



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 25/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.OP(MD)No.22584 of 2018

and

Crl.MP(MD)No.10607 of 2018

S.V.Karunakaran

: Petitioner/Accused

Vs.

1.The State

rep. by its Sub Inspector of Police,
Oomachikulam Police Station,
Madurai.

: R1/Complainant

2.K.Narayanan

: R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.347 of 2016, on the file of the Judicial Magistrate No.5, Madurai and quash the same.

For Petitioner : Mr.G.Jermiah

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

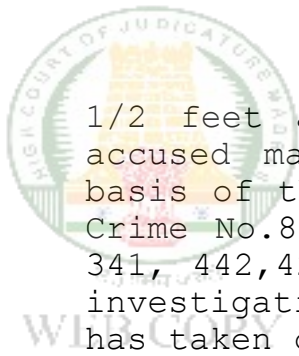
For 2nd Respondent : Mr.T.K.Gopalan

O R D E R

This petition has been filed seeking quashment of the case in CC No.347 of 2016 on the file of the Judicial Magistrate No.V, Madurai.

2.The case of the prosecution in brief:-

The de-facto complainant is residing in Narayanapuram, 2nd Cross Street, Madurai. The 2nd witness Palanisamy and the 3rd witness Danasekaran and the de-facto complainant purchased 10 feet breath property for the purpose of using the same as pathway. It is situated on the western side of their property. They also put up a cement road at their own cost. On the southern side of the 3rd witness house, the the property of the accused is situated and the house property is having the main entrance on the souther side. On 19/01/2014 at about 11.00 am, the accused person trespassed into the compound wall and damaged the northern portion, measuring about 2-



1/2 feet and put up a iron gate. When that was objected, the accused made a criminal intimidation upon the witnesses. On the basis of the complaint given by the de-facto complainant, a case in Crime No.85 of 2014 was registered for the offences under sections 341, 442, 427 and 506(i) IPC and after completing the formalities of investigation, final report was filed in CC No.347 of 2016 and it has taken cognizance by the trial court.

3. Seeking quashment of the same, this petition has been filed on so many grounds. The main ground is that the disputed wall belongs to the petitioner and the de-facto complainant is not the owner of the wall; In respect of the title over the disputed common pathway, a suit in O.S No.32 of 2014 was also filed; There was a delay of 14 days in filing the FIR.

4. Apart from the main ground, the point of limitation is also raised. It is also stated that the allegations mentioned in the FIR or the in the final report does not attract any of the ingredients of the alleged offences as alleged against the petitioner.

5. Heard both sides.

6. For better appreciation of the facts and dispute, let us straightway go the rough sketch and the photographs, which were collected during the course of investigation by the police.

7. It is not in dispute that the petitioner is having property on the southern side of the disputed lane. In the photographs, we see that the disputed lane is a cement plastered pathway.

8. As mentioned above, it is the case of the de-facto complainant and others that they have purchased the above said property for the purpose of using the same as personal and exclusive pathway. The disputed compound wall runs east-west and as mentioned earlier, it is the case of the de-facto complainant that the petitioner is having main entrance on the southern side of his house. But he illegally put a gate in the disputed compound wall on the north, which is situated on the northern side of his property. The de-facto complainant also relied upon the gift deed, dated 28/01/1998 in support of his case.

9. The learned counsel appearing for the petitioner would submit that when the disputed land has been gifted to the panchayat for common purpose, the de-facto complainant cannot claim any personal right over the said common lane. But we need not go into all these disputed question of facts, since the suit in O.S No.32 of 14 has been filed by the petitioner. During the pendency of the above said suit, interim application was filed seeking temporary injunction. That was allowed. But it was taken, on appeal by the de-facto complainant party, in CMA No.28 of 2014 before the Sub Court, Melur and was allowed by the Sub Court, Melur.



10.The learned counsel appearing for the second respondent would rely upon some of the observations made by the appellate court. Even though, originally the above said disputed land was alleged to have been gifted, later the Panchayat has put up a cement plastered road and towards expenses, a portion of the amount i.e., 1/3rd was ordered to be remitted by the 2nd respondent's party to the Municipal Corporation, since the Corporation has put up the cement plastered road. In respect of the above said land, Writ Petition in WP (MD)No.365 of 2015 has also been filed as mentioned in the petition. The order copy is produced by the second respondent and that writ petition was filed by the petitioner. Since O.S No.32 of 2014 was filed, the parties were directed to abide by the judgment of the civil court. These were the observations of the appellate court.

11.The gift deed, dated 28/01/1998 is also under dispute. Whether the above said gift deed is valid or not, is a matter for consideration by the trial court. It has been held by the appellate court that whether the disputed land is a common land or private land can be decided only at the time of trial. Noting that the petitioner is having main entrance on the southern side portion of his property of his house, the temporary injunction petition was dismissed. We need not go into the disputed facts now.

12.As mentioned earlier, now the dispute is whether any damage was done by the petitioner in the disputed compound wall and to whom it belongs is a matter for consideration by the trial court in O.S No.32 of 2016. So, this court invoking jurisdiction under section 482 Cr.P.C cannot go into all these disputed question of facts.

13.Now the learned counsel appearing for the petitioner would submit that the offence under section 427 IPC is also barred by limitation, since the occurrence said to have taken place, on 19/01/2014, but whereas final report has been filed in 2016. So it is barred by limitation.

14.The next contention is that the trial court without taking into account the fact that the offence under section 442 IPC is a non-cognizance offence, without application of mind, it has taken cognizance. It is also pointed out that no averment or allegation has been made in the complaint about the dispute. More-over, on the date of alleged occurrence, the petitioner was attending his duty, which is evident from the certificate issued by the competent authority. It is further contended that since the land dispute is with regard to the compound wall as well as the pathway, a civil dispute has been given criminal colour and the complaint has been given and cognizance has been taken. For that purpose, he would rely upon number of judgments. But I am unable to agree with the line of the argument for the simple reason that section 341 IPC is a cognizable offence. When it is coupled with the non-cognizance

<https://hccservices.gotmhc.org/hccservices/> police can take the offence and investigate the matter.



There is no necessity for the police to get proper permission from the jurisdictional Magistrate.

15. Similarly with regard to the point of limitation also, the offence under section 506(i) IPC is included and section 427 IPC is also included. So in such circumstances, the bar of limitation may not be attracted.

16. Regarding section 506(i) IPC, there is no clear averment. As per section 503 IPC, there must be a real threat to the life of the de-facto complainant and the witnesses. Even as per the averments in the complaint or in the final report, it is not stated that because of the criminal intimidation, the de-facto complainant and the others entertained life threat. It is a matter for consideration by the trial court at the time of trial.

17. Regarding the other offences, it has been brought to the notice of this court that the charges were already framed and the trial is yet to be commenced. Trial court must also take into consideration the above said observation with regard to section 506 (i) IPC.

18. With regard to alibi plea, the petitioner was attending his duty on 19/01/2014, 20/01/2014 and 21/01/2014 from 7.00 am to 5.00 pm at Palamedu Government Health Centre, can be a matter for consideration by the trial court. This document is not the admitted document on the side of the respondent. That alibi plea must be properly proved by proper evidence at the time of trial. Since the disputed question of facts are involved, I am of the considered view that the petitioner has to undergo the trial process.

19. In the result, this criminal original petition is **dismissed**. However, considering the fact that the petitioner is working as 'Assistant' in Government Primary Health Centre, his personal appearance is dispensed with. Within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that he will appear as and when required by the court and he must ensure that he is properly represented by an Advocate. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

er



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 No.V,
Madurai.

2.The Sub Inspector of Police,
Oomachikulam Police Station,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.JEREMIAH, Advocate (SR-20962[F] dated 25/04/2022)

+1 CC to M/s.T.K. GOPALAN, Advocate (SR-21089[F] dated 26/04/2022)

Crl.OP(MD)No.22584 of 2018
25.04.2022

MK/06.06.2022/5P/6C