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CRL.O.P.(MD).No.22445 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2022

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.O.P.(MD).No.22445 of 2022

and

CRL.M.P.(MD)No.15841 of 2022

1.Sabarinathan @ S.Sabarirajan

2.Saminathan

3.Mariyammal

: Petitioners

Vs.

1.State rep.by the Inspector of Police,
Swamimalai Police Station,
Thanjavur District.
Crime No.460 of 2022.

2.J.Vahitha Banu

: Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the First Information Report in Crime No.460 of 2022, dated 09.07.2022 on the file of the first respondent and quash the same as illegal against the petitioners herein/A1, A2 and A3.

For Petitioners : Mr.S.Sethu Mahendran,

For Respondents : Mr.M.Muthu Manikkam,
Government Advocate (Criminal Side)
for R1.



ORDER

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This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the First Information Report in Crime No.460 of 2022, dated 09.07.2022 on the file of the first respondent and quash the same as illegal against the petitioners herein/A1, A2 and A3.

2. The main contention of the petitioners is that the first petitioner has purchased the property from one Nazira Parveen, vide sale deed, dated 13.05.2022 and that the first petitioner had taken possession of the property on that day itself. He would further submit that when the petitioners were making improvement to the property, the defacto complainant had occupied the property forcibly and when the same was questioned, she has lodged the complaint and on that basis, FIR came to be registered in Crime No.460 of 2022 on 09.07.2022 for the offence under Sections 294(b), 448 and 506(ii) IPC.

3. The learned counsel for the petitioners would further submit that the first petitioner has lodged a complaint with Town Police Station, Kumbakonam and on that basis, the previous owner Nazira Banu was summoned and she has given a statement that she will take necessary steps to evict the persons in possession of the property within a period of ten days.



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4. The learned Government Advocate (Criminal Side) appearing for the State would submit that the said Nazira Banu has appeared before the Inspector of Police, East Police Station and gave a statement on 29.05.2022. He would further submit that there existed some transactions between the defacto complainant and the previous owner Nazira Banu and on that basis, the defacto complainant was in possession prior to the sale deed and that when the defacto complainant was attempted to be evicted forcibly, the present complaint came to be lodged.

5. The Hon'ble Supreme Court in the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 SCC (Cri) 426*** has enumerated 7 categories of cases, where the power can be exercised under Section 482 of Code of Criminal Procedure and the same are extracted hereunder:-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of



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justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on



the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6. In ***Dr.Dhruvaram Murlidhar Sonar Vs. The State of Maharashtra and others*** reported in **2019 (18) SCC 191**, the Hon'ble Apex Court has specifically held that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is settled law that the inherent jurisdiction under Section 482 Cr.P.C. is wide but at the same time, the same is to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself.



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7. The Hon'ble Supreme Court in *Kaptan Singh Vs. The State of Uttar Pradesh and others* reported in *2021 (3) Crimes 247* has stated that, that Court in catena of decisions has observed that the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial and that question is required to be examined keeping in view, the contents of FIR and prima facie materials, if any, requiring no proof and at such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and materials relied on.

8. A cursory perusal of the FIR makes it clear that there existed *prima facie* case to proceed against the accused and it is a matter for investigation. Hence, this Court concludes that the above Criminal Original Petition is devoid of merits and the same is liable to be dismissed.

9. In the result, the Criminal Original Petition is dismissed. However, the first respondent is directed to complete the investigation and file a final report within a period of three months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petition is closed.

20.12.2022

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K.MURALI SHANKAR, J.

das

To

- 1.The Inspector of Police,
Swamimalai Police Station,
Thanjavur District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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