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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.01.2022

Pronounced on : 11.03.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.O.P. (MD) .No.3407 of 2019

and

CRL.M.P (MD) No.1938 of 2019

1.Ramesh
2.S.Rathinam
3.Visu

... Petitioners/A1 to A3

Vs.

1.State through
The Inspector of Police,
Junction Police Station,
Tirunelveli.

... 1st Respondent /
Complainant

2.Krishnan

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to P.R.C.No.18 of 2019 on the file of the Judicial Magistrate No.IV, Tirunelveli and quash the same as against the petitioners.

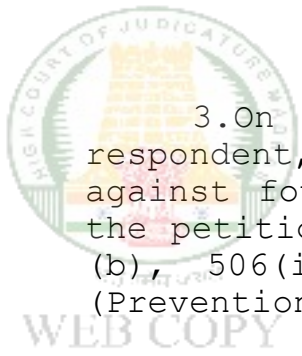
For Petitioners : Mr.P.Subbiah

For Respondents : Mr.M.Muthumanikkam, for R1.
Government Advocate (Criminal Side),
for R1.
: Mr.H.Arumugam, for R2.

ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Code of Criminal Procedure, seeking orders to call for the records pertaining to P.R.C.No.18 of 2019 on the file of the Judicial Magistrate No.IV, Tirunelveli and quash the same.

2. The petitioners are the accused 1 to 3 in P.R.C.No.18 of 2019 on the file of the Judicial Magistrate No.IV, Tirunelveli.



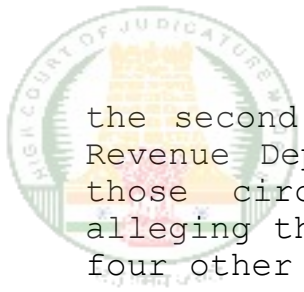
3.On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.156 of 2018, against four named persons and four identifiable persons including the petitioners herein for the offence under Sections 147, 452, 294 (b), 506(ii) IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992.

4.The first respondent after completing the investigation has laid the final report under Section 173 of Cr.P.C, dated 21.08.2018 against four persons arraying the petitioners as A1 to A3 for the alleged offence under Sections 447, 506(ii) IPC and 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and the case was taken on file in P.R.C. No.18 of 2019 on the file of the learned Judicial Magistrate No.IV, Tirunelveli and the same is pending.

5.Admittedly, the first petitioner/ first accused is the son of the second petitioner/second accused and the third petitioner/third accused is their relative.

6.The case of the prosecution is that on 28.05.2018 at about 10.00 p.m, the petitioners with the help of fourth accused, driver of JCB vehicle damaged the gate and compound wall worth about Rs.1.5 lakhs belonging to the principal of the defacto complainant and that when the same was questioned by the defacto complainant, the petitioners had threatened him with dire consequences.

7.The petitioners' case is that the second petitioner and her husband have constructed two houses in the land purchased by them in T.S.No.1630/2 and 1632/3 of Manimurtheeswaram Revenue Village, Tirunelveli Municipality, that an irrigation channel in T.S.No.1624 is the eastern boundary of the second petitioner's house, that one Mookandidas principal of the defacto complainant purchased a portion of land in T.S.No.1623/1, which is situated on the eastern side of the irrigation channel, that since the said Mookandidas and his men had attempted to close the irrigation channel with sand, the first petitioner sent a complaint to the Chief Minister's Cell on 11.07.2017, that the said Mookandidas started his construction works with the assistance of the defacto complainant on 02.09.2017, that since they dig the irrigation channel to lay foundation, the second petitioner objected and at that time, the defacto complainant and his men manhandled her and that the first respondent Police came to the spot and pacified the situation by directing the first petitioner to survey the land, that the second petitioner gave a petition to survey the property on 06.09.2017 and by paying survey fees, that the first petitioner has also sent a complaint to the Tahsildhar about the encroachment in the irrigation channel and for removal of the same, that the complaint was also given to the Minister of the Revenue Department on 11.09.2017, that on 14.12.2017 a survey was conducted by the Municipal Authorities, but they



the second respondent, that the complaint given to the Minister of Revenue Department was forwarded to the District Collector and in those circumstances, the second respondent lodged a complaint alleging that the petitioners along with the fourth accused and with four other persons damaged the gate and compound wall.

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8.The learned counsel for the petitioners would submit that the second respondent has lodged the above complaint falsely in order to stop the petitioners from questioning the encroachment made by the second respondent and the said Mookandidas in the irrigation channel, that the first respondent Police also helped the second respondent to lodge a false complaint and registered the same, that on 07.08.2018 the survey officials had recommended for removal of encroachment in the water body to the DRO, Tirunelveli and that the District Collector has also ordered the DRO to remove the encroachments in T.S.No.1624 vide communication, dated 17.09.2018.

9.The learned counsel for the petitioners would further submit that the first petitioner has filed a Writ Petition in W.P.(MD) No.22525 of 2018 before this Court on 22.10.2018 for removal of encroachment over the irrigation water channel and that the same is pending. He would further contend that the first respondent ought to have enquired the neighbours to the alleged occurrence place about the genuineness of the complaint, but the Police has cited some persons far away from the alleged place of occurrence as alleged eye witnesses and the said eye witnesses appears to be close relatives of the defacto complainant, that the complaint has been lodged after a delay of 9 days and there is no explanation for the delay either in the complaint or in the charge sheet, that the observation mahazar and seizure mahazar does not say anything about the damages to the gate and compound wall, that the fourth accused alleged to be the JCB vehicle driver is a fictitious person and the JCB vehicle was not at all traceable and that the first respondent has filed the charge sheet in a hurried manner and without properly investigating the case.

10. As rightly contended by the learned counsel for the second respondent, in the charge sheet, it has been specifically alleged that when the complainant was raising wall in their property on 02.09.2019, the accused Nos.1 and 2 had raised objections and suggested measurement of lands by the surveyor and that thereafter, on 10.11.2017 the property was measured and the complainant has raised the compound wall and also closed the same by erecting a gate and got it locked.

11.In the final report, it has been further alleged that the accused Nos.1 to 3 with the help of fourth accused, who was driving JCB, had entered into the property of the complainant's principal and caused damages to the gate and compound wall, that the complainant on coming to know about the same, immediately proceeded to the place and when the accused were questioned by him,



the accused Nos.1 to 3 had abused him in filthy language and threatened him with dire consequences and that they have caused damages to the gate and compound wall to the tune of Rs.1,50,000/-.

12.As already pointed out, it is not in dispute that the irrigation channel in T.S.No.1624 is situated in between the properties of the second petitioner and her husband on the west and the property of the defacto complainant's principal on the east. No doubt, the petitioners have produced the copies of the representations to show that they have taken steps to survey the property. It is also not in dispute that the District Collector, Tirunelveli had sent a communication to the DRO, Tirunelveli, directing him to take necessary steps for removal of encroachments allegedly made by some persons in the irrigation channel.

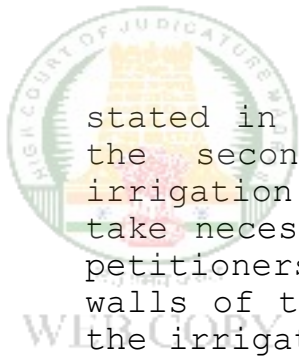
13.Moreover, according to the petitioners, the first petitioner has filed a writ petition in W.P.(MD)No.22525 of 2018 against the Revenue Officials, the Commissioner of Tirunelveli Corporation and also Mookandidas, owner of the land, seeking a writ of Mandamus, directing the Revenue Officials and Corporation Officials to remove the encroachment made by the defacto complainant over water irrigation channel in T.S.No.1624 of Manimurtheeswaram Village and consequently direct the authorities to restore the water irrigation channel to its original position and that the same is pending.

14.No doubt, the petitioners have only produced the copy of the affidavit filed by the second petitioner in support of the above said writ petition. Though it has been stated that the writ petition is pending, the petitioners have not chosen to inform this Court as to whether any interim order was passed.

15. As rightly contended by the learned counsel for the intervenor their main contention is that the petitioners along with the fourth accused had caused damages to their gate and compound wall in the property owned by the defacto complainant's principal and that when the same was questioned, the complainant was threatened with dire consequences.

16.As already pointed out, the learned counsel for the petitioner would submit that in the observation mahazar, they have not specifically stated that the gate in the defacto complainant's property was damaged, but as rightly pointed out by the learned counsel for the second respondent in the observation mahazar as well as in the rough sketch, it has been specifically stated that near the occurrence place, they found cement coated black stones, due to the demolition of the wall.

17.The learned Government Advocate (Criminal Side) would submit that the defacto complainant and the other eye witnesses in their



stated in the complaint. Even assuming for the arguments sake that the second respondent and his principal had encroached the irrigation channel, it is only for the Government authorities to take necessary steps for removing the encroachments and hence, the petitioners cannot take the law into their hands and damage the walls of the complainant, which were alleged to have constructed in the irrigation channel.

18.The Hon'ble Supreme Court in **Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and Ors.** reported in **2019 18 SCC 191**, after considering the decision of the Supreme Court in **State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.** reported in **1992 Supp(1) 335** has held that exercise of powers under Section 482 Cr.P.C to quash the proceedings is an exception and not a rule and that inherent power under Section 482 Cr.P.C, though wide, has to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the Section itself.

19.It is settled law that appreciation of evidence is not admissible at the stage of quashing proceedings in exercise of powers under Section 482 Cr.P.C. It is also settled law that the evidence produced by the accused in his defence cannot be looked into by the Court except in exceptional circumstances at the initial stage of the criminal proceedings and that the High Court cannot embark upon the appreciation of evidence while considering the petition under Section 482 Cr.P.C.

20.It is pertinent to mention that as per the legal dictum laid down by the Hon'ble Supreme Court that if a *prima facie* case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceedings.

21.In the case on hand, a perusal of the FIR and the material collected during the investigation on the basis of which, the final report has been laid, makes out a *prima facie* case against the accused at this stage and there appear to be sufficient ground for proceeding against the accused.

22.Considering the above, this Court do not find any justification to quash the charge sheet or the proceedings against the petitioners arising out of them as the case does not fall in any of the categories recognized by the Hon'ble Apex Court, which may justify their quashing. Hence, this Court decides that the pleas and the defence raised by the petitioners cannot be gone into at this stage and are matter for trial. Consequently, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.



23. In the result, the Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petitions is closed.

Sd/-
Assistant Registrar(AD I)

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Sub Assistant Registrar(CS)

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.

To

- 1.The Judicial Magistrate No.IV,
Tirunelveli.
- 2.The Inspector of Police,
Junction Police Station,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.SUBBIAH, Advocate (SR-11678[F] dated 11/03/2022)

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-12010[F] dated 14/03/2022)

CRL.O.P. (MD) .No.3407 of 2019
and
CRL.M.P (MD) No.1938 of 2019
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MK/30.03.2022/6P/6C