



Crl.O.P.No.15543/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.07.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P.No.15543 of 2021
&
Crl.M.P.Nos.8480 & 8481 of 2021

J. Lakshmanan ... Petitioner

Vs

B. Sundaramurthy ... Respondent

Prayer: Criminal Original Petition filed under section 482 of Cr.P.C., to call for the records in C.C.No.159 of 2021 on the file of the District Munsif cum Judicial Magistrate, Arcot and quash the same.

For Petitioner : Mr. N.R. Elango
for Aruna Elango

For Respondent : Mr. S. Namasivayam

ORDER

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This Criminal Original Petition has been filed to call for the records in C.C.No.159 of 2021 on the file of the District Munsif cum Judicial Magistrate, Arcot and quash the same.

2. The learned counsel for the petitioner submitted that the petitioner is A2 in C.C.No.159 of 2011 on the file of District Munsif cum Judicial Magistrate, Arcot.

3. The petitioner is tagged in the complaint filed in C.C.No159 of 2011 on the file of District Munsif cum Judicial Magistrate, Arcot on the following allegations.

4. A complaint was lodged by the respondent alleging that after the death of his father V.C.Backia Mudaliar, there was partition among the brothers of the complainant. During the course of partition, in the presence of Panchayatdars, the Rice Mill belonging to petitioner's father has to be



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settled in favour of his elder brother Gopal after clearing the debts of the joint family. Till the debts are being cleared, it was decided that the documents pertaining to rice mill would be handed over to a common man and after clearing the debts, the document of the mill would be handed over to his elder brother Gopal or his heirs. Accordingly, the document was handed over to the petitioner as a common man. Thereafter, the complainant's elder brother Gopal died in the year 2014. The complainant believed that the sons of deceased Gopal will clear the debts, but till 2019, the debts are not cleared. Later, the respondent after coming to know that the said Balaji had not cleared any family debts as promised, approached the petitioner seeking to return the document of the rice mill. Whiles, they came to know that the petitioner with the connivance of said Balaji alienated the mill in favour of Balaji without the knowledge of the respondent and his brothers and Panchayatdars. When the same was questioned by the respondent, he along with Balaji abused him in a filthy language, threatened him and also instigated the said Balaji to kill him.

5. The learned counsel for the petitioner submitted that the



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allegations levelled in the complaint are false one for the reason that in the complaint given by the petitioner before the Commissioner of Police on 24.09.2018, there is no such allegation against this petitioner. Apart from this, in the complaint dated 24.09.2018, it was mentioned that the alleged incident took place on 14.09.2018, but contrary to this averment, in the complaint given before the Court, it is alleged that the incident took place on 28.11.2019 and the allegations levelled in the complaint before the court are not stated in the complaint before the Superintendent of Police. In the circumstances, exfacie it is a false allegation to tag the petitioner/accused in this complaint. Hence he seeks to quash the complaint.

6. The learned counsel for the respondent/complainant submitted that endorsement of document by the Lakshmanan/petitioner is not disputed, but the mentioning of the date of the incident as 28.11.2019 in the complaint before the court and 14.09.2018 in the complaint to the Superintendent of police is typographical error. Hence there is no merit for quashing the case. The petitioner has to face the trial, hence he seeks to



dismiss the criminal original petition.

7. Heard both sides and perused the entire materials available on record.

8. On perusal of records, it reveals that the petitioner is A2 in C.C.No.159 of 2021 on the file of District Munsif cum Judicial Magistrate, Arcot. The respondent has filed a complaint against this petitioner/A2 and another person one Balaji. The allegation in the complaint is that the respondent and his brothers are the legal heirs of deceased one V.C.Backia Mudaliar, who died leaving behind the property and business place with a debt of 30 lakhs. So after clearing the debt, they agreed to share the properties. Meanwhile, they entrusted the document pertaining to the rice mill with the petitioner Lakshmanan, but without clearing the debts, the petitioner, in order to help the another accused Balaji, who is the legal heir of deceased brother of the respondent, handed over the documents to him. Hence there was a dispute between the respondent and



the petitioner and the said Balaji in this regard.

9. On perusal of the complaint filed before the court, it is seen that the incident had taken place on 28.11.2019. At that time, this petitioner Lakshmanan instigated Balaji to assault and kill the respondent. I have also noticed the complaint given by the petitioner before the Superintendent of Police on 24.09.2018. It is also filed along with the materials.

10. On perusal of this complaint given by the petitioner before the Superintendent of Police, he had stated that the alleged incident had taken place on 14.09.2018 and in the said complaint, there is no such allegation raised before the court that the petitioner Lakshmanan had instigated another accused Balaji to assault and kill the respondent. Further, the date of the alleged incident was mentioned as 14.09.2018, which is contrary to the pleadings and averment before the court. Thus, it is seen that the complaint has been given before the court adding the allegations of threateneing, abusing and instigating Balaji to kill the respondent.



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11. *Perse* both the averments in the complaints before the Superintendent of Police dated 24.09.2018 and before the Magistrate Court are totally contrary. Under the circumstances based upon the two contrary pleadings and allegations, the case cannot be proceeded further. In view of the above discussion, this court is of the view that continuing the criminal proceedings based on two contrary pleadings and allegations is not proper. Further, it meets the parameters laid down by the Hon'ble Supreme Court in the cases of **(i) State of Haryana and others Vs. Bhajanlal reported in AIR 1992 (604) (ii) R.P.Kapoor Vs. State of Punjab reported in AIR 1960 SC 866; (iii) Neeharica Infrastructure Pvt. Limited Vs. State of Maharashtra and others reported in AIR 2021 SC 1918.**

12. The Honourable Supreme Court in the above cases, settled the principle that in exercising its jurisdiction under Section 482 Cr.P.C., the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not, that is the function of the trial Magistrate and



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ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and content that on a reasonable appreciation of the evidence, the accusation made against the accused would be sustained.

13. In view of the above, the criminal proceedings against the petitioner in C.C.No.159 of 2021 on the file of District Munsif cum Judicial Magistrate, Arcot is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

19.07.2023

msr
Index;yes/no
Internet;Yes/no

To

The District Munsif cum Judicial Magistrate,
Arcot.

V. SIVAGNANAM, J.



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