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Crl.O.P.(MD)No.19574 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.19574 of 2018

and

Crl.MP(MD)Nos.8893 and 8894 of 2018

1.Mohamed Sarufedeen
2.Shakeera Banu
3.Fathima
4.Alam Mohamed
@ Sha Alam Mohamed

: Petitioners/A1 to A4

Vs.

1.State rep. By
The Inspector of Police,
Colachel Police Station,
Kanyakumari District.

: R1/Complainant

2.Valsala

: R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.164 of 2018 on the file of the Judicial Magistrate, Eraniel and quash the same.

For Petitioners : Mr.N.S.Ramakrishnadass

For 1st Respondent : Mr.B.Nambi Selvan
Addl. Public Prosecutor

For 2nd Respondent : Mr.G.Mohan Kumar



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This criminal original petition is filed seeking quashment of the case in CC No.164 of 2018 on the file of the Judicial Magistrate, Eraniel.

2.The case of the prosecution in brief:-

The accused persons entered into an agreement with one Ramadhas. As per the sale agreement, the accused persons did not execute the sale deed. So the said Ramadhas filed a suit and obtained a decree, on 25/10/2006. In pursuance of the above said decree, Ramadhas sold the property to the de-facto complainant. On 05/02/2018, the de-facto complainant locked the door and went away to some other place. Subsequently, on 11/02/2018 at about 8.00 pm, all the accused persons broke the lock and entered into the property. When that was prevented by the de-facto complainant, she was abused in filthy language and also criminally intimidated by them. So on the basis of the complaint given by the de-facto complainant, a case in Crime No.28 of 2018 for the offences under sections 448, 294(b) and 506(ii) IPC, was registered and after completing the formalities of investigation, final report has also



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been filed and it was taken cognizance in CC No.164 of 2018 by the Judicial Magistrate, Eraniel.

3. Seeking quashment of the same, this petition is filed by the accused persons 1 to 4.

4. Heard both sides.

5. Perusal of the records shows that the property originally belonged to Al-Mohamed Sarufedeen and he entered into a sale agreement with one Ramadhas. When the sale was not executed, the said Ramadhas filed a suit in O.S No.227 of 2002 before the Sub Court, Padmanabapuram and it was decreed, on 23/07/2004 in favour of the above said Ramadhas. Against which, appeal suit in AS No.218 of 2004 was preferred by A1 before the District Judge, Kanyakumari @ Nagercoil. That was also dismissed, on 02/09/2006. Against which, second appeal has been preferred in SA(MD) No.1235 of 2006 before this court. That was also dismissed, on 17/11/2016, confirming the concurrent findings of the trial court as well as the first appellate court. The present complaint came to be registered, on 18/02/2018, wherein it has been stated that the date of occurrence is 11/02/2018. So before the present occurrence, it is seen



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that another occurrence took place. In respect of the occurrence that took place, on 11/02/2018, it is seen that a complaint was given, on 12/02/2018 before the Cholachel police station. According to the de-facto complainant, that was not taken into account. So she sent a complaint to the Deputy Superintendent of Police and that was forwarded to the 1st respondent police and the case was registered on that date. So, the petitioners cannot be permitted to argue that there is a delay in lodging the complaint.

6.The learned counsel appearing for the petitioners would rely upon the suit filed by the first petitioner/A1 against the above said Ramadhas and others, before the District Judge, Kanyakumari, wherein he has stated that even though, the decree for specific performance was passed, he is in continuous possession. When a decree of specific performance was passed, which was also confirmed by this court, the contention on the part of the 1st petitioner/A1 that he continued to be in possession of the property and on that ground, the complaint given by the 2nd respondent is liable to be quashed, cannot be acceptable at all.



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7.No doubt, the 2nd respondent has to file an execution petition for executing the decree. After dismissal of the suit, it appears that the said Ramadhas executed a sale deed in favour of the de-facto complainant, on 05/02/2018.

8.As mentioned earlier, the second appeal was dismissed by this court, on 17/11/2016. So after confirming the decree only, it appears that the sale deed was executed by the Decree-Holder in favour of the de-facto complainant. But the subsequent development is not available on record. Whether after execution of the sale deed, possession was delivered to the Decree-holder and whether the accused persons trespassed into the property as alleged by the de-facto complainant, is a matter for consideration. No doubt, section 294(b) IPC may not be attracted. In respect of section 506(ii) IPC, since there is no averment to the effect that because of the threat made by these petitioners, the de-facto complainant entertained fear of death. It appears that only verbal quarrel occurred between the parties.

9.The learned counsel appearing for the petitioners would rely upon the proceedings in EP No.69 of 2018, that was filed by Decree-Holder and subsequent to that, the



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legal heirs were impleaded. Originally, EP was filed for delivery and an order was passed, on 23/06/2008.

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10.Now the learned counsel appearing for the petitioners would submit that delivery was not effected and possession was not handed over to the Decree-Holder or the legal representatives. The complaint given by the de-facto complainant is that she locked the door of the house and at that time, the petitioners alleged to have trespassed into the house is nothing, but a *mala fide* and inherently improbable allegation.

11.The said EP has been filed by the Decree-Holder for delivery of possession and pending delivery proceedings, the Decree-Holder appears to have filed EA No.1 of 2019 to implead one Joseph as a party. As mentioned earlier, subsequent developments are not known.

12.In view of the pendency of the above said EP proceedings before the trial court, I am of the considered view that continuation of criminal proceedings against the petitioners will be an abuse of process of law and court. So, it is liable to be quashed.



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13.In the result, this criminal original petition is **allowed**. The impugned proceedings in CC No.164 of 2018 on the file of the Judicial Magistrate, Eraniel is hereby quashed against the petitioners. Consequently, connected miscellaneous petitions are closed.

11.04.2022

Internet:Yes/No
Index:Yes/No
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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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G . ILANGO VAN , J . ,

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To,

- 1.The Judicial Magistrate,
Eraniel.
- 2.The Inspector of Police,
Colachel Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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