



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.18079 of 2018

and

Crl.MP(MD)No.8018 of 2018

Murugavel : Petitioner/A20

Vs.

1.The Inspector of Police,
District Crime Branch,
Dindigul District.
(Crime No.13 of 2016) : R1/Complainant

2.Sudhakar : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.497 of 2017 pending on the file of the Judicial Magistrate No.2, Dindigul and quash the same.

For Petitioner : Mr.K.N.Abdul Hai

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

For 2nd Respondent : Mr.V.Janakiramulu

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.No.497 of 2017 pending on the file of the Judicial Magistrate No.2, Dindigul.

2.The case of the prosecution in brief:-

On 24/04/2008, the de-facto complainant executed a power of attorney deed in favour of A1. Using the above said power of attorney, A1 sold the property measuring about 1,04,000 sq. feet in TS No.644/1 to various persons, but later failed to pay the amount in his account. Over which the above issue, on 24/02/2006, the de-facto complainant went to the house of the A1 and made an enquiry. At that time, all the accused persons joined together, criminally intimidated and prevented him from moving from that place. Based upon the complaint given by the de-facto complainant, a case in Crime No. 13 of 2016 was registered for the offences under sections



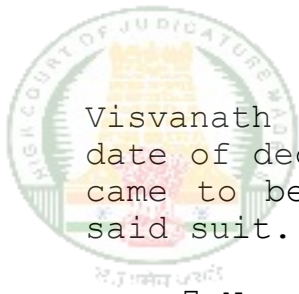
120(b), 406, 420 and 506(i)IPC and after completing the formalities of investigation, final report was also filed before the Judicial Magistrate No.2, Dindigul and it was taken cognizance in C No.497 of 2017.

3. Seeking quashment of the same, this petition has been filed on the ground that bald allegations have been made against this petitioner over the land dispute, the property over which, he was provided with the power of attorney and as per the power of attorney, he sold the property in 2012. But the complaint was given in 2016. He purchased the property only in the capacity of the Managing Director of Dindigul Iron and Hardware Private Limited from A1. Except that, he has not involved in the above said affairs. Originally, the de-facto complainant filed a complaint against this petitioner and others before the Superintendent of Police, Theni, which was registered in Crime No.118 of 2013 for the offences under sections 120(b), 420, 506(ii) IPC and it was referred as 'Mistake of Fact' in 2013 itself. Later, he filed a private complaint before the Judicial Magistrate No.2, Dindigul. In respect of the land issue, a suit in O.S No.33 of 2012 was pending before the Additional District Court, Dindigul, wherein an ex-parte decree was passed against the de-facto complainant.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would submit that bald allegations have been made against the petitioner and he is noway involved in the above said issue between the de-facto complainant and the first accused. According to him, even though allegations made in the FIR as well as in the final report, even if it is taken on face value, sections 147, 341, 506(i) r/w 34 of IPC are not attracted.

6. No doubt that the dispute between the de-facto complainant and A1 started way back in 2010. But what happened after 2010 till the date of occurrence is not clear on record. It is mentioned in the grounds of petition that O.S No.33 of 2012 was filed by the petitioner and others against the de-facto complainant and that was ex-parte decree, on 16/02/2017 and the nature of the suit and decree made available to the court by the petitioner in the typed set of papers, wherein we find that totally 25 persons have been shown as defendants. It is a suit for partition filed by one S.Viswanath Kanna and the de-facto complainant namely Sudhakaran has been shown as the first defendant and this petitioner has shown as 22nd defendant. As per the case of the above said S.Viswanath Kanna, the property belonged to the joint family, in which he got 1/3rd share and the accused 1 to 5 created power of attorney deed, which is not valid under law. But later the above said S.Viswanath Kanna failed to appear, so the case was dismissed for default. But it was wrongly mentioned that the de-facto complainant failed to appear, as decided ex-parte. Actually, it was filed by one



Visvanath Kanna. The de-facto complainant remained ex-parte. The date of decree and judgment is 16/02/2017 and this present complaint came to be registered, on 08/06/2016 during pendency of the above said suit.

7. Now whatever may be, the co-accused persons filed Crl.OP(MD) Nos.15359 and 15499 of 2017 before this court, seeking quashment of the same and those persons are also standing on the very same footing like that of the petitioner. In the concluding portion of the order, it is observed like this.

"7. In this case, FIR has been registered on the direction of the competent court of law, after satisfying prima facie case of involvement of the accused. Whether the accused committed the offence or not will be decided only after examining the witnesses and on production of the documents. At this stage, it is to be decided whether any prima facie case was made out or not. On perusal of the records, it reveals that prima facie case was made out. Hence, the reasons stated by the petitioners are not acceptable."

8. So finding the same, it was dismissed. Since the petitioner is also standing on the very same footing like that of the petitioner, this court cannot take a different view. On the principle of judicial comity, this court has to follow the view that has been taken by the Coordinate Bench, when no other materials are available to differ from the view that has been expressed by the Coordinate Bench. So only on that ground, this petition is liable to be dismissed.

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

Sd/-

Assistant Registrar (T&P)

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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 No.2,
Dindigul.

2.The Inspector of Police,
District Crime Branch,
Dindigul.

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

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-16185[F] dated 01/04/2022
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Crl.O.P. (MD)No.18079 of 2018
30/03/2022

RD(22.04.2022) 4P 5C