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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Reserved on : 04.01.2022

Pronounced on : 04.03.2022

COARM

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL OP(MD) . No.7201 of 2018

M.Subramanian : Petitioner/A1

Vs

1.State represented by
The Inspector of Police,
Woraiyur Police Station,
Trichy District.

Crime No.122 of 2013 : Respondent /Complainant

2.K.Rathinakumar : Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records connected with Charge Sheet No.131 of 2013, dated 19.09.2013 in P.R.C.No.12 of 2013, pending on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli and quash the same as illegal in respect of the petitioner.

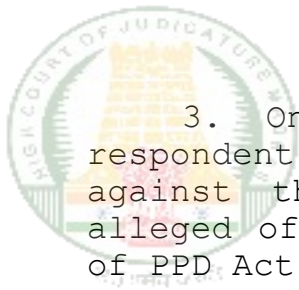
For Petitioner : Mr.J.Anandhavalli,
For Respondents : Mr.M.Muthu Manikkam,
Government Advocate (Criminal Side)
for R1.

: Mr.S.K.Mani, for R2.

O R D E R

The Criminal Original Petition has been filed, invoking Section 482 Cr.P.C, seeking orders to call for the records relating to the final report in P.R.C.No.12 of 2013, pending on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli and quash the same.

2. The petitioner is the first accused in P.R.C.No.12 of 2013, pending on the file of the learned Judicial Magistrate No.IV, Tiruchirappalli.



3. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.122 of 2013, against three persons including the petitioner herein for the alleged offence under Sections 447, 341, 294(b), 506(ii) IPC r/w 3 of PPD Act.

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4. The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C, dated 19.04.2013 against four persons arraying the petitioner as first accused for the alleged offence under Sections 447, 342, 294(b), 506(i) IPC r/w 3 of PPD Act against the Accused Nos.1 and 2 and under Sections 447, 342 IPC r/w 3 of PPD Act against the accused 3 and 4 and that the same was taken on file in PRC.No.12 of 2013 and that the same is pending on the file of the Court of the Judicial Magistrate No.IV, Trichy.

5. The case of the prosecution is that on 20.02.2013, at about 03.00 am, one Rajkumar and another, who came in a NBT Tipper Lorry bearing registration No.TN-45-AP-9286 had trespassed into the property belonging to Grama Vidiyal Micro Finance and demolished the compound wall on all three sides and caused damage to the bore-well and gate and that when the same was questioned by the defacto complainant and other staff of the said Finance Company, it was informed that they have demolished the compound wall only at the instructions of the Chairman of Oxford College/the petitioner herein and that Rajkumar had also threatened and abused the defacto complainant with dire consequences. Hence, the complaint.

6. The petitioner's case is that the defacto complainant seems to be an employee of Grama Vidiyal Micro Finance, who is the purchaser of the property situated in T.S.Nos.23 and 24/2 part within the Tiruchirappalli City Municipal Corporation and new Survey No. 23/2A and 24/2 an extent of 2467.5 sq.ft vide sale deed No.2496 of 2007 along with compound walls situated on east, north and south side; that the vendor of the defacto complainant company has filed a suit in O.S.No.1629 of 2008 in respect of the said property and the same is pending for trial before the District Munsif Court, Trichy; that the petitioner has filed a petition in I.A.No.1 of 2008 and as per the order passed therein, he was impleaded as third defendant in the suit and that though Tiruchirappalli Corporation has issued a notice, dated 22.02.2013, to the President of Grama Vidiyal Micro Finance, calling upon them to remove the encroachment made in the public property, the same was challenged in W.P.No.3244 of 2013 before this Court and the same is pending.

7. The learned counsel for the petitioner would submit that in the affidavit filed in support of the writ petition, the owner has stated about the existence of the compound wall and sought for an order of stay of the impugned notice, dated 22.02.2013 issued by the Tiruchirappalli Corporation and therefore, the allegation of



petitioner is totally false and untenable and that the above complaint has been lodged only to harass the petitioner and to damage his reputation.

8. The learned counsel for the petitioner would further submit that when the civil suit is pending between the parties and the defacto complainant company has already filed a writ petition questioning the notice issued by the Tiruchirappalli Corporation, it is highly unbelievable that the alleged occurrence had taken place and that too, at the instigation of the petitioner.

9. The learned counsel for the intervenor would submit that the suit in O.S.No.1629 of 2008 on the file of the District Munsif Court, Tiruchirappalli was already ordered to be dismissed for default on 07.10.2014. He would further submit that in the complaint, the defacto complainant has specifically stated about the statement of the accused persons implicating the petitioner as, at whose instructions, they had demolished the compound wall; that the said statement made at the time of demolition of wall by the accused persons to the defacto complainant and also the statement recorded under Section 161(3) Cr.P.C referred to the same and that the said statement made at the time of occurrence cannot be considered as hearsay as is sought to be made by the petitioner, but the said statement is very much relevant and admissible under Section 6 of Indian Evidence Act as *res gestae*.

10. As rightly contended by the learned counsel for the intervenor, it is necessary to consider the claim put forth by the petitioner with respect to the property in dispute. As already pointed out, the intervenor has filed a suit in O.S.No.1629 of 2008, on the file of the District Munsif Court, Trichy, against the City Commissioner and Assistant Commissioner of Municipal Corporation, claiming permanent injunction restraining them and their men from interfering with the plaintiffs' peaceful possession and enjoyment of the suit properties either by removing the compound walls or in any manner.

11. As rightly pointed out by the petitioner herein, after getting himself impleaded as third defendant, has filed a written statement claiming that the suit property is a part of road and the relevant passage in the written statement is extracted hereunder.

"16.The third defendant is claiming that the suit property is a part of road. It is to be noted that the previous proceedings the suit land does not find a place as alleged by the plaintiff. The suit survey number is a road and it was never returned back. Even in the Land Acquisition Proceedings and in the Civil Suit in O.S.No.47 /1966 on the file of the Sub Court, Tiruchirappalli there are various survey numbers and the survey number 4048 does



not find a place. It is not covered in any suit. It is clear that the plaintiff is misrepresenting the entire facts."

12. In the written statement, the petitioner has further stated that the intervenor wants to knock off the property, which is a part of the road; that the residents of that area, who have got houses, have got access only through the said road to come to the main road and the same is in existence for more than 40 years and that the plaintiff cannot be allowed to enrich himself, when the suit property is a road for public purposes.

13. As already pointed out, since Tiruchirappalli City Corporation has issued notice under Section 258 of Tiruchirappalli City Municipal Corporation Act for removal of encroachment, the intervenor has filed a petition in W.P.(MD)No.3244 of 2013, seeking issuance of writ of Certiorari Mandamus, calling for the records relating to the proceedings of the Corporation in Na.Ka.No.2674/2005/F1, K.Abishekapuram Zone, dated 22.02.2013 and quash the same.

14. It is further evident from the records that the petitioner has also filed an application to implead him as third respondent in the writ petition in M.P.(MD)No.1 of 2013 in W.P.(MD)No.3244 of 2013 and in the affidavit filed in support of the impleading petition, the petitioner has stated that the subject matter of the writ petition is a compound wall in the public property put up by the intervenor's vendor in T.S.No.24 corresponding to Old T.S.No.4048, that the said road is being used as ingress and egress for his property and that the intervenor by encroaching on the public road is not allowing the petitioner and other public from using the public road.

15. The learned counsel for the intervenor would submit that after impleading the petitioner, the suit in O.S.No.1629 of 2008 was dismissed for default and as such, no suit is pending as of now.

16. Whatever it is, as rightly contended by the learned counsel for the intervenor, since the petitioner has got himself impleaded in the original suit filed by the vendor of the intervenor and the writ petition filed by the intervenor, the same would go to show that the petitioner has been claiming some interest over the property in the question and more particularly, the compound walls in the property.

17. It is pertinent to mention that the Division Bench of this Court, while admitting the Writ Petition in W.P.No.3244 of 2013, has granted interim stay for a period of 14 days and they have also specifically observed that the Tiruchirappalli Municipal Authorities are at liberty to remove the encroachments, if any made in



18. It is not the case of the petitioner that the Corporation Authorities in pursuance of the said orders of this Court had taken necessary proceedings and demolished the compound walls.

19. Admittedly, the petitioner claiming that the property in question is a road and is meant for public purposes, has not filed any civil suit to get their right declared and for restraining the intervenor and their men from using or possessing the said property.

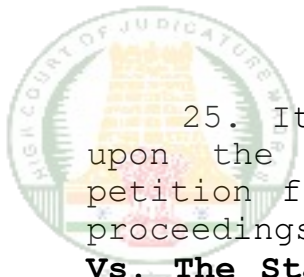
20. Now, coming to the case on hand, the petitioner has raised a ground that the defacto complainant nor the Police has explained as to how the defacto complainant came to know about the occurrence allegedly taken place in wee hours and as to why the defacto complainant has not preferred complaint till 10.30 am in the next morning.

21. As rightly pointed out by the learned counsel for the intervenor, in the complaint itself, the defacto complainant has specifically stated that immediately after the incident, they have contacted the Police through 100 and thereafter, visited the Police and preferred the complaint. Moreover, as rightly contended by the learned counsel for the intervenor, whether the delay occurred in preferring the complaint is fatal to the prosecution or not, is a matter for trial and the same cannot be gone into at this stage.

22. The learned counsel for the petitioner would submit that two witnesses - Rathnakumar and Subbiah in their further statements had informed that the Inspector of Police asked them to come to a place near Ramba Oorvasi Theater to identify the JCB involved and in the previous statement, they claimed that when they went to the place of occurrence, they have seen the Tipper Lorry and as such, they were not in a position to identify the JCB.

23. The learned counsel for the petitioner would further submit that the mahazar witnesses-Village Administrative Officer and his Assistant, who accompanied the police in their vehicle did not say anything about the presence of the other two witnesses and that each statement of the prosecution witnesses is contradictory in nature.

24. At this juncture, it is necessary to refer the judgment of Hon'ble Supreme Court in **Devendra Prasad Singh Vs. State of Bihar and Ors.** in Criminal Appeal No. 579 of 2019 (Arising out of S.L.P. (Crl.) No. 21 of 2018, dated 02.04.2019, whereunder, the Hon'ble Supreme Court has held that the High Court while hearing the application under Section 482 Cr.P.C had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and therefore, there was no *prima facie* case made out against the accused.



25. It is also settled law that the High Court cannot embark upon the appreciation of the evidence, while considering the petition filed under Section 482 Cr.P.C for quashing the criminal proceedings. 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.

26.As rightly contended by the learned Government Advocate (Criminal side), the witnesses in their statements recorded under Section 161 Cr.P.C, have specifically stated that the other accused at the time of occurrence have specifically stated that only under the direction of the petitioner herein, they have demolished the walls.

27. As rightly contended by the learned counsel for the intervenor, if the said version is reiterated before the trial Court, then such statement is certainly admissible under Section 6 of Indian Evidence Act as *res gestae* and as such, the contention of learned counsel for the petitioner that nothing is not available to connect the petitioner with the crime in question, cannot be accepted.

28.A perusal of the FIR and the material collected by the investigating Officer, on the basis of which, the final report has been laid, makes out a *prima facie* case against the petitioner at this stage and as such, the question of quashing the criminal proceedings as against the petitioner does not arise at all. Hence, this Court concludes that the above petition is devoid of merit and the same is liable to be dismissed.

29.In the result, the Criminal Original Petition is dismissed.

Sd/-

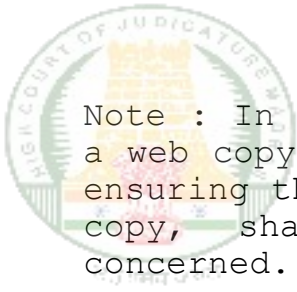
Assistant Registrar (T&P)

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Sub Assistant Registrar(CS)

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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 No.IV,
Tiruchirappalli.
2. The Inspector of Police,
Woraiyur Police Station,
Trichy District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.ANANDHAVALLI, Advocate (SR-10409[F] dated 07/03/2022)

CRL OP(MD). No.7201 of 2018
Date : 04/03/2022

RD(17.03.2022) 7P 5C