



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)Nos.13638 and 18365 of 2018

and

CrlMP (MD)Nos.6143 and 8198 of 2018

1.Crl.OP (MD)No.13638 of 2018:-

Rahmathulla : Petitioner/A1

Vs.

1.The State rep. By
The Sub Inspector of Police,
Panagudi Police Station,
Tirunelveli District,
(Crime No.350 of 2016) : R1/Complainant

2.V.John Bosco : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records relating to the impugned charge sheet in CC No.147 of 2017 on the file of the Judicial Magistrate, Vallioor and quash the same in so far as the petitioner/A1 is concerned.

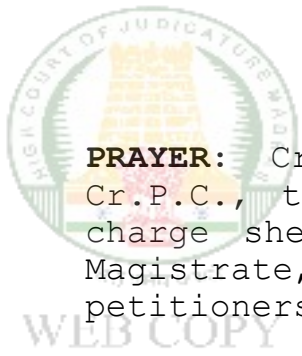
2.Crl.OP (MD)No.18365 of 2018:-

1.Krishore Kumar
2.Spelman Rajarasal : Petitioners/A2 and A3

Vs.

1.The State rep. By
The Sub Inspector of Police,
Panagudi Police Station,
Tirunelveli District,
(Crime No.350 of 2016) : R1/Complainant

2.V.John Bosco : R2/De-facto Complainant



PRAYER: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records relating to the impugned charge sheet in CC No.147 of 2017 on the file of the Judicial Magistrate, Vallioor and quash the same in so far as the petitioners/A2 and A3 are concerned.

For Petitioner : Mr.S.Veeranasamy
(In both cases)

For 1st Respondent : Mr.SS.Madhavan
(In both cases) Government Advocate (crl.side)

For 2nd Respondent : Mr.T.Ponram Kumar
(In both cases)

COMMON ORDER

These criminal original petitions seeking quashment of the case in CC No.147 of 2017 on the file of the Judicial Magistrate, Vallioor, respectively.

2.The case of the prosecution in brief:-

The first accused was a tenant in the property, which is owned by the de-facto complainant. He was running a nursing college called as 'IMS Nursing College'. Because of some sort of trouble, the college was closed. On 19/09/2016 at about 8.30 pm, all the accused persons trespassed into the above said college and tried to break open the lock. When that was objected by the de-facto complainant, he was abused in filthy language and also assaulted. The second witness was also assaulted. But they sustained no injury. They also threatened the de-facto complainant with dire consequences and also criminally intimidated. On the basis of the complaint given by the de-facto complainant, a case in Crime No.350 of 2016 was registered for the offences under sections 447, 294(b), 352 and 506(ii) IPC and after completing the formalities of investigation, final report was filed in CC No.147 of 2017 and it has taken cognizance by the Judicial Magistrate, Vallioor.

3. Seeking quashment of the same, the first accused namely Rahmathulla filed Crl.OP(MD)No.13638 and similarly the accused 2 and 3 also filed Crl.OP(MD)No.18365 of 2018 on the very same ground that the first accused was the tenant under the de-facto complainant even from the year 2010 and on the date of the alleged occurrence, the lease was in subsistence and in order to vacate the first accused, the de-facto complainant has given this false complaint.



4.Heard both sides.

5.It is not in dispute that the first accused was a tenant in respect of the disputed property and the original owner is the de-facto complainant. The lease agreement, dated 01/06/2010 is produced in the typed set of papers, wherein we find that the lease was granted in respect of a portion of the premises, consisting of a building and vacant site and the lease was granted for the purpose of running the college. It was agreed that it is a yearly lease and it must be renewable after a year. In 2015 also, the lease agreement was entered. But at that time, the first incident taken place and one year later, on 26/04/2016, the lease agreement was entered into between the wife of the de-facto complainant and the first accused.

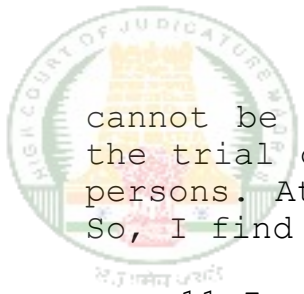
6.According to the first accused, on the date of the alleged occurrence, that is on 19/09/2016, the lease was in subsistence. But the lease agreement reads that it must be in force for one year only. So automatically, on the expiry of one year, it might have got expired. But whether that was later extended or not is not clear on record.

7.The learned counsel appearing for the petitioners would submit that only for the purpose of evicting the first accused from the tenanted premises, illegally such a false complaint has been given.

8.The learned Government Advocate (Criminal side) would submit that even though, the lease agreement between the first accused and the de-facto complainant and subsequent to his wife, the first accused was not in a position to get proper permission for running the college. On that account, it was closed. Only during that time, the offence said to have been taken place. It is nothing, but the disputed facts, which cannot be gone into at this stage.

9.Whether the disputed property was in possession of the first accused or it has been surrendered and taken over by the de-facto complainant, is a matter for trial. When the allegation of trespass, assault, break open the lock, it is a matter for trial. Unless there is sufficient material to show that the complaint is a *mala fide* one, that cannot be quashed.

10.The learned counsel appearing for the petitioners would submit that since the offence said to have been taken place in the premises of the college, section 294(b) IPC is not attracted. But in the complaint, it has been specifically stated that only within the premises, the offence said to have been taken place. What has been stated in the complaint is that the accused trespassed into the premises illegally and try to break open the lock. So when that being so, the contention that section 294(b) IPC is too premature also. Even though allegations in the FIR and final report may not



cannot be a ground for quashing the entire prosecution. It is for the trial court for framing appropriate charges against the accused persons. At that stage, the petitioners can advance their argument. So, I find no merit in the petitions.

11. In the result, these criminal original petitions are **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

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.

To,

1. The Judicial Magistrate,
Vallioor.
Tirunelveli District.
2. The Sub Inspector of Police,
Panagudi Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.Veerana Samy, Advocate (SR.No.17311)

+1 CC to M/s.T.Pon Ramkumar, Advocate (SR.No.17216)

Crl.O.P.(MD)Nos.13638 and 18365 of 2018

05/04/2022

MGJ(04.05.2022) 4P 6C