



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.22631 of 2018

and

Crl.MP(MD)Nos.10632 and 10633 of 2018

WEB COPY

1.Karutharajan
2.Manickam

: Petitioners/A1 and A2

Vs.

1.The State rep. By its
Inspector of Police,
Anna Nagar Police Station,
Madurai.
(In CC No.11 of 2015)

: R1/Complainant

2.Ponnuthai

: R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.11 of 2015 on the file of the Judicial Magistrate No.6, Madurai and quash the same.

For Petitioners : Mr.N.R.Balaji

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

For 2nd Respondent : Mr.D.Malaichamy

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.11 of 2015 on the file of the Judicial Magistrate No.6, Madurai.

2.The case of the prosecution in brief:-

The 2nd respondent herein lodged a private complaint with the following allegations. The property in which he is living with the family members belongs to one Bhavani Ammal, who is the sister of A1 namely Karutharajan. Her husband by name Palanisamy paid Rs.1,25,000/- for the above said Bhavani Ammal and obtained othi deed. They are in possession for more than 10 years. They also made repairs at the cost of Rs.62,000/-. The father of the first accused filed a suit in O.S No.3 of 2003 before the II Additional Sub Court,



Madurai against her husband. On 06/12/2004, in order to remove the complainant from the possession of the property, A1 along with the other accused persons came to the property with deadly weapons and made quarrel. Over which, a complaint was given. That was not properly forwarded. On 30/06/2005, Palanisamy died. Even after that, they made a trouble on 12/08/2007. Even though the complaint was given, that was not properly attended. So she filed a suit in O.S No.770 of 2007 before the Additional District Munsif, Madurai and *status quo* order was also passed in that suit. Again on 09/10/2007, at the instance of the first accused, A2 and others trespassed into the properties, caused damage and also occupied the same. At the intervention of the police, all of them were removed. Even though the complaint was given, the Inspector of Police, attached to Anna Nagar Police station asked her to come on the next day. On 10/10/2007 at about 9.00 am, when she opened the bureau, at that time, she found 50 sovereigns of jewels and Rs.50,000/- was found missing. The accused persons alleged to have been suspected to have stolen the same. Even though the complaint was given, that was not properly taken. But however, the police has registered a case against A3 to A5 under section 75 of the City Police Act and no proper action was taken on the basis of the complaint given by her. Later, she filed a petition under section 156(3) Cr.P.C before the Judicial Magistrate No.6, Madurai. In pursuance of the order, that has been passed by the court, a case in Crime No.1500 of 2007 was registered for the offences under section 147, 448, 427 and 379 IPC. That was not properly investigated and final report has been filed. Over which, she also filed a protect petition and the court directed the complainant to file a private complaint. So on that basis, the private complaint has been filed.

3. Seeking quashment of the same, this petition has been filed.

4. Heard both sides.

5. The only ground on which this petition came to be filed is that when the complaint given by the 2nd respondent came to the court by the respondent police, final report was filed, which was also accepted by the trial court. Unless, it is set aside through proper petition, the second complaint on the very same set of fact by way of private complaint is not at all maintainable.

6. For that purpose, the learned counsel appearing for the petitioner would rely upon the judgments reported in the case of A.Krishna Rao Vs. L.S.Kumar [1998(1) CTC 329] and Senthil Kumar Vs. S.Palani Kumar (Crl.OP No.27351 of 2010, dated 04/10/2017).

7. Per contra, the learned counsel appearing for the 2nd respondent would rely upon the judgment reported in the case of Vishnu Kumar Tiwari Vs. State of Uttar Pradesh [2019(5) CTC 603] for the purpose of argument that when the closure report is filed by the police, the jurisdictional magistrate court, option is



available to the complainant to file a private complaint, if the concerned magistrate closed the case, after accepting the report.

8.In the light of the rival submission, let us go to the order that has been passed in Cr.No.1500 of 2007 in RCS No.305 of 2009, dated 9th July 2009. The order reads that the objection of the de-facto complainant was found to be not acceptable. But however, liberty was granted to the de-facto complainant to file a private complaint. On that ground, the final report was closed and recorded as 'Mistake of fact'. When such a liberty is granted to the petitioner to file a private complaint, the contention on the part of the petitioner that without setting aside the order of acceptance and closing by the trial court, the second complaint by way of private complaint is not at all acceptable and cannot be accepted.

9.The Hon'ble Supreme Court has also clarified the position in the above said case of **Vishnu Kumar Tiwari** that in such an event, right and liberty is always available to the complainant to file a private complaint.

10.In the light of the latest judgment of the Hon'ble Supreme Court, the contention that has been raised by the petitioner is out of place and cannot be accepted. Whether the allegation that has been made by the petitioner in the complaint is true or not, cannot be a matter for consideration in this petition by this court. It can be tested only during the course of trial. Since the allegation of damage, threat, criminal intimidation has been made, it requires thorough trial. Except stating that the previous police complaint was closed as 'mistake of facts', no other legal ground worth considering has been made out. So this petition is liable to be dismissed.

11.In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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