property was purchased by the



second respondent. In the said suit, he filed petition for interim injunction in IA.No.73 of 2010. Thereafter, he filed comprehensive suit for declaration declaring himself as the owner of the property by adverse possession and also challenging the sale deeds executed in favour of the defacto complainants and other purchasers as null and void in OS.No.33 of 2019 on the file of the learned Principal District Judge, Ariyalur. Therefore, there is no question of trespass into the said property and no offence is made out under Section 447 of IPC. Insofar as the other offences are concerned, it is bald and vague allegations and no specific overt act as against the petitioner to attract any of the offences. Hence he prayed to quash the same.

4. The learned counsel for the second respondent in both the petitions would submit that it is true that the petitioner filed suit for bare injunction in OS.No.46 of 2010. While pending the suit, he also filed petition for interim injunction in IA.No.73 of 2010. Though it was allowed by the trial court and the same was challenged by the first defendant in the said suit i.e. the vendor of the second respondent in CMA.No.3 of 2012 on the file of the learned Principal District and Sessions Judge, Ariyalur. By an



order dated 13.12.2013, it was allowed and set aside the order passed by the trial court. Aggrieved by the same, the petitioner also filed civil revision petition before this Court in CRP.PD.No.2879 of 2014 and it was also dismissed by this Court by order dated 27.06.2019. Immediately after dismissal of the said civil revision petition, the petitioner filed these petitions to quash the proceedings. One way or other, the petitioner dragged the proceedings for these long years since the crime is of the year 2012. However, the petitioner managed to prolong the criminal case for the past 10 years. The petitioner never was in possession and even according to him, he is the 'benami' of the vendor of the second respondent in both the petitions. Therefore, he has no title over the property and all the offences are clearly made out as against the petitioner.

5. The learned Government Advocate(crl.side) appearing for the first respondent / police would submit that there are two cases registered against the petitioner in Crime Nos.382 and 383 of 2012. Insofar as Crime No.383 of 2012, it was lodged by another purchaser in respect of the part of the property for the similar allegations. The petitioner has no title over the



property. He has filed suit for bare injunction and the interim injunction application was also dismissed by the first appellate court and confirmed by this Court. Thereafter, he filed another suit in OS.No.33 of 2019 for declaration of title, that too by adverse possession. Therefore, all the offences are clearly made out as against the petitioner.

6. Heard Mr.T.L.Thirumalaisamy, the learned counsel appearing for the petitioner, Mr.A.Gopinath, Government Advocate(crl.side) appearing for the first respondent/police and Mr.S.Mohan, the learned counsel appearing for the second respondent in both the petitions.

7. The petitioner is the sole accused in both the cases. The allegation is that the petitioner trespassed into the respective properties belong to the second respondent in both the petitions and scolded the person who occupied the subject property and also threatened him with dire consequences. Though the petitioner filed suit for bare injunction in OS.No.46 of 2010 on the file of the Sub Court, Ariyalur, his injunction application was dismissed and confirmed by this Court. It shows that the



petitioner is not in possession and enjoyment of the subject property. That apart, the petitioner also filed suit in OS.No.33 of 2019 for declaration declaring that the subject property belongs to him by adverse possession on the file of the Principal District Court, Ariyalur.

8. On perusal of the plaint in OS.No.46 of 2010, the petitioner himself averred that the subject properties have been purchased by him in joint venture in the name of the vendor of the second respondent in both the petitions. However, the petitioner also filed another suit in OS.No.33 of 2019 on the file of the Principal District Court, Ariyalur for declaration declaring that the subject properties belong to him by adverse possession. Therefore, he also challenged the sale deeds executed in favour of the second respondent in both the petitions and other purchasers. Therefore, both the suits are nothing to do with the present criminal case.

9. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-



" 12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

10. Recently, the Hon'ble Supreme Court of India dealing in respect



of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, wherein, it has been held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”



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11. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had



incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner are mixed question of facts and it cannot be considered by this Court under Section 482 Cr.P.C.

12. In view of the above discussion, this Court is not inclined to quash the proceedings in CC.Nos.204 & 203 of 2019 on the file of the Judicial Magistrate Court-II, Jayankondam. The petitioners are at liberty to raise all the grounds before the trial Court. Considering the age of the petitioner, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of three months from the date of receipt of



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13. Accordingly, both the criminal original petitions are dismissed.

Consequently, connected miscellaneous petitions are also closed.

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G.K.ILANTHIRAIYAN. J.
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To

- 1.Judicial Magistrate Court-II,
Jayankondam
- 2.The Inspector of Police,
Anti Land Grabbing Cell,
Ariyalur District
- 3.The Public Prosecutor,
Madras High Court,
Chennai.

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