



Crl.O.P.No.17599 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.17599 of 2019 and
Crl.M.P.No.8888 of 2019

1.A.Rajendra Kumar Kanodia
2.Aarthi Kanodia
3.Sourabh Khaitan
4.Mahesh Agarwal

... Petitioners / Accused 1 -4

Vs.

1.The State rep by.
Inspector of Police,
Race Course,
Coimbatore 600 008.

2.Raghav Kanodia ... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in C.C.No.215 of 2018 on the file of learned Judicial Magistrate – III, Coimbatore and quash the same.

For Petitioners

... Mr.K.M.Aasim Shehzad

For Respondents

... Mr.A.Gopinath,
Govt. Advocate (Crl.Side) for R1
No appearance for R2



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ORDER

WEB COPY This Criminal Original Petition has been filed to call for the records in C.C.No.215 of 2018 on the file of learned Judicial Magistrate – III, Coimbatore and quash the same.

2. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent.

3. The petitioners are the accused 1 to 4 against whom the second respondent has preferred a complaint. As per the case of the prosecution on 04.02.2017 at about 5.30 p.m., the petitioners trespassed into the subject property where the second respondent was living and confined himself and his family members and also threatened that if the second respondent did not vacate the property immediately, they would set fire upon the second respondent and his family members.

4. The learned counsel for the petitioners submitted that the petitioners and the second respondent are relatives and there are already civil disputes pending between themselves; in fact, the first petitioner had



filed a civil suit in respect of the same subject matter on 28.12.2016 in O.S.No.1988 of 2016 before the District Munsif, Coimbatore; he has also obtained an order of temporary injunction in his favour on 19.01.2017 by virtue of an order passed in I.A.No.1558 of 2016 in O.S.No.1988 of 2016; having known about the said order, the second respondent had filed a subsequent suit in O.S.No.120 of 2017 on 27.01.2017 and managed to get an *exparte* order against the petitioners by suppressing the earlier order of injunction granted in the earlier suit; now, in order to strengthen the above said case, the second respondent had given a criminal case; in fact, the complaint has been given just to add criminal flavour to the civil dispute which has been pending between the petitioners and the second respondent.

5. On perusal of the records, it is seen that the second respondent has mentioned about the civil suits pending between himself and the petitioners and he has also stated about the *exparte* injunction order which was obtained in I.A.No.99 of 2017. However, he did not state about the earlier order of injunction granted in favour of the first petitioner in



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I.A.No.1558 of 2016 in O.S.No.1988 of 2016 on 19.01.2017. Even in the statement of witnesses, they have consciously mentioned about the second suit filed by the second respondent in O.S.No.120 of 2017 and the order of *exparte* injunction passed in I.A.No.99 of 2017 in O.S.No.120 of 2017.

6. The second respondent has the knowledge about the earlier suit and the earlier injunction order passed in I.A.No.1558 of 2016 in O.S.No.1988 of 2016 and he entered appearance in the said proceedings and filed his counter also. In fact, that would have obviously prompted him to file a subsequent suit in O.S.No.120 of 2017. But for the reasons known to the second respondent, he had omitted to mention about the earlier injunction order granted in favour of the petitioners and had stated only the subsequent *exparte* injunction order obtained by the second respondent. So, the background in which the criminal complaint has been given on the face of it would show that some civil disputes have been exaggerated as criminal complaints. The averments in the complaint of the second respondent would itself show that more stress is given for the second *exparte* injunction order obtained by the second respondent in the



subsequent suit filed by him. So, the intention of the second respondent is visible from the time during which the criminal complaint was given and the manner in which the averments have been made.

7. No doubt even when there are civil suits pending for any civil action committed by the respective parties, they are liable to face the criminal prosecution also. But one of the parties cannot intentionally drag the other one to the criminal proceedings just to settle personal scores. In view of the pending civil disputes, the other party cannot be made to undergo the ordeal of trial unnecessarily. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court made in the case of ***State of Haryana Vs. Bhajanlal reported in 1992 SUPP (1) SCC 335***, wherein, seven golden principles have been laid down as shown under:

“(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



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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”

8. The materials available on record would show that the present case would fit into the category (7) of the above said judgment. In view of the same, I feel it is appropriate to invoke the powers of this Court under Section 482 of Cr.P.C., to quash the proceedings in order to prevent the abuse of process of law and to serve ends of justice.

9. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.215 of 2018 on the file of learned Judicial Magistrate – III, Coimbatore, is quashed. Consequently, connected miscellaneous petition is closed.

Index: Yes/No
Internet: Yes/No
gsk

02.03.2023



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R.N.MANJULA ,J.

gsk

To

- 1.The Judicial Magistrate – III,
Coimbatore.
- 2.The Inspector of Police,
Race Course,
Coimbatore 600 008.
- 3.The Public Prosecutor,
High Court, Madras.

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