



CRL.O.P (MD) No.11384 of 2022

.BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.11384 of 2022

and

CrI.M.P(MD)No.7184 of 2022

Thamarai Selvam

...Petitioner/Sole Accused

Vs.

1.The State Rep. By

The Inspector of Police,
Ettayapuram Police Station,
Thoothukudi District.

... 1st Respondent/Complainant

2.R.Ramesh Kumar

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the impugned F.I.R. in Crime No.829 of 2021, dated 28.09.2021 pending on the file of the first respondent police as against the petitioner and quash the same.

For Petitioner : Mr.M.Pandian

For R1 : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor

ORDER

This petition has been filed to quash the FIR in Crime No.829 of 2021, dated 28.09.2021 on the file of the first respondent police.



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2.The learned counsel for the petitioner submitted that the petitioner is the owner of the land in S.Nos.219/2, 219/3 and to support the case, he has also filed a patta copy. In that agricultural land, he is having own Palmyra trees and in order to do agriculture work he has removed his own Palmyra trees. But without conducting proper enquiry, the defacto complainant gave a complaint, as if he had damaged the property in poromboke land in Survey.No.219/6 and hence, the case has been registered. The ingredients of the offence under Section 379 of IPC will not attract against the petitioner, hence, he prays for quashing the F.I.R.

3.The learned Additional Public Prosecutor appearing for the respondent police submitted that the case is under investigation.

4. I have considered the submission of the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the respondent police.

5.The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure



to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft



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of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

6.In the case on hand, a perusal of impugned F.I.R., registered based on the complaint given by the Village Administrative Officer, Surikaipatti Village, Ettayapuram Taluk, Thoothkudi District, shows that on 28.09.2021 the petitioner/accused has damaged 10 Palmyra trees standing in the Government Promboke land in S.No.219/6, worth about Rs.10,000/-. This fact discloses the commission of offence and further, the investigation is pending. Pending investigation, it is inappropriate to quash the F.I.R against the petitioner.

7.On perusal of impugned F.I.R, it is seen that the allegation therein would *prima facie* make out a case for investigation by the police authority.



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8. Further, the Hon'ble Supreme Court in the case of **R.P.Kapur v. State of Punjab (AIR 1960 SC 866)** and subsequent cases, has held that revisional or inherent powers for quashing the proceedings at the initial stage can be exercised only where the allegations made in the complaint or the first information report, even if taken at their face value and accepted in their entirety, do no prima facie disclose the commission of an offence or where the uncontroverted allegations made in the FIR or complaint and the evidence relied in support of the same do not disclose the commission of any offence against the accused, or the allegations are so absurd and inherently improper that on the basis of which no prudent person could have reached a just conclusion that there were sufficient grounds in proceedings against the accused or where there is an express legal bar engrafted in any provisions of the Code or any other statute to the institution and continuance of the criminal proceedings or where a criminal proceeding is manifestly actuated with mala fide and has been initiated maliciously with the ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

9. The Investigating Agency should have the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. It is not appropriate to quash the complaint since this Court finds no merit in this case.



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V.SIVAGNANAM, J.

vsd

10.In the light of the above factual and legal positions, this Criminal Original Petition is dismissed. Consequently connected miscellaneous petition is closed.

27.06.2022

Index : Yes / No
vsd

To

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

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