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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.10597 OF 2017

AND

CRL.MP.NO.7000 OF 2017

1. P.Sathiyaraj
2. P.Parthiban
3. D.Radhakrishnan
4. Sakthivel

... Petitioners

Vs.

Saravanan

... Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code to call for the entire records in C.C.No.130 of 2010 pending on the file of the learned Judicial Magistrate No.I, Cuddalore and quash the same.

For Petitioners : Mr.V.Jayaprakash Narayanan
for Dr.G.Krishnamurthy

For Respondent : Mr.R.Sathish Kumar
Legal Aid Counsel

ORDER

The petitioners/A4 to A7 facing trial on a private complaint filed by the respondent for the offence under Sections 147, 148, 427, 447 and 506(ii) IPC in C.C.No.130 of 2010 on the file of the learned Judicial Magistrate No.1, Cuddalore, filed this quash petition.

2.Notice was sent to the respondent. The respondent received the same, entered appearance through his counsel and thereafter, none appeared. Keeping the case pending from the year 2017 without any progress would serve no purpose. Hence, this Court appointed Mr.R.Sathish Kumar as Legal aid counsel for the respondent.



3. The gist of the complaint is that the respondent is the resident of Thottapattu Village. The first accused Govindaraj inherited a property along with others in the year 1968. Out of those properties, he sold some lands in S.Nos.98/1 and 98/2 in Thottapattu Village to the respondent's mother Periyamayaki on 16.12.1982. From then, the respondent's mother and the family members are enjoying the property. On 18.10.1988, the said Periyamayaki died leaving behind Radha, Saroja, Vanaja, Mallika, Saravanan and Badhrachalam as legal heirs and they were enjoying the property. After marriage of the females, they settled with their respective families. Since the respondent's brother was residing at Vanpakkam due to his business, the respondent alone was residing near the property by putting up a shed and was cultivating casuarina trees for the past 28 years. The respondent's brother and sisters pledged the property to one Jaisankar on 06.01.1993. The first accused Govindaraj and his brother Devaraj devised a plan to take back the property sold to the respondent's mother and hence, initially filed a civil suit in O.S.No.51 of 2010 before the District Munsif Court, Cuddalore on 27.01.2010, thereafter he had not further pursued the suit and the suit was dismissed for non-prosecution. On 21.02.2010 in the midnight A1/Govindaraj along with muscle men attacked the respondent, caused damage to the casuarina trees and taken away the valuables. The respondent lodged a complaint to the Police and with great difficulty, a case in Crime No.87 of 2010 was registered. On 03.04.2010, again A1 along with his muscle men trespassed into the respondent's property, caused damage to the field and threatened the respondent to vacate the property. Again a complaint was lodged, though initially C.S.R. number was assigned and thereafter, no action was taken. The Inspector of Police attached to the Nellikuppam Police Station taken sides with the said Govindaraj/A1 and was supporting him. Further, he called the respondent and threatened him to leave the property, otherwise he would be chased away.

4. On 10.05.2010 at about 11.00 a.m., the accused along with 70 others armed with Aruval, Knife and other weapons entered into the field, damaged the fencing and the crop, due to fear for life, the respondent fled away from there. A1/Govindaraj along with his muscle men wanted to chase away the respondent and take over the property. Since the Police were taking sides and were only supporting A1 which embolden him to further become aggressive and attacked the respondent, having lost faith with the Police, the respondent filed a private complaint. The Trial Court examined the witnesses produced by the respondent, thereafter taken the case on file in C.C.No.130 of 2010 and issued summons.



5.The contention of the petitioners is that the first petitioner purchased an agricultural land to an extent of 99 cents in S.No.30/4 [Old S.Nos.98/1 and 98/2] of Thottapattu Village out of 1 acre and 8 cents from one C.Govindaraj, son of Chinnasamy through vendor's Power of Attorney agent Mr.D.Tiruvengkataam by way of registered sale deed bearing Doc.No.1726/2010 on 10.05.2010. The said transaction was mediated by the petitioners 2 and 3, thereafter the first petitioner put up fence around the said land and appointed 4th petitioner as watchman for the said land. The respondent along with his relatives and others entered into the property, caused damage by breaking the fence and attacked the 4th petitioner in this case. Though a complaint was given to the Nellikuppam Police Station, only C.S.R.No.52 f 2010 was assigned as a defence the present case has been filed. It is further submitted that originally the property was inherited by A1/C.Govindaraj in S.No.98/1 to an extent of 68 cents and in S.No.98/2 to an extent of 40 cents, totally 1 acre 8 cents at Thottapattu Village, Cuddalore District, out of which, he sold 9 cents of land in S.No.98/2 along with other lands to the mother of the respondent Periyamayaki by a registered sale deed bearing Doc.No.1738/1982. The respondent admittedly has got title to an extent of 9 cents alone in S.No.98/2 [New S.No.30/4B], the remaining land to an extent of 99 cents in both Survey Numbers vested with A1/C.Govindaraj. After the demise of Periyamayaki, to grab the property of Govindaraj, with ill intention the respondent created a false and fabricated release deeds in Doc.No.2628/2010 dated 30.06.2010 and Doc.No.2830/2010 dated 12.07.2010. It is further submitted that without any right over the said land, the respondent created a document to show that Periyamayaki purchased 1 acre and 8 cents through Doc.No.1738/1982, thereafter all the family members released their respective shares to the respondent Saravanan and his brother Badrachalam. Thus, release deeds are fabricated documents and using these fabricated documents patta was also changed. Thereafter, the petitioner submitted a complaint to the revenue authorities and enquiry was ordered by DRO, Cuddalore in R.D.R.971/10-11 dated 19.07.2010. After enquiry, the Tahsildar, Cuddalore issued patta to the first petitioner in Na.Ka.B2/9105/2011 dated 10.08.2011 for the said land to an extent of 99 cents in Patta No.700.

6.It is further submitted that the respondent's brother Badrachalam also filed a complaint before the DCB, Cuddalore against the first petitioner herein and his vendor, a case in Crime No.52/2011 under Sections 120-B, 465, 468, 420 of PC was initially registered and later, the case was closed pursuant to the order of the Tahsildar. The respondent's wife Usha filed a false complaint against vendors of the first petitioner to the



Inspector of Police, Nellikuppam Police Station in Crime No.87/2010 under Sections 147, 294(b), 323, 427, 379 and 506(ii) IPC on 02.03.2010. After due enquiry, this case was closed as mistake of fact and thereafter, now the present case is filed. It is further submitted that the complaint if considered in its entirety, it would disclose that there is no case made against the petitioners. The respondent's brother filed a civil suit against the petitioners and others in O.S.No.141 of 2012, which is still pending. The allegation if taken on face value, then also it can be seen that it is only a civil wrong and already civil suits are pending between them.

7.The learned counsel for the petitioners filed a typed set stating that in the sale deed dated 16.12.1982 it is clearly mentioned that the respondent's mother Periyamayaki purchased only 9 cents in S.No.98/2 out of 40 cents which is also confirmed in the mortgage deed executed by the respondent's brother and sister to one Jaisankar wherein only 9 cents mentioned. In the partition deed which is created in the year 2010 between Saroja, Vanaja and the respondent, 1.09 acres of land in S.Nos.98/1 and 98/2 was shown as purchased, likewise in the another partition deed executed between Badrachalam, Radha and Mallika, 1.09 acres of land was shown as purchased but the respondent's mother purchased only 9 cents, hence in the family partition deed of the legal heirs of Periyamayaki ownership for 1.09 acres of land is created without any right and enjoyment. Using this family partition, the respondent and his brother managed to get patta in their name from the Deputy Tahsildar, Cuddalore. Thereafter, on the representation of the petitioners, enquiry conducted by the Tahsildar, Cuddalore in Na.Ka.No.B2/9105/2011 dated 10.08.2011 in which the respondent and his brother were summoned, enquired and finally the Tahsildar ordered cancellation of patta and issuance of patta in the name of petitioner for 99 cents and in the name of Badrachalam, brother of the respondent for 9 cents alone, purchased by his mother. The said order was not challenged till date. Thus, from the revenue records as well as from the documents from the year 1968, it is seen that the defacto complainant's mother Periyamayaki purchased only 9 cents in S.No.98/2 vide Doc.No.1738/2 dated 18.12.1982 along with other properties. Thus, the respondent using the self-serving documents created artificial right over the property of one Govindaraj, who is the vendor of the first petitioner and projected the case as though the petitioner using the same claiming right over the property, trespassed into the property, abused, assaulted and caused damaged to the respondent is only to create a defence and to strengthen his civil case. Thus, a civil case given a criminal flavour. He further submitted that the Trial Court not recorded the sworn statement of the



respondent and thus, taking cognizance of the complaint is bad in law. Hence, he prayed for quashing the criminal complaint.

8. The learned counsel for the respondent made his submission along with synopsis, dates and events wherein he had stated that in the year 1968 due to family partition, the petitioner's vendor inherited the property vide Doc.No.252/1968, from Manickam, his grandfather since his father Chinnaasamy passed away then. During the year 1982, A1/Govindaraj and his brother Devaraj decided to sell their share of 1.18 acres and they sold the same to Periyannayagi, mother of the respondent vide Doc.No.1738/1982. On 18.01.1988, Periyannayagi, mother of the respondent passed away leaving behind her legal heirs, four daughters and two sons, namely, Radha, Saroja, Vanaja, Mallika, Saravanan and Badhrachalam. The property is being in continuous enjoyment and possession of the respondent. A1/Govindaraj executed a Power of Attorney in favour of one Thiruvengadam, through him A4 purchased property vide Doc.No.1726/2010. From the year 1982, the respondent is in enjoyment of the property. Earlier, during the family partition, there are some mistakes committed by the first petitioner's vendor and in the schedule of the property wantonly mistakes committed. Taking advantage of the same, somehow to take over the property of the respondent, the petitioners using muscle men attacking the respondent and attempting to chase him away. The respondent's brother Badhrachalam already lodged a complaint with the Anti-land Grabbing Cell, Cuddalore and a case was registered against six persons for the offence under Sections 120-B, 420, 423, 465, 470 IPC, in which the petitioners as well as his vendor Govindaraj are accused. The present complaint lodged for petitioners and others trespassing into the property, assaulting, causing damage and threatening the respondent. The Civil Suit is filed seeking injunction, restraining them not to interfere with the peaceful possession and enjoyment of the respondent. As regards the order passed by the Tahsildar, the respondent is taking steps to challenge the same and it is an appealable order before the higher revenue authorities. Now the petitioners cannot use the same to absolve themselves from the misdeeds.

9. The learned counsel for the respondent further submitted that in this case, A1/Govindaraj gave the possession of the property in different survey number instead of handing over the actual property mentioned in the schedule in the sale deed in document No.1738 of 1982, dated 16.12.1982. The legal heirs of Periyannayagi failed to notice this fraudulent act and took possession of the property identified by Govindaraj and have been enjoying same. Now, the petitioners and other accused are attempting to vacate the respondent and his family members and



grab the property. He further submitted that the 1st petitioner filed a suit in O.S.No.141 of 2012 before the learned Principal Subordinate Judge, Cuddalore. The learned Principal Subordinate Judge, Cuddalore rendered judgment in favour of the 1st petitioner herein on 17.02.2016. Thereafter, the respondent's brother Badrachalam filed an appeal in A.S.No.19 of 2017 before the learned Sessions Judge, Cuddalore. The learned Sessions Judge by judgment, dated 28.08.2018 set aside the judgment in O.S.No.141 of 2011, dated 07.02.2016 and remanded the suit for fresh trial.

10.He relied upon the decision of the Apex Court in the case of Mohd. Allauddin Khan vs. State of Bihar and others reported in (2019) 6 SCC 107 for the proposition that the High Court had no jurisdiction to appreciate evidence in proceedings under Section 482 Cr.P.C. the contradiction and inconsistencies in the statement of witnesses cannot be decided, it is an issue relating to appreciation of evidence and the same can be gone into by the Magistrate during the trial. Further, reliance was placed on the decision of the Apex Court in the case of K.Jagadish vs. Udaya Kumar G.S. and another reported in 2020 (14) SCC 552 stating that even if civil remedy is availed, that does not preclude from setting in motion proceedings in criminal law. With regard to the contention of the petitioner that the sworn statement of the respondent was not recorded, he placed reliance on the decision of the Apex Court in the case of Narmada Prasad Sonkar alias Ramu vs. Sardar Avtar Singh Chabara and others reported in 2006 (9) SCC 601, wherein it is observed that if the Magistrate had not followed the procedure and failed to apply his mind as required by law, the order issuing process could be quashed, but the Magistrate should be directed to reconsider the matter and pass fresh order in accordance with law.

11.This Court considered the rival submissions and perused the materials available on record.

12.It is seen that the respondent's mother Periyamayaki purchased the property of 82 cents in survey No.97/1, 27 cents in old survey No.53 and 9 cents in old survey No.98/2 vide document No.1738 of 1982, dated 18.12.1982 from Govindaraj (A1) in this case. Thereafter, the respondent, along with his sisters Saroja and Vanaja released their rights, vide document No.2628 of 2010, dated 30.06.2010 in favour of the respondent's brother Badrachalam. The other two sisters of the respondent viz., Radha and Malliga executed another release deed, vide document No.2830 of 2010, dated 12.07.2010 in favour of Badrachalam. In the said two release deeds, the survey No.98/1 (New survey No.30/4A) has been shown as 0.39 ares, i.e., 1.09 acres. Using the same, patta was obtained by the said

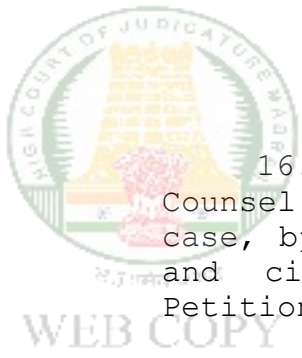


Badrachalam, against which, the 1st petitioner lodged a complaint to the revenue authorities, thereafter, an enquiry was ordered by the District Revenue Officer, Cuddalore in R.D.R.971/10-11, dated 19.07.2010, after the enquiry of Tahsildar, Cuddalore, patta was issued to the 1st petitioner in Na.Ka.No.B2/9105/2011, dated 10.08.2011 pertaining to old survey No.98/1, new survey No.30/4A for 99 cents finding that the respondent's mother Periyamayaki had purchased only 9 cents in survey No.98/2 and civil cases are pending between the parties.

13.The complaint is that on 10.05.2010, the petitioners along with other accused trespassed into the 2nd respondent's property, abused and attacked him. In support of his complaint, the respondent examined himself as PW1, one Jayashankar, to whom the property was earlier mortgaged, examined as PW2, one Purushothaman examined as PW3 and the sister of the respondent Vanaja examined as PW4. The statement of witnesses is that two persons attacked the respondent at the time of occurrence. None of the witnesses have stated about the property description, survey numbers and its extent. There is inter se contradiction between the statement of witnesses, P.W.2 to P.W.4. The complaint is in total variance to the evidence. The respondent is sitting over a property which is disputed, revenue records are in favour of first petitioner. Added to it, civil suit is pending, to lend credence to the civil suit, such claims and complaints are usually made. Admittedly, the respondent's mother had only purchased 9 cents in survey No.98/2, which was mortgaged to PW2-Jayashankar. Thus, the patta, chitta, adangal and 'A' Register are in the name of the 1st petitioner. The respondent to agitate and make claim over the legal ownership of the property with the revenue authorities and in Civil Court, not by initiating such criminal complaint. Criminal complaint cannot be used as a tool for oblique reasons. Arraying a person in criminal case is a serious one which will have wide ramification.

14.The rival claim of the parties is a matter, which has to be decided by the civil Court, since the dispute between them is civil nature. Hence, it is for the civil Court to decide their rights.

15.In view of the above, the continuation of proceedings in C.C.No.130 of 2010, on the file of the Judicial Magistrate Court No.I, Cuddalore would amount to abuse of process of law and the same is liable to be quashed, and is quashed against the petitioners and also against the other accused, who are similarly placed. Accordingly, this Criminal Original Petition is allowed. In sequel, C.C.No.130 of 2010 is hereby quashed.



16. This Court appreciates Mr. R. Sathish Kumar, Legal Aid Counsel for the 2nd respondent for meticulous preparation to this case, by way of making submissions and filing relevant documents and citations. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

cse

To

The Judicial Magistrate No. I,
Cuddalore.

+1cc to M/s. V. Jaisankar, Advocate, S.R.No. 23050

Crl.O.P.No. 10597 of 2017

PL (CO)
RLP (27/04/2022)