



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 28.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No. 29584 of 2017
and
Crl.M.P.Nos.16699 & 16700 of 2017

P.HarakchandBandari ... Petitioner/1st Accused

Versus

1.State rep.by Inspector of Police,
Mamallapuram Police Station,
Mamallapuram,
Kancheepuram District. ... 1st Respondent

2.Praful Bhandari ... 2nd Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to C.C.No.189 of 2017, on the file of the learned District Munsiff cum Judicial Magistrate, Thirukalukundram and quash the same as against the petitioner.

For Petitioner	:	Mr.R.Srinivasalu for Mr.K.Venkatesan
For Respondents	:	Mr.R.Kishore Kumar for R1 Govt.Advocate (Crl.Side)
	:	Mr.R.Kannan for R2

ORDER

This Criminal Original Petition has been filed to quash the final report in C.C.No.189 of 2017 on the file of the learned District Munsif cum Judicial Magistrate, Thirukalukundram for the offence under Sections 427 and 506(1) IPC.

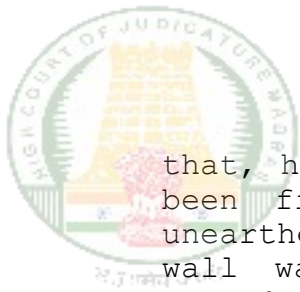


2. The Crux of the final report is that the complaint has been filed by the defacto complainant/son against the petitioner/father, who is aged about 83 years on the ground that the petitioner has executed a settlement deed to an extent of 1.19 acres of land in favour of the de facto complainant/son vide Document No.731 of 2003. Thereafter, the petitioner/A1 along with others have damaged the compound wall to an extent of 10 feet. Besides, they also made an oral threat. Thereby, the final report has been filed for the offence under Sections 427 and 506 (1) IPC.

3. The learned counsel appearing for the petitioner submitted that the petitioner has already filed a Civil suit in O.S.No.33 of 2017, on the file of District Munsif Cum Judicial Magistrate, Thirukalikundram to revoke the settlement deed executed in favour of the defacto complainant/son. Now, the said Civil suit has been transferred to District Munsif Court, Chengalpattu. Admittedly, the son is not an eye witness. The other witness on their side is the employee of the son. At any event, if the entire allegations made against the petitioner are taken on its face value, the same would not constitute any offence under Section 427 and 506(1) IPC. Hence, it is nothing but an abuse of process of law.

4. Whereas, the counsel appearing for the de facto complainant submitted that petitioner/father executed a settlement deed on 24.03.2003. Pursuant to the date of settlement, the de facto complainant is the absolute owner and having possession of the property. Thereafter, he also developed a Farm House. Whereas, the petitioner in order to revoke the above settlement deed, trespassed the said property and also caused mischief and threatened the employee of the de facto complainant. Hence, he opposed to quash the proceedings.

5. This Court has perused the entire materials available on record. Normally, this court would not make a roving enquiry while exercising its power under Section 482 Cr.P.C, to go into the validity of the statements. However, when the Court finds that the prosecution is a result of motivation and also due to civil dispute, this court can go into merits also. It is to be noted that the First Information Report itself is lodged by the son/defacto complainant on the basis of telephonic conversation said to have been received through his employee and in the First Information Report, he only suspected his father. Though this statement also appears to be hearsay, only his employee was examined as an eye witness and stated as if the father has come to the land and caused damage to the compound wall, besides



that, he also made an oral threat. Though, the final report has been filed by the Investigating Officer, no materials were unearthed by the investigating agency to show that the compound wall was damaged. Except some statements of P.W.2/employee, no other materials available on record to show that there was damage to the compound wall. Therefore, if the entire materials are taken on its face value, the chance of the case leading to conviction is very remote. Further, it is admitted that there is dispute between the petitioner and defacto complainant with regard to the settlement deed and the Civil suit is also pending before the District Munsif Court. Thereafter, this complaint is also filed.

6. In such view of the matter, the materials collected by the prosecution are not sufficient to prove the alleged offence and no materials available to show the damage caused to the compound wall and mere oral empty threat itself would not constitute any offence under Sections 427 and 506 (1) IPC.

7. In view of the above, this Court is of the view that continuance of the prosecution against the petitioner is nothing but a futile exercise. Hence, the same is quashed.

8. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

msv/psa

To

1. The District Munsif cum Judicial Magistrate,
Thirukalukundram.
2. The District Munsif Court, Chengalpattu.
3. The Inspector of Police,
Mamallapuram Police Station,
Mamallapuram, Kancheepuram District.



4. The Public Prosecutor,
High Court, Madras.

WEB COPY

+1cc to Mr.R.Srinivasalu, Advocate, S.R.No.5880

+3ccs to Mr.R.Kannan, Advocate, S.R.No.5324, 4124

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MT (CO)
SU (01/03/2022)