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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

CRL. O.P. NOS.5593 TO 5595 OF 2017
AND CRL.O.P.NO.5658 OF 2017
AND CRL.M.P.NOS.4185, 4187, 4188 AND 4234 OF 2017

1.R.Perumalswamy

Versus

2.P.Jayapal

3.J.Logesh

...Petitioners/Accused in all Crl.O.Ps

1.The State by
Inspector of Police,
T-15,SRMC Police Station
Porur, Chennai-600 116

2.WS Industries(India)Limited,
108, Mount Poonamalee Road,
Porur,
Chennai-116

...Respondents/Defacto Complainant
in all Crl.O.Ps

COMMON PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to Crime Nos. 846 of 2016 and 323,328 and 321 of 2017 pending investigation on the file of the respondent police and quash the same.

For Petitioners
in all Crl.O.Ps

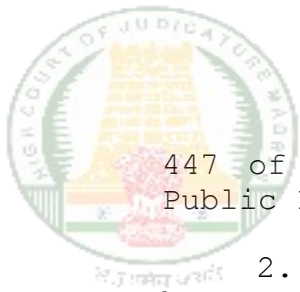
: Mr.Adhithya Reddy for
M/s. Manoharan S.Sundaram

For Respondents
in all Crl.O.Ps

: Mr.S.Vinoth Kumar for R1
Government Advocate(Crl.side)
Mr.K.P.Sanjeev Kumar for R2
for M/s.OJAS Law firm

COMMON ORDER

These Criminal Original Petitions have been filed for quashing four FIR's viz., in Crime No.846 of 2016 for the offence under Sections 447, 379 and 506(2) of IPC, in Crime No.321 of 2017 for the offence under Sections 147, 448 IPC, in crime No.323 of 2017 for the offence under Section 379 of IPC, in Crime No.328 of 2017 for the offence under Sections 147, 148,



447 of IPC read with section 3(1) of Tamilnadu Prevention of Public Property Damages and Loss Act.

2. Except in Crime No.328 of 2017, the accused names had not been mentioned in all the other FIR's, only the unknown accused names have been recorded. The entire allegation in all the FIR's indicate that as if the petitioners along with the henchmen trespassed into the property owned by the defacto complainant and caused damage to the property and stolen certain materials stacked by the defacto complainant. After hearing both learned counsels, it appears that the main dispute raised by the petitioner herein is over the property situated at Porur Village to the extent of 13.5 acres in Survey Nos.70/1A1, 70/1A2, 73/2 and 77 which were given to the defacto complainant by assignment deed dated 26.02.1964 for industrial purpose. Pursuant to the assignment deed, they were in possession of the property and they constructed the factory and stacked materials. When the materials took in the year 2015, the claim has been made by one of the petitioner claiming right over the property of above survey no's and also obtained orders from the DRO, but the same was challenged before this Court and this Court set aside the order of the DRO. Thereafter, the Division Bench restored the order of the DRO and the Hon'ble Apex Court in Civil Appeal Nos.1318 & 1319 of 2017 set aside the order of the DRO in fact, the Hon'ble Apex Court had found that the defacto complainant was in possession of the property, now, the three FIR's have been filed mainly on the ground that the petitioner claimed right over the property and with the help of henchmen, he trespassed and caused damages to the property.

3. The petitioners were not shown as an accused in Crime Nos.846 of 2016 and 321 and 323 of 2017, and only unknown persons were shown as an accused. Only in Crime No.328 of 2017, the petitioners were shown as accused. The allegations in the FIR indicate that the persons entered into the property and claimed right over the property and also destroyed and removed certain materials from the property. The allegations in the FIR also indicate that since the dispute arose over the immovable properties, the petitioners herein tried to enter into the property. The dispute is mainly with regard to the claim of right over the property and the order passed by the DRO in favour of the petitioner is also set aside. Now the petitioner has also filed an affidavit before this Court indicating that they will not interfere with the possession of the property belonging to the defacto complainant in any manner except in accordance with the decision of the Court of law. Further, they agreed not to enter into the property which is in possession of the defacto complainant in Survey Nos.73/2, 70/1 and 77 situated at Porur village. The said undertaking affidavit is taken on record.



4. Considering the above affidavit and the entire FIR, it is clearly seen that except the general allegation that the petitioners had trespassed the property and the alleged theft, there is no specific overt act alleged against the present petitioner. Therefore, even continuing the investigation is nothing but a futile exercise as the identity of the persons who trespassed the property is not established. Further, the alleged theft of materials is also general in nature and without any specific allegations with regard to the theft, the same has been pressed into service only in order to prevent the person from entering into the property.

5. This Court is of the view that continuing all the FIR's will not serve any purpose. From a reading of all the FIR's and considering the submissions of both the learned counsel, this Court can easily come to the conclusion that the very criminal case has been lodged only in order to prevent the persons claiming right over the immovable property. In such view of the matter, as the allegations are general in nature and there is no specific overt act alleged against the petitioner and the petitioner also filed an Affidavit undertaking not to interfere with the possession of the defacto complainant's property. Further, learned counsel for the defacto complainant also submitted that if the petitioners do not enter into the property they will not proceed further on the basis of the FIR's.

6. Taking note of the above submission, this Court is inclined to quash all the FIR's based on the affidavit filed by the petitioner. The petitioners herein are directed not to interfere with the possession of the de facto complainant's property except with the due process of law.

7. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

*Xerox copy of Affidavit enclosed

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msv/nr

To

1.The State by
Inspector of Police,
T-15,SRMC Police Station
Porur, Chennai-600 116



2.The Public Prosecutor
High Court, Madras.

+3cc to Mr.K.P.Sanjeev Kumar, Advocate, SR.NO.521

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PCH (CO)
KKV/03/02/2021