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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 11/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)No.3259 of 2019

and

Cr1.MP(MD)Nos9.1828 and 1829 of 2019

Thulasiyaiya : Petitioner/A1

Vs.

1.The State rep. by
The Inspector of Police,
Gandharvakottai Police Station,
Pudukottai District.
(Crime No.259 of 2016) : R1/Complainant

2.Janakiraman : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in PRC No.21 of 2018 on the file of the Judicial Magistrate, Pudukottai and quash the same.

For Petitioner : Mr.P.Jameel Arasu

For 1st Respondent : Mr.Kottai Chamy
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.M.Ramu

**ORDER**

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This petition has been filed seeking quashment of the case in PRC No.21 of 2018 on the file of the Judicial Magistrate, Pudukottai.

2.The case of the prosecution in brief:-

Land dispute is existed between the de-facto complainant Janakiraman and the accused persons. In pursuance of the above said enmity, on 13.09.2016 at about 11.30 am, all the accused persons trespassed into the property situated in Survey No.112/4 and caused damage to the sugarcane crops. They also caused severe criminal intimidation. The worth of the damaged crops is about Rs.5,94,125/-. They also taken away the Swaraj Tractor bearing registration No.TN-55-AD-0798. Based upon the complaint given by the de-facto complainant, a case in Crime No.259 of 2016 for the offences under sections 3(1) of TNPPDL Act and 379(NP) and 506(ii) IPC was registered and after completing the formalities of investigation, final report was also filed stating that the accused persons have committed the offences as stated above, which was taken in PRC No.21 of 2018 by the trial court.



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3. Seeking quashment of the same, this petition has been filed by the petitioner/A1 on the ground that on the earlier occasion, the complaint given by the de-facto complainant was closed as 'Mistake of Fact' after investigation, on 29/11/2016 and on the basis of the protest petition filed by the de-facto complainant, the court directed the respondent police to conduct fresh investigation and file a final report. Based upon only, the present final report has been filed without collecting further materials.

4. Heard both sides.

5. An initial argument has been advanced by the learned counsel appearing for the petitioner that originally, the complaint was closed, on 29/11/2018 by the Investigating Officer as 'Mistake of Fact'. But however, the very same Investigating Officer has filed a final report, on 16/10/2018 stating that the offence under sections 379 (NP), 506(ii) IPC r/w section 3(1) of TNPPDL Act has been committed. So on that basis, the learned Government Advocate (Criminal side) is required to get instruction from the officer concerned.



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6. Now let us straightaway go to the copy of the closure report, dated 29/11/2016, which is enclosed in the typed set of papers, wherein it has been mentioned that on the basis of the complaint given by the de-facto complainant, enquiry was undertaken by registering the case in Crime No.259 of 2016 and before that, after receiving the complaint, CSR enquiry was undertaken in Petition No.303 of 2016. It has been mentioned that during the course of investigation, it was found that Manicka Konar divided the entire properties and allotted shares to their sons Thulasiyaiya, Govindaraj, Janakiraman and Chelladurai by way of family arrangement. In that family arrangement, Thulasiyaiya was allotted property in Survey No.112/4. But no document was registered or executed. But the complainant namely Janakiraman wanted that the entire property must be taken by him. So he took his father Manicka Konar to the Sub Registrar Office and got deed executed in his favour by including the property, which was allotted to Thulasiyaiya and Govindaraj, in which his brother namely Chelladurai was also involved. On coming to know about the above said registration of the document, Thulasiyaiya filed a suit in O.S No.158 of 2016. During the pendency



7. According to the 2nd respondent, after filing the protest petition only, further investigation was ordered. Only on the basis of the further investigation, final report was filed. But the earlier statement of the witnesses are not available.

8.The learned counsel appearing for the petitioner would rely upon the Commissioner report that was filed by the above Commissioner in O.S No.486 of 2018. According to him, during the visit, it was found that there was no standing crops and only a piece of sugarcane crop was found here and there. The date of visit is stated to be 27/12/2018. But as per the FIR, it is stated to be taken place, on 13/09/2016. So the Commissioner report is not



9. The learned counsel appearing for the petitioner would submit that there are contradictions with regard to the complaint as well as the statement. The contradictory statements cannot be a matter for consideration in a petition filed under section 482 Cr.P.C. So during the course of further investigation, the complainant stated that each and every year, whenever sugarcane is planted, the accused persons are preventing them from harvesting or cultivating. This is the only further statement that was recorded and that portion has been repeated by the other witnesses also. Further statement of the parties have been recorded, on 29/08/2018. The earlier closure report says that absolutely, there was no truth in the complaint. The further statement also shows that the 2nd respondent wants to sustain his possession. So it is purely a civil dispute between the brothers.

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shares to each sons and one of the sons was not satisfied with the allotment. That is the problem for the issue. The date of plaint in O.S No.120 of 2017 is 18/09/2017, which is much before filing of the complaint. The suit was filed by Chelladurai, one of the brothers, in which the neighbour, who is the de-facto complainant is a party. This petitioner is the defendant there.

11. Reading of the above said plaint shows that in respect of the allotment of the shares in the family partition, the petitioner also filed O.S No.158 of 2016, which was for declaration and injunction. That was filed on the basis of the family arrangement. Now that was disputed by Chelladurai in respect of tractor bearing No.TN-55-AD-0798. When Chelladurai has also stated that the above said tractor was allotted to him, even as per the case of the petitioner, it must be returned to him.

12. Now let us go back to the complaint, wherein the very same tractor has been mentioned, as if the above said tractor was taken by the petitioner, which belongs to the above said Chelladurai. So it appears that there is a continuous dispute between the members of the family



in respect of sharing of the property. So I find though *prima facie case*, it appears that it is a civil dispute between brothers, which has been given criminal colour. The private complaint has been filed with an ulterior intention of creating document for the purpose of claiming right over the family properties. So I find that the complaint itself is a *mala fide* one, which is rightly closed by the Investigating Officer, earlier. But in pursuance of the above said direction, without making further proper investigation, the final report has been filed in a routine manner, which is not at all permissible under law.

13. Further the investigation ought to have been undertaken with reference to the alleged occurrence and not with regard to the subsequent events. The grievance is that even as per the above said complaint, they are not permitted to cultivate the land and harvesting the crops. That cannot be a reason for filing final report. On that ground, the prosecution is bad in law.

14. The learned counsel appearing for the 2nd respondent would mainly relied upon the judgment of the



15.No doubt that at the stage of exercising 482 Cr.P.C, the court cannot take the statement recorded under section 161 Cr.P.C as evidence. But at the same time, when the prosecution itself is aimed by creating the evidence over the disputed property without any basis, it can be quashed on the ground that it is clearly an abuse of process of court and law.

16. So, I find that this is one of the fittest cases to exercise the jurisdiction under section 482 Cr.P.C. In the light of the above development, the entire criminal proceedings is liable to be quashed and accordingly, it is quashed.



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17. In the result, this criminal original petition is **allowed**. The impugned PRC No.21 of 2018 on the file of the Judicial Magistrate, Pudukottai is hereby quashed against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

11/04/2022

Index:Yes/No
Internet:Yes/No

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



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To,

- 1.The Judicial Magistrate,
Pudukottai,
Pudukottai District.
- 2.The Inspector of Police,
Gandharvakottai Police Station,
Pudukottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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12

G.ILANGOVAN, J

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