



WEB COPY



Crl.O.P.No.10494 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.10.2023

PRONOUNCED ON : 08.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.10494 of 2021
and Crl.M.P.Nos.6309 & 6310 of 2021

Maleappane Razendhiran @
Raja Malaiyappan

...Petitioner

-Vs-

1. The State of Puducherry,
Rep. by Inspector of Police,
Odiansalai Police Station
Puducherry.
Cr.No.185 of 2017.

2. Pratap

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.C.No.20 of 2021 on the file of the III Additional District Judge, Puducherry, quash the same.

For Petitioner : Mr.R.Udhayakumar

For Respondents

For R1 : Mr. K.S.Mohan Dass
Public Prosecutor (Pondy)

For R2 : Mr.R.Thiagarajan



Crl.O.P.No.10494 of 2021

ORDER

WEB COPY

This petition has been filed to quash the proceedings in S.C.No.20 of 2021 on the file of the III Additional District Judge, Puducherry, thereby taken cognizance for the offence punishable under Sections 147, 148, 448, 427, 294(b), 324, 506(ii), 395 and 109 r/w. 149 of IPC as against the petitioner.

2. The case of the prosecution is that when the defacto complainant was in his residence on instruction of the accused 1 & 2, the third accused along with 15 persons trespassed into his premises and broke open all the doors with hammer and iron rod. When it was questioned by the defacto complainant, he was abused with filthy language and also insulted him. The third accused assaulted him with iron rod and threatened him with dire consequences, by using the names of A1 & A2. They also obstructed the defacto complainant and restrained him from going out from the house. He was managed to escape from their custody and went to the government hospital, Puducherry, for the injuries sustained by him. They also threatened that if the defacto complainant goes to the police station, they will do away his life. They had damaged the articles worth about Rs.2,50,000/- in his residence.



Crl.O.P.No.10494 of 2021

WEB COPY

3. On receipt of the said complaint, the first respondent registered the FIR in Crime No.185 of 2017, for the offence under Section 147, 448, 427, 294(b), 324, 506(ii) and 109 r/w. 149 of IPC. After completion of investigation, they filed final report and the same has been taken cognizance by the trial Court in S.C.No.20 of 2021.

4. The learned counsel appearing for the petitioner submitted that the petitioner is arrayed as second accused. The second respondent had inherited an extent of 16,484 Sq.ft., land and the building at door No.38, Dumas Street, Ponducherry. An extent of 6456 sq.ft., of land and building was leased out to one Pierre Elouard in the year 2000. Subsequently, the said tenant had entered into partnership agreement with the mother of the petitioner in the year 2008 and formed a partnership firm M/s. Galaxia Enterprise. The remaining extent of the property was leased out to hotel Le Club, Pondicherry in which the petitioner was running his business.

4.1. In order to evict the tenants, the second respondent had instituted a petition for fixation of fair rent in HRCOP.No.53 of 2012 and



Crl.O.P.No.10494 of 2021

also filed eviction petition in HRCOP.No.40 of 2007. While pending those petitions, the second respondent in collusion with the partner of the petitioner's mother's business, had made him to execute a letter dated 13.10.2017, wherein one of the partners of Galaxia Enterprise who was having only one percent share in the business, stating that he had resigned from the partnership in the year 2011 and Galaxia Enterprise was shifted to another place. Accordingly, a memorandum was executed between the second respondent and other partner as if the keys of the said premises will be handed over to the second respondent with the copy of lease agreement and also undertook to withdraw the Rent Control Appeal. Based on the said memorandum, the first respondent attempted to dispossess the petitioner and his mother from the business premises at the instigation of the second respondent.

4.2. Therefore, the mother of the petitioner had instituted a suit in O.S.No.2347 of 2017 on the file of the I Additional District Munsif, Pondicherry for injunction. Further on the next day itself, viz., on 10.11.2017, the respondents along with rowdy elements came to the premises and attempted to vacate the premises. In fact, immediately the petitioner lodged complaint before the first respondent through E-mail at



Crl.O.P.No.10494 of 2021

about 8.41 p.m., on 10.11.2017. However, no action has been taken and instead of registering FIR as against the second respondent and others, the first respondent registered FIR as against the petitioner. Therefore, it is a false case and no offence is made out as against the petitioner.

4.3. Further for non taking any action on the complaint lodged by the petitioner's mother, they submitted representation before the Police Complaints Authority. After due enquiry, the Police Complaints Authority by an order dated 21.02.2018, had concluded that an independent Inspector of Police to be deputed to probe into the matter and take suitable legal action. Further, in the suit filed by the petitioner's mother, an injunction was granted in I.A.No.917 of 2017. Therefore, he sought for quashment of entire proceedings.

5. Heard the learned counsel appearing on either side and perused the material placed before this Court.

6. On perusal of the entire records revealed that the petitioner is a sub-tenant for the portion of the building owned by the second respondent. Admittedly, the rent control proceedings are pending for



Crl.O.P.No.10494 of 2021

eviction as well as the fixation of fair rent as against the original tenant.

The mother of the petitioner is a partner and they running M/s. Galaxia Enterprise in the part of the premises. On perusal of the statement of the second respondent revealed that he was attacked by the accused persons and also damaged the articles to the tune of Rs.2,50,000/-. Eye witnesses are there and they categorically deposed about the occurrence. The materials are available to attract the offence as against all the accused persons.

7. That apart, the grounds raised by the petitioner are mixed question of fact and it can be proved before the trial Court during the trial by let in evidence. Though the Police Complaint Authority directed to prove into the matter by an independent Inspector of Police, it would not dissolve the offence committed by the accused persons in the present case. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the



application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of



Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

9. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may



Crl.O.P.No.10494 of 2021

also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

10. In view of the above discussions, this Court is not inclined to quash the proceedings. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

08.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order

rts



WEB COPY



Crl.O.P.No.10494 of 2021

G.K.ILANTHIRAIYAN. J.

rts

To

1. The III Additional District Judge,
Puducherry.
2. The Inspector of Police,
Odiansalai Police Station,
Puducherry.
3. The Public Prosecutor,
Madras High Court,
Chennai.

ORDER IN
Crl.O.P.No.10494 of 2021
and Crl.M.P.Nos.6309 & 6310 of 2021

08.11.2023