



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.01.2022

Pronounced on : 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P. (MD)No.3740 of 2019

and

Crl.M.P. (MD)No.2179 of 2019

1.Vijayalakshmi

2.Kamaraj

3.K.Manirathinam

4.K.Vairamani

5.K.Muthumani

: Petitioners/A1 to A5

Vs.

1.The State rep. by
The Inspector of Police,
Land Grabbing Cases (DCB),
Madurai District.
(Crime No.34 of 2018)

: Respondent/Complainant

2.Nagappan

: Respondent/Defacto -
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the FIR in Crime No.34 of 2018 on the file of the Inspector of Police, Land Grabbing Cases (DCB, Madurai District and quash the same.

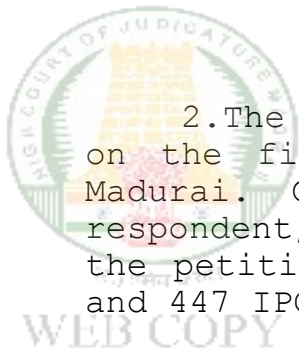
For Petitioner : Mr.S.Balaji

For Respondents : Mr.Muthumanikkam,
Government Advocate (Criminal Side)
for R1.

: Mr.Chandra Pandi,
for Mr.O.Sivakumar, for R2.

O R D E R

The Criminal Original Petition has been filed, invoking Section 482 of Cr.P.C., seeking orders to call for the records pertaining to the FIR in Crime No.34 of 2018 on the file of the first respondent and quash the same.



2.The petitioners are the accused 1 to 5 in Crime No.34 of 2018 on the file of the District Crime Branch, Land Grabbing Cases, Madurai. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.34 of 2018 against the petitioners herein for the alleged offences under Sections 420 and 447 IPC.

3.At the time of admission, this Court has granted an interim order of stay, directing the first respondent not to file the final report. The learned Government Advocate (Criminal Side) would submit that they have already completed the investigation and charge sheet is made ready and that since there was an interim order, they are not in a position to file the final report.

4.Admittedly, the petitioners 1 and 2 are the wife and husband and the petitioners 3 to 5 are the sons of the petitioners 1 and 2.

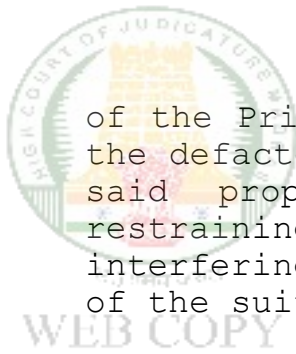
5.The case of the prosecution is that the property situated in S.No.56/5B2A1, present S.No.56/48 an extent of 3 feet x 42 feet land is owned by the wife of the defacto complainant, that the petitioners had encroached the said land and despite the serious objections raised by the defacto complainant, they have raised constructions and that when the same was questioned, they had threatened with dire consequences.

6.It is evident from the typed set of papers filed by the second respondent that the wife of the second respondent Andal has filed a suit in O.S.No.263 of 2016 on the file of the Principal District Munsif, Thirumangalam, against the first petitioner, claiming the reliefs of declaration that the property described in 'B' schedule therein belongs to her and for recovery of possession and also for mandatory injunction, directing the first petitioner to remove the encroachment, namely, the super structures put up by her in the 'B' schedule and restore the same to the original position.

7.It is not in dispute that since the first petitioner has not chosen to file the written statement, she was set ex-parte and subsequently, the ex-parte decree came to be passed on 18.07.2018. Thereafter, the said Andal has laid the execution petition in E.P.No.63 of 2016 before the Additional District Munsif, Thirumangalam, for removal of the encroachments and for recovery of possession of 'B' schedule property in pursuance of the decree, dated 18.07.2018.

8.It is also not in dispute that subsequently the first petitioner has filed an application for setting aside the ex-parte decree in I.A.No.233 of 2019 and the same was set aside, vide order dated 13.12.2019, and that the said suit is pending.

9.It is further evident from the records that the first respondent also filed a suit in O.S.No.192 of 2019 on the file



of the Principal District Munsif, Thirumangalam against the wife of the defacto complainant, claiming the relief of declaration that the said property belongs to her and for permanent injunction restraining the said Andal and her men from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property and that the said suit is also pending.

10.Considering the above records, it is very much clear that the petitioners are owning a property adjacent to the defacto complainant's wife's property and that the property now in dispute is situated in between their properties.

11.As already pointed out, the defacto complainant's wife has shown the land measuring east x west 3 feet and north x south 30 feet as the disputed property and the first petitioner has shown east x west 1 ½ feet north x south 30 feet land as the property in dispute. The learned Government Advocate (Criminal Side) appearing for the State would submit that during the investigation, they came to know that 8 inches x 42 feet land is the disputed property. Whatever it is, whether the disputed property belongs to the first petitioner or to the wife of the defacto complainant is a matter to be decided by the competent Civil Court.

12.As rightly contended by the learned counsel for the petitioners, the defacto complainant has nowhere whispered anything about the filing of the suit by his wife and passing of ex-parte decree and also the filing of the execution petition.

13.The defacto complainant has lodged a complainant as if the property was grabbed by the petitioners. In the complaint, he has specifically stated that the petitioners have already completed the constructions, that they are going to make constructions by digging near the wall now constructed by the petitioners, that in case if the petitioners' wall gets collapsed, the same will cause damages to the property and there will be danger to human life also and therefore, the petitioners may be directed to remove the articles placed in their property and also they may be directed to move out of that place during their constructions, that they came to know that the petitioners are planning to attack them and to kill them and there is also possibility for communal violence and that therefore, they may be booked under the Goondas Act and under the Land Grabbing Act.

14. This Court is at loss to understand as to how the FIR came to be registered by Land Grabbing Cell, without understanding the basis and the purpose for which, the Land Grabbing Act came to be enacted and by registering the case, they have allowed the defacto complainant to give the civil dispute a criminal color/flavor.

15. As already pointed out, it is a pure civil dispute that <https://www.courtsofindia.org/> the parties and since the suits filed by both the



parties are pending, it is for them to work out their remedy before the Civil Court. But the defacto complainant, taking advantage of the Land Grabbing Cell and by converting the civil dispute as a criminal dispute, has lodged the complaint abusing the process of law.

16. Moreover, this Court is constrained to say that the very registration of FIR is a clear abuse of process of law and hence, this Court has no hesitation to hold that the impugned FIR is liable to be quashed.

17. In the result, the Criminal Original Petition is allowed and the impugned FIR in Crime No.34 of 2018 on the file of the Inspector of Police, Land Grabbing Cases (DCB), Madurai District, is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Crl side)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

das

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 Inspector of Police,
Land Grabbing Cases (DCB),
Madurai District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S.BALAJI, Advocate (SR-10022[F] dated 04/03/2022)

Crl.O.P.(MD)No.3740 of 2019

and

Crl.M.P.(MD)No.2179 of 2019

03.03.2022