



CRL.O.P(MD) No.11313 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.10.2022

PRONOUNCED ON : 25.11.2022

CORAMBEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P(MD) No.11313 of 2022

and

CrI.M.P(MD)No.7126 of 2022

1.Fr.Savariappan

2.Sr.Mary Stella @ Stalla

...Petitioners

Vs.

1.The Inspector of Police,
Airport Police Station,
Trichirrapalli District.
(Crime No.397 of 2021)

2.Evangline Jayachithra

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to F.I.R. in Crime No.397 of 2021, dated 24.09.2021 on the file of the first Respondent and quash the same insofar as the Accused Nos.1 and 2.

For Petitioner :Mr.I.Romeo Roy Alfred

For R1 :Mr.R.Sureshkumar
Government Advocate (CrI.side)



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ORDER

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This Criminal Original Petition has been filed to quash the F.I.R. in Crime No.397 of 2021, dated 24.09.2021 on the file of the first Respondent police.

2.The learned Counsel for the Petitioners would submit that the Petitioners are the Landlords and the De-Facto Complainant, who is running a Pearl Trust, is the tenant. He would further submit that one Ramachandran, who is the Managing Director of the said Trust, is a practising lawyer and he is facing disciplinary proceedings with the Bar Council of Tamil Nadu on the allegation that he had obtained fake degree certificates.

3.It is the further submission of the learned Counsel for the Petitioners that after the Petitioners had taken steps to vacate the tenant from the premises with an ulterior motive the complaint had been filed. Also, he would submit that at the time of registering the FIR, the Petitioners had filed Crl.O.P.(MD) No.15614 of 2021 seeking anticipatory bail and the same was allowed vide order dated 28.10.2021, against which the De-Facto



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Complainant filed Crl.M.P.(MD) No.11292 of 2021, which was dismissed with cost of Rs.10,000/- by this Court. Therefore, he seeks to quash the FIR in Crime No.397 of 2021.

4.The learned Government Advocate (Crl.side) for the first Respondent vehemently oppose the line of arguments of the learned Counsel for the Petitioners stating that there are ingredients attracting the offences under Sections 294(b), 506(1), 427, 457 and 380 IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

5.The case was posted from 26.09.2022 to 18.10.2022 for service of notice on the second Respondent/De-Facto Complainant. The endorsement refused is considered as proper notice on the De-Facto Complainant by this Court. The submissions of the learned Counsel for the Petitioner and the learned Government Advocate (Crl.side) were recorded on 26.09.2022.

6.The learned Counsel for the Petitioner relied on the ruling of the High Court of Kerala reported in **MANU/KE/0210/2005** in the case of **N.Kesavan Nair and Others Vs. State of Kerala and Others**, the relevant



paragraph of which reads as follows:

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"7. Thus, it is clear that the offence of "theft" takes in both a physical act of 'moving' and also a specified intention. But, what exactly is the nature of the intention which is required to be proved to make out the offence of "theft"? Theft postulates two "intentions". Firstly, an intention of the accused to 'take' any movable property out of possession of another person without the consent of the other person. Secondly, an intention to cause wrongful gain by unlawful means, of such property to which the person gaining is not entitled to or to cause wrongful loss by unlawful means of such property to which the person losing is entitled to. Only if both such intentions of the accused are proved, an offence of "theft" as defined in section 378 IPC will be established. Therefore, a mere removal of a movable property by a person from possession of another without the consent of the latter with the sole intention to evict him from a building will not be sufficient to make out an offence under Section 380 of IPC.

11.It is well-settled that if the court finds that the allegations revealed from the records on the face of it do not constitute ingredients of any



offence, this Court can certainly interfere under Section 482 Cr.P.C. and quash the charge. This will be necessary for the purpose of preventing abuse of process of court and also to meet ends of justice, as stated in section 482 itself. On going through the records and hearing both sides, I am satisfied that no offence under Section 380 of IPC is made out from the records available in this case. If no offence under Section 380 IPC is made out, an offence under Section 451 also will not lie. The charge sheet itself explicitly reveals that the sole intention of the petitioners was to evict illegally the defacto complainant who was allegedly running his office in the building belonging to the first and second petitioners. Hence the lower court ought not to have taken cognizance of the offence of either under section 380 or 451 IPC. Charge against the accused in this case is liable to be quashed and I do so".

7. In the light of the submissions made by the learned Counsel for the Petitioner, a civil litigation had been converted into a criminal case by the second Respondent only to harass the Petitioner and to get unlawful gain over the property on the guise of the criminal case. Therefore, the



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submission of the learned Counsel for the Petitioner is accepted in the light of the reported ruling of the Hon'ble Supreme Court in the case of ***State of Haryana Vs. Bajanlal***, wherein, guidelines were issued to the High Court regarding quashing of F.I.R., Charge sheet, only if it is an abuse of process of law. One of the guidelines was that civil dispute converted into criminal case. Here the facts appear to be a civil dispute regarding tenant and landlord. The second Respondent/De-Facto Complainant is a tenant under the Petitioner.

8. Therefore, she had instituted a criminal case, which is registered by the first respondent as F.I.R. in Crime No.397 of 2021 for the offences under Sections 294(b), 506(i), 427, 457 and 380 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The ingredients of the offences under Section 380 of IPC is not made out in a case regarding eviction of tenant, as per the interpretation given by the High Court of Kerala.

9. In the light of the above discussions, the objection of the learned Government Advocate (Crl.side) is rejected. The submissions of the learned



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Counsel for the Petitioner is accepted in the light of the reported ruling of the *Hon'ble Supreme Court* in the case of *State of Haryana Vs. Bajanlal*.

In the result, this Criminal Original Petition is allowed. The F.I.R. in Crime No.397 of 2021 pending on the file of the First Respondent Police is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

.11.2022

Index:Yes/No

vsd

To

- 1.The Inspector of Police,
Annavaasal Police Station,
Pudukkottai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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SATHI KUMAR SUKUMARA KURUP, J.

vsd

Pre-Delivery Order made in
CRL.O.P(MD) No.11313 of 2022

25.11.2022