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Crl.O.P.No.5372 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 5372 of 2021

and

Crl.M.P. No. 3473 of 2021

1.Karthikeyani

2.Shanmuga Priya

3.Rajamuthu @ Rajkumar

... Petitioners

Vs.

1.The State of Tamil Nadu
Rep by Inspector of Poilce,
Vellithiruppur Police Station
Erode District.

2.Periyasamy

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the proceedings in C.C.No.15 of 2020 on the file of the Judicial Magistrate II, Bhavani and quash the same.



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For Petitioners : Mr. John Sathyan
Senior Counsel
for Mr. K.S.Karthik Raja

For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor

For Respondent 2 : No Appearance.

ORDER

The petition is to quash the final report for the alleged offences under Sections 427, 447 and 506 (ii) of IPC.

2. It is alleged in the final report that the petitioners had trespassed into the land belonging to the 2nd respondent and caused damage to the Maize crops in the land by using JCB, besides causing damage to the Well and the Pipes; that the petitioners had also abused the 2nd respondent in a filthy language and threatened him of dire consequences.

3. (a) Mr.John Sathyan, learned Senior Counsel appearing for the petitioners, would submit that the impugned proceedings are clearly an



abuse of the process of law. The petitioners and the 2nd respondent are closely related to each other. The 2nd respondent is the paternal uncle of the 1st and 2nd petitioners. The 3rd petitioner is the husband of the 2nd petitioner.

(b) The father of the petitioners was allotted the disputed property by virtue of a partition deed between him and the 2nd respondent, which was registered in Doc.No.378 of 1992 on the file of the Sub Register Office, Ammapettai. The only grievance of the second respondent is that the petitioners were living in the United States of America, and he was in possession of the property. Further, the petitioner's father promised that he would sell his share of the property to the defacto complainant. Contrary to the promise, the petitioners were attempting to divide the land into plots and sell it. The second respondent had also filed a suit in O.S.No.100 of 2019 before the learned District Munsif, Bhavani, stating the above facts.



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(c) Since the right of the petitioners in the disputed property has been admitted by the 2nd respondent, the offences of trespass or mischief are not made. As regards the offence under Section 506 (ii) IPC, the words said to have been uttered by the petitioners would not amount to real threat. The property dispute between the petitioners and the 2nd respondent is sought to be projected as an offence.

4. The learned Additional Public Prosecutor submitted that there are eyewitnesses to the occurrence who speak about the fact that JCB was used to destroy the crops in the land, which was in possession of the 2nd respondent. Therefore, the matter has to be adjudicated before the Trial Court and prayed for the dismissal of the quash petition.

5. Though notice was served on the 2nd respondent and a counsel had entered appearance earlier, there was no representation when the matter was called on 24.04.2023. Even today, there is no representation for the 2nd respondent.



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6. This Court, on perusal of the impugned final report finds that the 2nd respondent is the paternal uncle of the petitioners. Admittedly, the 2nd respondent and the father of the petitioners had entered into a partition deed in the year 1992. The 2nd respondent had filed a civil suit in O.S.No.100 of 2019 before the District Munsif, Bhavani, praying for an injunction restraining the petitioners herein from interfering with his possession. According to him, he is in possession of the property, which was allotted to the share of the petitioners' father as the petitioners were living in the USA and he was doing agricultural activity in the said land. According to him, the petitioners' father had promised that he would sell the property allotted to his share to the 2nd respondent. This Court finds that in view of the pleading of the 2nd respondent, in the civil suit wherein he had admitted the ownership of the petitioners in the land, the offence of trespass is not made out. Similarly, since the land belongs to the petitioners, it cannot be said that any wrongful loss was caused to the 2nd respondent. Further, this Court finds that there is no investigation as regards which JCB Machine was used for the alleged destruction of crops and who



operated it on the said day. The driver has neither been made an accused nor a witness in the final report. Therefore, this Court finds that the offences under Sections 447 and 427 IPC are not made out in the instant case.

7. As regards the offence under Section 506 (ii) IPC, this Court had time and again stated that there must be a real threat. In this regard, the observation of this Court in ***Noble Mohandass Vs. State***, reported in ***1989 Cri. LJ 669*** is extracted below for better understanding:

*“7. Further for being an offence under **Section 506(2)** which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually.”*



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8. Therefore, for the above reasons, this Court finds that the civil dispute between the petitioners 1 and 2 (ladies living in the USA) and the second respondent is sought to be projected as an offence of trespass and mischief. The impugned proceedings in the facts and circumstance of this case is clearly an abuse of the process of law and is liable to be quashed.

9. In the result, the petition is allowed. Consequently, the connected miscellaneous petition is closed.

26.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

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1.The Judicial Magistrate II,
Bhavani.

2.The Inspector of Poilce,
Vellithiruppur Police Station
Erode District.



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SUNDER MOHAN. J,

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