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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP(MD)No.15765 of 2019

and

Cr1.MP(MD)No.9338 of 2019

1.Angusamy
2.Krishnan
3.Boomi @ Boomiraj
4.Jeyakumar
5.Kannappan
6.Palani : Petitioners/A1 to A6
Vs.

1.The State through
The Sub Inspector of Police,
Kalayarkovil Police Station,
Kalayarkovil Taluk,
Sivagangai District.
(Crime No.110 of 2019) : R1/Complainant
2.Xavier : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to Crime No.110 of 2019 on the file of the 1st respondent and quash the same as against the petitioners.

For Petitioners : Mr.M.Thirunavukkarasu
For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)
For 2nd Respondent : Mr.V.K.Vijayaraghavan

**ORDER**

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The petition has been filed seeking quashment of the case in Crime No.110 of 2019 on the file of the first respondent.

2.The case of the prosecution in brief:-

The 2nd respondent, who is the de-facto complainant has lodged a complaint against the petitioners and others with the following allegations:- He is a retired Ex-service man. The property situated in survey Nos.5/3, 5/4, 5/5, 5/6 and 5/7 in Pallivayal Group of Andichioorani Village, Kalaiyarkovil Taluk, are the ancestral properties of the de-facto complainant. They are in possession from the date of purchase. The Government has acquired the land in survey No.5/6 for forming a Channel. But in the revenue records, the property in survey No.5/7 has mistakenly changed. So, the de-facto complainant filed a petition seeking patta. He has also filed a suit in OS No.77 of 2016 on the file of the District Munsif Court, Sivagangai. During his absence, the accused persons trespassed into the property and damaged the standing crops. When that was questioned



on 28/12/2018 at about 5.00 pm, he was criminally intimidated and abused in filthy language. So on the basis of the advised by his son, on 20/02/2019, a complaint was given by the de-facto complainant, which was registered in Crime No.110 of 2019 for the offences under sections 147, 427, 294(b) and 506(ii) IPC by the first respondent police.

3. Seeking quashment of the same, this petition has been filed by the accused persons on the ground that the first petitioner made a complaint against the then Sub Inspector of Police, Ranjith before the State Human Rights Commissioner, for having registered a false case against his son. Thereafter only at the instance of the above said Sub Inspector of Police, this false case has been registered. The Tashildar of Kalaiyarkovil has given a report stating that they removed the encroachment, that was made by the 2nd respondent officially. So, the question of causing damage under section 427 IPC may not be attracted. Similarly, the other allegations in the FIR also does not attract any of the ingredients of the offences under sections 294(b), 147 and 506(ii) IPC.



4. Heard both sides.

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5. It is seen that dispute exists between the parties over a property. According to the 2nd respondent, the property in survey No.5/7 situated in Pallivayal Group of Andichioorani Village, Kalaiyaukovil Taluk belongs to him ancestrally. But it was changed in the revenue records. He also filed a suit and it is pending. In the above said property, the accused persons alleged to have destroyed the crops. With regard to the delay, the date of occurrence stated to be taken, on 28/12/2018, but whereas the complaint has been given, on 21/02/2019, after the expiry of two months.

6. The learned counsel appearing for the petitioners would submit that the encroachment in survey No.5/7 has been removed by the revenue officials, for which the petitioners were no-way responsible. He would rely upon the order of the Tashildar, Kalayarkoil, dated 26/09/2019 wherein, it has been stated that on 20/10/2018 at about 4.00 pm, the de-facto complainant alleged to have encroached the above said property and ploughed the same. That was prevented and his encroachment was removed. So



no doubt that it is the allegation of encroachment by the second respondent, which was also removed by the revenue officials.

7.The learned counsel appearing for the petitioners would also rely upon the Commissioner Report that was submitted in OS No.77 of 2016 in the typed set of papers, wherein in para '4', it has been mentioned that even though the property in survey No.5/7 encroached with fencing, there is no trace for the recent cultivation.

8.According to the petitioners, absolutely, there is no possibility or probability probable for the occurrence said to have been taken place. But these things cannot be taken into account at this stage. It is a matter for evidence before the trial court. It is completely a factual issue. Whether on the date of the alleged occurrence, the disputed property was in possession of the de-facto complainant, whether it was removed by the revenue officials and whether the cultivation has been damaged by the petitioners are all the matters for consideration by the trial court. So these disputed factors cannot be taken into account at this stage.



9. However, the official records shows that the encroachment made by the 2nd respondent was removed by the revenue officials. The date of occurrence said to be taken place is doubtful. Whether the second respondent claimed possession over the disputed property subsequent to the removal of the encroachment is no doubt a issue. That can be taken into account by the trial court. So, I am not going into all the disputed questions now.

10. Similarly, whether the offence under section 294(b) IPC can be attracted is also doubtful because the occurrence took place in front of the house of the de-facto complainant or in the public place. It is a matter for consideration by the trial court.

11. The learned counsel appearing for the petitioners would rely upon the complaint that was given by the first petitioner namely Angusamy against the police officials, over the registration of a false case against his son namely Raja by the then Sub Inspector of Police, Ranjith to the Human Rights Commissioner. The suit in O.S No.77 of 2016 was decreed ex-parte due to non appearance of the officials. So the patta was ordered to be transferred in



12. Reading of the entire documents as well as hearing of the parties shows that since there is continuous dispute with regard to the property in survey No.5/7 in Pallivayal Village, Sivagangai Taluk. Continuous trouble existed between the parties. Whether the occurrence said to have been taken place on a particular date is true or not, cannot be a matter for consideration in the petition. So, I am of the considered view that this is not a fittest case to quash the proceedings.

13. Even though the offence under section 427 IPC may not be attracted in the above factual situation and other offences, is a matter for trial. Since the final report has also been filed before the concerned court, the petitioners have to undergo the trial process. I find no



strong has been made out by the petitioners to quash the criminal proceedings.

14. In the result, this criminal original petition is **dismissed**. Consequently connected Miscellaneous Petition is closed.

26/04/2022

Index:Yes/No
Internet:Yes/No
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To,

1. The Sub Inspector of Police,
Kalayarkovil Police Station,
Kalayarkovil Taluk,
Sivagangai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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Note :

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