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CrI.O.P.No.16062 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:13.12.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

CrI.O.P.No.16062 of 2023 & and
CrI.M.P.Nos.18182 and 10081 of 2023

1.Dr.D.Chandra Regha
2.A.S.Sathish Kumar

.. Petitioners/Accused 1&2

/versus/

1.The State represented by
The Inspector of Police,
(Law and Orders),
F3, Nungambakkam Police Station,
Chennai 600 034.

..1st Respondent/Complainant

2.G.Sakthivel

..2nd Respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
to call for the records relating to FIR No.5 of 2023 dated 13.01.2023 on the
file of the 1st respondent police and quash the same.

For Petitioners :Mr.S.I.Sharukumar

For Respondents :Mr.Leonard Arul Joseph Selvam
Govt.Advocate (CrI.Side) for R1
Mr.V.K.Sathiamurthy for R2



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ORDER

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The dispute between the builder and the contractor has led to the registration the FIR in Crime No.5 of 2023 dated 13.01.2023 by the Nungabakkam Police Station. This action is based on the complaint forwarded by XIV Metropolitan Magistrate Court, Chennai under Section 156(3) of Cr.P.C.

2. The complainant G.Sakthivel earlier had moved this Court in Crl.O.P.No.9500 of 2023 seeking direction from this Court to carry forward the investigation in Crime No.5 of 2023 and to file the final report at the earliest. This Court, on considering the prayer and the nature of the case, has directed the respondent police to complete the investigation and file the final report, within the period of three months from the date of receipt of a copy of that order.



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3. The above said order came to be passed on 28.04.2023. Thereafter, the accused 1 and 2 had filed Crl.O.P.No. 16062 of 2023 before this Court seeking quash of the complaint on the ground that the civil dispute has been given a criminal colour and therefore, it has to be quashed invoking power under Section 482 of Cr.P.C. If the complaint is allowed to be investigated, it will lead to miscarriage of justice. This Court, on considering the materials put forth, *prima facie* satisfied that a civil dispute has been given a criminal colour and therefore the interim order of stay of investigation in Crime No.5 of 2023, pending disposal of the criminal original petition, was granted.

4. In turn, the defacto complainant, on notice had filed Crl.M.P.No.18182 of 2023 to vacate the interim stay granted by this Court in Crl.O.P.No.16062 of 2023 dated 18.07.2023.



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5. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the 1st respondent and also the learned counsel appearing for the 2nd respondent.

6. The learned counsel appearing for the petitioners submitted that already suits filed by both the parties and the matter is pending. Infact, in the suit filed by the accused, there is an order of interim injunction which will clearly show that it is a case of purely civil dispute and no criminality in it.

7. The learned counsel appearing for the defacto complainant/2nd respondent submitted that though there is a contract between the parties, according to the terms of the contract, the portion of the flat constructed by the defacto complainant has been illegally and criminally trespassed by the accused persons, by break opening, even without any formal handing over of the possession to him. The petitioner also abused with abusive language and threatened him with dire consequences.



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8. So, from the reading of the complaint, it is clear that apart from the civil dispute, whether formal possession of the flat has been handed over or not, there is an allegation of break open of the lock, criminal trespass and use of abusive language, which cannot be considered as *prima facie* civil dispute to stay the investigation. Hence, it is appropriate to direct the respondent police to complete the investigation in the complaint, within the time prescribed, which this Court has already issued by its order dated 28.04.2023.

9. The investigating officer to complete the investigation and arrive at a conclusion, whether it is really pure civil dispute or otherwise. Usurping the role of the investigator and arriving at a decision, based on the surmises and presumption is contrary to the law, procedure and dictum of the Hon'ble Supreme Court. Hence, this Court finds that the petition to quash the First Information Report, deserve to be dismissed, when there is an allegation of criminality found in the complaint. Accordingly, this Criminal Original Petition is dismissed.



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10. In the result, the Criminal Original Petition in Crl.O.P.No.16062 of 2023 is dismissed. As a consequence, Crl.M.P.No.18182 of 2023 and Crl.M.P.No.10081 of 2023 are also dismissed.

13.12.2023

Index:yes/no

Netural Citation:yes/no

Speaking order/Non speaking order
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To:

1.The Inspector of Police,
(Law and Orders),
F3, Nungambakkam Police Station,
Chennai 600 034.

2.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Crl.O.P.No.16062 of 2023

and

Crl.M.P.Nos.18182 and 10081 of 2023

13.12.2023