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CrI.O.P.No.19853 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 05.04.2023

Pronounced on : 12.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No.19853 of 2019

and

CrI.M.P.No.10163 of 2019

1.P.Ganasekaran
2.G.Kaviarasan
3.G.Lavanya
4.G.Santhi
5.V.Babu
6.V.Rajasekar
7.V.Ulaganathan

...Petitioners

Vs.

K.Ratnasabapathi

...Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the



CrI.O.P.No.19853 of 2019

Criminal Case in C.C.No.45 of 2019 on the file of the Judicial Magistrate, Maduranthagam quash the same.

For Petitioners : Mr.AGD.Balakumar

For Respondent : Mr.G.Mageshkumar

ORDER

The petition is to quash the private complaint in C.C.No.45 for 2019 on the file of the learned Judicial Magistrate, Maduranthagam for the alleged offences under Sections 147, 148, 294(b), 447, 323 and 506 (i) IPC.

2. It is alleged in the complaint that on 25.12.2018 at about 9:30 A.M., when the complainant was constructing a compound wall around his house, the petitioners who are his neighbours came to the house armed with spades, knives and sticks and prevented the complainant from constructing the compound wall; that thereafter, the petitioners had damaged the compound wall constructed by the complainant; that the petitioners 1, 2, 3 and 4 attacked the complainant with sticks on his chest; that the first petitioner attempted to strangle the neck of the complainant; that the other petitioners pushed the complainant down and



threatened the complainant saying that if the complainant builds the house in the land, he would be done away with; that on the same day, the complainant gave a complaint to the Madhuranthagam Police Station; that they did not take any action; that on 29.12.2018, they sent a representation to the Superintendent of Police, Kanchipuram; and that the Police did not take any action. Hence, the private complaint.

3.Mr.AGD.Balakumar, the learned counsel for the petitioners would submit that there is a civil dispute between the petitioners and the respondent. The first petitioner had filed a Suit in O.S.No.183 of 2018 before the learned District Munsif, Madurantakam and obtained an order in I.A.No.2284 of 2018 on 24.04.2019 restraining the respondent herein from interfering with the peaceful possession and enjoyment of the B-Schedule Property mentioned therein; that on the day of occurrence, the respondent and his henchmen were the aggressors and in fact, the first petitioner had given a complaint on 25.12.2018 to the Inspector of Police, Madhuranthagam. However, both the complaints filed by the petitioners as well as the respondent were closed instructing the parties to approach the Civil Court for remedy. The learned counsel therefore, submitted that a civil case is sought to be projected as a criminal case and



the entire complaint implicating the ladies in the family is malafide.

The Police rightly refused to take action because the respondent had come up with a false case. The learned counsel for the petitioners further submitted that earlier on 01.04.2019, the 4th petitioner had given a complaint against the respondent herein that he had attacked her husband and her son namely G.Kaviarasan, the second petitioner herein; and that the second petitioner had to be admitted in the Hospital. An FIR was registered in Cr.No.108 of 2019 for the offences under Sections 294(b), 324, 506(2) of IPC against the respondent by Maduranthagam Police.

4.Mr.G.Mageshkumar, the learned counsel appearing for the respondent submitted that the petitioners and his relatives attacked the second respondent besides damaging the compound wall. The learned counsel would further submit that the impugned complaint contains allegation attracting the offence alleged. Hence, the points raised by the petitioners that the allegations are false and it is civil in nature have to be adjudicated only before the Trial Court. Hence, he prayed for dismissal of the quash petition.



5.This Court finds that the respondent claims that he had given a complaint to the Police and that the Police refused to take action.

The petitioners also claim that they had given a complaint for which also the Police had not taken any action. The first petitioner had filed a suit before the learned District Munsif, Maduranthagam in December 2018 in O.S.No.183 of 2018 for injunction restraining the complainant and others from interfering in his peaceful possession. He had also filed I.A.No.2284 of 2018 for temporary injunction on 20.12.2018. It appears that an exparte order of injunction was passed and notice was issued to the respondent, which he had received on 22.12.2018. It is the case of the petitioners that the respondent inspite of receiving the Court notice proceeded with the construction of compound wall. It is the petitioners' version that the first petitioner and his wife were attacked by the respondent. Thus, it can be seen that pursuant to the interim injunction, it is probable with the petitioners had prevented the respondent from making the construction and an altercation would have ensued. The petitioners and the respondent had given different versions about the incident. The respondent had implicated all the family members of the 1st petitioner including his daughter and wife. It is clear that an altercation between the neighbour has been exaggerated attributing overt acts to all



CrI.O.P.No.19853 of 2019

the family members including the ladies. Earlier, the fourth petitioner herein had given a complaint against the respondent herein which was registered in Cr.No.128 of 2016 on the file of Maduranthagam Police Station. Thus, there seems to be a continuous dispute between the petitioners and the respondent with regard to property. The respondent had attempted to construct when there was an order of interim injunction against him. Subsequently, it appears that the said injunction application was allowed on 24.04.2019 and the respondent had remained exparte. Thus, this Court is of the view that the impugned complaint appears to be to wreak vengeance and the allegation against the family members appears to be highly improbable. The impugned complaint therefore is an abuse of process of law and it is liable to be quashed.

6. With the above observations, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

12.04.2023

dk

NCC: Yes/No

Index : Yes/No

Speaking/Non Speaking Order



Crl.O.P.No.19853 of 2019

To
The Judicial Magistrate
Madutharangam.



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Crl.O.P.No.19853 of 2019

SUNDER MOHAN. J,
dk

Pre Delivery Order in
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