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CrI.O.P.No.28384 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2022

PRONOUNCED ON : 21.11.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.28384 of 2018 and

CrI.M.P.No.16505 of 2018

1.Dhanraj @ Lakshminarayanan

2.V.M.Kothandaraman

3.Saranya Gomathi

... Petitioners

Vs.

1.State by Station House Officer,  
Mangalam Police Station,  
Puducherry.  
(Crime No.90/2015).

2.S.Swaminathan @ Baskar

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.181 of 2018 on the file of the Judicial Magistrate No.IV, Puducherry and quash the same in respect of the petitioner 1 to 3 alone.

For Petitioners : Mr.K.Sukumaran

For R1 : Mr.V.Balamurugane,  
Public Prosecutor, Puducherry

For R2 : Mr.R.Sasikumar

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## ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.181 of 2018, on the file of the Judicial Magistrate Court No.IV, Puducherry.

2.The case of the prosecution is that on 08.10.2015, at about 02.00 p.m., the petitioners/A1 to A3 and A4 forcibly trespassed into the 2<sup>nd</sup> respondent's land, threatened and chased away the labourers, who were working in the field, damaged casuarina grooves and also made arrangement to put up fencing around the field of the 2<sup>nd</sup> respondent. Further, they claimed that the property belongs to the 2<sup>nd</sup> petitioner. Due to resistance and intervention of the villagers, the accused ran away from the scene of occurrence and thereafter, the complaint was lodged by the 2<sup>nd</sup> respondent to the 1<sup>st</sup> respondent Police. On completion of investigation in Crime No.90 of 2015, charge sheet filed listing 10 witnesses as LW1 to LW10 and documents, for offence under Sections 447, 427, 409 and 506(ii) r/w 34 IPC, before the learned Judicial Magistrate No.IV, Puducherry and the same was taken on file as C.C.No.181 of 2018, against which, the present Criminal Original



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Petition.  
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3.The learned counsel for the petitioner submitted that the 3<sup>rd</sup> petitioner is the wife of Dhandapani, who is the son of late Subramaniya Muthaliyar. The 3<sup>rd</sup> petitioner sold 1/5<sup>th</sup> share of her property to the 2<sup>nd</sup> petitioner. The suit for specific performance in O.S.No.40 of 2009 was filed by the 2<sup>nd</sup> petitioner against Deivanai, the mother of the 2<sup>nd</sup> respondent and legal heirs of Subramaniya Muthaliyar seeking execution of sale deed as per the agreement, dated 18.12.2006. The learned counsel further submitted that initially, the legal heirs of Subramaniya Muthaliyar negotiated the sale of the property and received Rs.10,00,000/- as advance during the month of December 2006. As per the agreement, dated 18.12.2006, on or before 10<sup>th</sup> February 2007, the balance amount to be paid and sale deed to be executed by the 2<sup>nd</sup> respondent. Thereafter, whenever the 2<sup>nd</sup> petitioner approached for execution of sale deed, the legal heirs of Subramaniya Muthaliyar neither executed the sale deed nor returned the amount of Rs.10,00,000/-, which was received by them in the year 2006. Thereafter, the civil suit in O.S.No.40 of 2009 decreed in favour of the 2<sup>nd</sup> petitioner on 20.11.2014



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directing him to deposit the balance sale consideration within the stipulated time. Subsequent to it, the 3<sup>rd</sup> petitioner executed the sale deed in respect of her 1/5<sup>th</sup> undivided share in favour of the 2<sup>nd</sup> petitioner. On deposit of the entire amount as directed in O.S.No.40 of 2009, the 2<sup>nd</sup> petitioner filed Execution Petition in E.P.No.73 of 2015 before the learned III Additional District Judge, Puducherry. On coming to know about the same, Deivanai and the legal heirs of Subramaniya Muthaliyar including the 2<sup>nd</sup> respondent filed appeal before this Court in A.S.No.367 of 2015 against the judgment and decree passed in O.S.No.40 of 2009 and this Court directed the 2<sup>nd</sup> respondent and other contesting defendants to deposit the sum of Rs.10,00,000/- with 9% interest from 18.12.2006 to till date of the decree within a period of four weeks from 09.10.2015 and thereafter to, they failed to deposit the amount. Hence, the petitioners having legal right over the property, made an attempt to fence the property. At that time, the 1<sup>st</sup> petitioner was assaulted by Deivanai and the legal heirs of Subramaniya Muthaliyar, for which, the complaint, dated 10.03.2015 was given before the Inspector of Police, Karikalampakkam Police Station, Puducherry, which was closed as civil nature. On the contrary, for the same cause of action, on the complaint of



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the 2<sup>nd</sup> respondent, dated 09.10.2015, the above case in Crime No.90 of 2015 came to be registered and charge sheet filed.

4.The learned counsel further submitted that the 2<sup>nd</sup> respondent group having failed before the civil Court (O.S.No.40 of 2009) as well as before the appellate Court (A.S.No.367 of 2015) and later, having no other option, had managed the 1<sup>st</sup> respondent to file charge sheet against the petitioners. He further submitted that earlier, the 1<sup>st</sup> petitioner gave several complaints dated 10.03.2015, 08.10.2015 and 10.10.2015 complaining the 2<sup>nd</sup> respondent and his group entering into the property using force and attempted to chase away the 1<sup>st</sup> petitioner and his men. On 09.10.2015, at about 01.15 p.m., the FIR in Crime No.90 of 2015, for offence under Sections 143, 109, 447, 427 and 506(ii) r/w 149 of IPC was registered against the petitioners and seven others as though on 08.10.2015, at about 02.00 p.m., the 1<sup>st</sup> petitioner and A4 forcibly trespassed into the property of the 2<sup>nd</sup> respondent at the instigation of A2 and A3, chased away the workers and caused damage to casuarina grooves, attempted to put up fence around the property. In the complaint, date has been corrected to suit the prosecution case and there is no



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specific overtact attributed against the petitioners 2 and 3 except bald allegation that at the instigation of the petitioners 2 and 3, the 1<sup>st</sup> petitioner and A4 committed the offence. He further submitted that the appeal suit in A.S.No.367 of 2015 was dismissed by the Hon'ble Division Bench of this Court on 26.04.2017 and the execution petition in E.P.No.73 of 2015 is pending for execution of sale deed in favour of the 2<sup>nd</sup> petitioner. Thus, the 2<sup>nd</sup> petitioner has become entitled to the suit property in O.S.No.40 of 2009 and the 2<sup>nd</sup> respondent and his group have no right in the suit property.

5.He further submitted that the judgment and decree of the civil Courts are in favour of the 2<sup>nd</sup> petitioner and the 1<sup>st</sup> respondent acted in a overzealous manner filed the charge sheet against the petitioners and A4. This case is predominantly civil in nature and hence, he prayed for quashing the charge sheet.

6.The learned Public Prosecutor for Puducherry appearing for the 1<sup>st</sup> respondent Police submitted that Subramaniya Muthaliyar died in the year 1995 leaving behind his wife Deivanai and his sons Swaminathan @



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Baskar/2<sup>nd</sup> respondent, Dhandapani/husband of the 3<sup>rd</sup> petitioner, Vadivel and Vasanthkumar as his legal heirs, who inherited five acres of land in R.S.No.2/1. During the year 2006, the legal heirs of Subramaniya Muthaliyar intended to sell the above said property. The 1<sup>st</sup> petitioner being the land broker introduced the 2<sup>nd</sup> petitioner as though he is a wealthy business man settled in Chennai, his son and daughter are settled abroad. The 2<sup>nd</sup> petitioner intends to buy the property, paid the advance of Rs.10,00,000/- on 18.12.2006 confirming that the balance amount would be paid and sale deed would be executed by 10<sup>th</sup> February 2007. Whenever the 2<sup>nd</sup> respondent and his group approached the 2<sup>nd</sup> petitioner, he was giving one reason or other and, was not willing to pay balance amount. The 2<sup>nd</sup> respondent informed that his son and daughter once come from abroad, the balance amount will be paid and sale will be concluded and also informed money to be mobilized. Thereafter, 2<sup>nd</sup> petitioner became inaccessible despite best efforts taken by the 2<sup>nd</sup> respondent.

7.He further submitted that the 2<sup>nd</sup> petitioner promised that soon he would purchase the property since the possession and enjoyment of the



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property was with the 2<sup>nd</sup> respondent and his group, who were carrying on with the agricultural activities in the property. They left it at that stage. Taking advantage of the demise of Dhandapani, the 2<sup>nd</sup> petitioner lured the wife of Dhandapani/the 3<sup>rd</sup> petitioner, got execution of sale deed in respect of her 1/5<sup>th</sup> undivided share. Using the same, the 2<sup>nd</sup> petitioner filed the civil suit in O.S.No.40 of 2009 and obtained the order in his favour. Aggrieved over the same, the 2<sup>nd</sup> respondent and his group filed appeal suit in A.S.No.367 of 2015 before this Court, during the pendency of the appeal, taking advantage of the purchase of 1/5<sup>th</sup> undivided share of the 3<sup>rd</sup> petitioner, the petitioners 1, 2 & 4 trespassed into the property, chased away the workers, damaged casuarina grooves and attempted to fence the property. The 2<sup>nd</sup> petitioner claiming that by purchasing 1/5<sup>th</sup> undivided share of the 3<sup>rd</sup> petitioner's property, he has got complete legal right over the property is not proper. The property in dispute is yet to be divided among the legal heirs of Subramaniya Muthaliyar by metes and bounds.

8.It is further submitted that on the earlier complaint given by the 1<sup>st</sup> petitioner, dated 08.10.2015, the 1<sup>st</sup> respondent Police registered the



complaint in No.1 of 2015, conducted enquiry, found the dispute predominantly civil nature, advised both the parties to approach the civil Court. As regards the complaint of the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent Police finding cognizable offence made out, registered FIR in Crime No.90 of 2015, conducted investigation and filed final report. The points raised by the petitioner are factual in nature, which cannot be decided in the Quash Petition. Hence, he prayed for dismissal of this Quash Petition.

9.The learned counsel for the 2<sup>nd</sup> respondent submitted that Subramaniya Muthaliyar, the husband of Deivanai died in the year 1995 leaving behind his wife Deivanai and his sons viz., Swaminathan @ Baskar/2<sup>nd</sup> respondent, Dhandapani/husband of the 3<sup>rd</sup> petitioner, Vadivel and Vasanthkumar as his legal heirs, who inherited around five acres of land in R.S.No.2/1, wherein they carry on their agricultural activities. The property in dispute was not divided by metes and bounds. All the legal heirs of Subramaniya Muthaliyar in physical possession, cultivating and enjoying the property together. On 29.07.2011, Dhandapani one of the legal heir of Subramaniya Muthaliyar died, taking advantage of the



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same and without knowledge of the 2<sup>nd</sup> respondent and his group, the 1<sup>st</sup> petitioner being power agent of the 2<sup>nd</sup> petitioner, purchased 1/5<sup>th</sup> undivided share of the property from the 3<sup>rd</sup> petitioner, wife of Dhandapani. Admittedly, in this case, the property was not divided by metes and bounds and there are common well, pumpset, electricity connection, which are enjoyed by the legal heirs of Subramaniya Muthaliyar. Taking advantage in purchase of 1/5<sup>th</sup> undivided share of the 3<sup>rd</sup> petitioner, the petitioners and A4 trespassed into the property, chased away the workers, damaged casuarina grooves and attempted to fence the property.

10.He further submitted that on the strength of civil suit, entering into the property and causing damage to the standing grooves is against law. The 1<sup>st</sup> respondent Police, on the complaint received from the 2<sup>nd</sup> respondent, conducted investigation, found the involvement and participation of the petitioners along with A4, registered FIR, on completion of investigation, filed charge sheet. The points raised by the petitioners at this stage are matter of facts, which has to be decided only during trial and not in this Quash Petition. Hence, he prayed for



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dismissal of the same.

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

12.It is seen that the late Subramaniya Muthaliyar was having five acres of agriculture land in R.S.No.2/1 at Thanikuppam Village, Puducherry. After his demise in the year 1995, the property got devolved to his legal heirs namely his wife Deivanai, his sons viz., Swaminathan @ Baskar/2<sup>nd</sup> respondent, Dhandapani/husband of the 3<sup>rd</sup> petitioner, Vadivel and Vasanthkumar. The 2<sup>nd</sup> respondent as well as his mother admit receipt of Rs.10,00,000/- from the 2<sup>nd</sup> petitioner on 18.12.2006 and sale agreement entered between them with the 2<sup>nd</sup> petitioner to purchase of the above property. Though the 2<sup>nd</sup> petitioner agreed to purchase the property within period of three months, that is, on or before 10<sup>th</sup> February 2007, he failed to do so. Earlier, the 2<sup>nd</sup> petitioner filed civil suit for specific performance before the learned III Additional District Judge, Puducherry in O.S.No.40 of 2009 seeking direction to the 2<sup>nd</sup> respondent and his group to comply with the agreement, dated 18.12.2006. The suit



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was decreed in favour of the 2<sup>nd</sup> petitioner on 20.11.2014 with the direction to the 2<sup>nd</sup> petitioner to deposit the balance sale consideration to the Court within a stipulated time. After the judgment and decree in O.S.No.40 of 2009, the 3<sup>rd</sup> petitioner wife of Dhandapani, who got 1/5<sup>th</sup> undivided share in the disputed property, executed sale deed in document No.365 of 2015 in favour of the 2<sup>nd</sup> petitioner without informing the 2<sup>nd</sup> respondent and his group. As against decreed civil suit, dated 20.11.2014, the 2<sup>nd</sup> respondent and his group filed appeal suit in A.S.No.367 of 2015 before this Court and this Court, by order, dated 09.10.2015 directed the 2<sup>nd</sup> respondent to deposit Rs.10,00,000/- and interest at the rate of 9% within a period of four weeks calculating from 18.12.2006 to 09.10.2015. The 2<sup>nd</sup> respondent and his group failed to deposit the same and thereby, not complied with the order of this Court.

13.On 08.10.2015, the petitioners entered into the property, which was objected and resisted by the 2<sup>nd</sup> respondent and his group and also assaulted the 1<sup>st</sup> petitioner and lodged the complaint, dated 10.03.2015 to the 1<sup>st</sup> respondent Police. This complaint was closed as civil in nature by the Inspector of Police, Karikalampakkam Police Station, Puducherry.



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The 1<sup>st</sup> respondent Police received complaint from the 2<sup>nd</sup> respondent that the 2<sup>nd</sup> respondent and his group were threatened, attempted to be assaulted by the petitioners causing damage to standing casuarina grooves and to the property. The 1<sup>st</sup> respondent Police for the reasons best known dropped the investigation on the complaint of the 1<sup>st</sup> petitioner, dated 10.03.2015 for the reason that the dispute is civil nature. On the other hand, conducted investigation on the complaint of the 2<sup>nd</sup> respondent, dated 09.10.2015, registered FIR and filed charge sheet before the trial Court. The complaints of the 1<sup>st</sup> petitioner and the 2<sup>nd</sup> respondent are predominantly civil in nature.

14.It is also to be seen that the judgment and decree of the civil Courts are in favour of the 2<sup>nd</sup> petitioner, which is not in dispute. On the strength of the civil Court orders, the petitioners entered into the property, which cannot be termed as trespass. Had the 2<sup>nd</sup> respondent and his had objections for the petitioners entering into the property, they ought to have filed an appeal against the civil Courts Judgment & decree before the appropriate forum and ought to have obtained appropriate orders. In this case, no such steps taken, in fact, the petitioners are armed with the



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civil Court orders. The 1<sup>st</sup> respondent Police failed to look into these aspects and filed the charge sheet in the absence of any material constituting ingredients of commission of offence. In fact, the 2<sup>nd</sup> and 3<sup>rd</sup> petitioners were not present in the scene of occurrence. While this being so, they are projected as abettors abetting 1<sup>st</sup> petitioner and A4 to enter into the property and cause damage to casuarina grooves and attempt to fence the property.

15.From the statement of witnesses, it is seen that except the 2<sup>nd</sup> respondent and his group, no independent witnesses from the scene of occurrence have stated specific overtact for the incident taken place on 08.10.2015. The other witnesses namely Sivamani, Manokaran, Pazhanivel, Nagaraj, Vengadesan are all employees of the 2<sup>nd</sup> respondent. Other than that, no independent witnesses examined. The petitioners armed with the civil Court orders, entering the property, would not amount to trespass and there is no evidence or material for causing any damage. Apart from oral intimation nothing followed by any action.



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16.Thus, the proceedings are maliciously instituted with an ulterior motive for wrecking vengeance against the petitioners. The continuation of the proceedings against the petitioners would amount to abuse of process of law and hence, this Court is inclined to quash the proceedings against petitioners and also the other accused/A4, who is also similarly placed as that of the petitioners.

17.Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.181 of 2018, on the file of the Judicial Magistrate Court No.IV, Puducherry is, hereby, quashed against all the accused. Consequently, the connected Miscellaneous Petition is closed.

21.11.2022

Speaking order/Non-speaking order

Index: Yes/No

Internet: Yes/No

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To

1.The Judicial Magistrate No.IV  
Puducherry.



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M.NIRMAL KUMAR, J.

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2.The Station House Officer,  
Mangalam Police Station,  
Puducherry.

3.The Public Prosecutor,  
High Court, Madras.

PRE-DELIVERY ORDER IN  
CrI.O.P.No.28384 of 2018

21.11.2022