



Crl OP Nos.19570 & 19396 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition Nos.19570 & 19396 of 2019

and

Crl.M.P.No.9933 of 2019

Crl OP No.19570 of 2019

1. Chandramohan

2. Sakthivel

3. Natarajan

4. Maragatham

5. Rukmani

6. Selvaraj

7. Velusamy

8. Chinnasamy

9. Murugesan

10. Mayilsamy

11. Kuppusamy

... Petitioners/Accused

Versus

S. Dhandapani

... Respondent/Complainant



Crl OP Nos.19570 & 19396 of 2019

Prayer : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the S.T.C.No.7217 of 2019 pending on the file of the learned Judicial Magistrate No.7, Coimbatore, as against the petitioners.

For Petitioners : Mr.B.Kumar, Senior Counsel
for M/s.K.M.D.Muhilan

For Respondent : Mr.K.Govi Ganesan

Crl OP No.19396 of 2019

1. Isvarmurti

2. Shenbagavalli

3. Kartik

4. Shanmugha Priya ... Petitioners/Accused

Versus

S. Dhandapani ... Respondent/Complainant

Prayer : Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code seeking to call for the entire records in S.T.C.No.7217 of 2019 pending on the file of the learned Judicial Magistrate No.7, Coimbatore, quash the same.

For Petitioners : Mr.Rahul Balaji

For Respondent : Mr.K.Govi Ganesan



COMMON ORDER

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These Criminal Original Petitions have been filed to quash the private complaint filed for the offences under Sections 120(b), 294(b), 341, 427, 508(2) and 506(ii) of the Indian Penal Code.

2. It is alleged in the complaint that the respondent is a cultivating tenant in the land measuring 13.45 acres in Survey Nos.476, 477/1, 477/2 and 473 of Putchanur Village, Coimbatore; that the petitioners on 19.09.2017 with the help of Officials and Policeman entered into the land in possession of the respondent and constructed a fence around the land besides causing damage to the coconut trees and other agricultural equipments in the said land; that the petitioners had given a complaint to the Police on 23.09.2017; that on 28.11.2017 again the petitioners entered into the land and abused the respondent in filthy language; that once again the respondent gave a complaint to the Police on 28.11.2017 and thereafter the Police did not take any action; that the respondent's father had obtained an order of interim injunction against the first petitioner and in such circumstances, the respondent's possession is established.



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3. (a) Mr.B.Kumar, learned Senior Counsel appearing for the petitioners would submit that the respondent had failed to establish that he is a cultivating tenant and that he is in possession of the property before the Authorities and before this Court in the Writ proceedings. The Application filed by the respondent to declare him as a cultivating tenant was negated by the District Revenue Officer on 03.07.2017. The Complainant filed a Writ Petition in WP No.21793 of 2017 challenging the said order. On 25.07.2019, this Court dismissed the said Writ Petition.

3. (b) The learned Senior Counsel further submitted that the respondent had also filed a suit for partition against the petitioners claiming 1/5th share in the property. The said suit for partition which is contrary to their stand that they were cultivating tenants came to be dismissed for default.

3. (c) The respondent had challenged the action of the petitioner in putting up a fence before this Court in WP No.25665 of 2017. This Court by the order dated 25.07.2019 dismissed the said Writ Petition stating



that the respondent had failed to establish that he was a cultivating tenant and he had been in possession of the lands. In the said writ petition the respondent had stated that he was dispossessed which is contrary to the allegations in the complaint.

3. (d) The learned Senior Counsel further submitted that the respondent gave a Report to the Police on 28.11.2017 alleging trespass and destruction of crops by the petitioners. The said complaint was closed after due enquiry and the Police found that the complaint did not disclose any cognisable offence. The respondent had not challenged the said Final Report. However, he has come up with this impugned complaint by suppressing several material facts.

4. The learned counsel appearing for the petitioners in Criminal OP No.19396 of 2019 adopted the submissions made by the learned Senior Counsel and submitted that the petitioners were agricultural labourers and they have been falsely implicated in the impugned complaint

5. Mr.K.Govi Ganesan, learned counsel appearing for the respondent submitted that the allegations attract the offences alleged.



The respondent had not made any false averment in the Writ Petition.

The respondent is still in possession of a portion of the property. The petitioners attempted to disturb his possession in respect of the portion where his house is situated. The allegations attract the offences and this Court cannot interfere in the instant quash petition when there is a factual controversy. The learned counsel further submitted that the power under Section 482 of the Code of Criminal Procedure has to be exercised only in rarest of rare cases.

6. This Court on perusal of the impugned complaint finds that the entire complaint is on the premise that the respondent is in possession of property in dispute. Admittedly, the respondent's attempt to declare him as a cultivating tenant in the property failed before the Revisional Authority and before this Court in WP No.21793 of 2017. This Court had dismissed the respondent's Writ Petition and held that the order passed by the DRO denying the petitioners claim to be declared as cultivating tenant was justified. Further this Court finds that WP No.25605 of 2017 filed by the respondent challenging the action taken by the petitioners with the aid of Police and Officials to fence the property also came to be dismissed by the order dated 25.07.2019. This



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Court had observed as follows:

“Since the petitioners failed to establish that they are cultivating tenants and have been in possession in lands they are not entitled to for the reliefs sought for in this petitions.”

7. Though it is stated that the Writ Appeal is pending challenging this finding, this Court is of the view that the respondent has not established his right as cultivating tenant and his possession in the disputed property. In the affidavit filed in support of the Writ Petition dated 20.09.2017 in WP No.25665 of 2017, the respondent has stated he was dispossessed. Further it is seen that on the very same set of facts, the respondent had approached the Police. The said complaint was enquired into and the Police had found that the respondent had not established that he was a cultivating tenant and that he was in possession of the disputed property. The respondent was advised to seek appropriate remedy before the Civil Court.

8. Further it is seen that there is nothing in the impugned complaint to show that the words uttered by the petitioners amounted to real threat



in order to attract the offence of criminal intimidation. As regards the offence under Section 427 IPC, it is seen that the respondent's right has not been established and in view of the same it cannot be said that any wrongful loss was caused to him. In this regard, the Judgment cited by the learned Senior Counsel in ***Kolathukara Vaiyapuri Goundan v. Kuppuswami Goundan***, reported in ***Part 14 SCConline 331***, wherein it is stated that in order to attract the offence under Section 427 IPC, it should be shown that the complainant had suffered wrongful loss viz. that he had unlawfully lost the property which he is legally entitled to. Since there is a finding by this Court in the writ proceedings that the respondent has failed to establish possession, the alleged damage cannot be said to have caused wrongful loss to him. The above judgment squarely applies to the facts of this case. Hence the offence under Section 427 is also not made out.

9. From the above facts, it is clear that the impugned complaint is nothing but an abuse of process of law. The respondent having failed in all attempts to establish his right as cultivating tenant or his possession has come up with this impugned complaint. The Police have rightly



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refused to take action on the respondent's complaint. The respondent has not challenged the said report. Therefore, this Court is inclined to quash the impugned complaint. Both the Criminal Original Petitions are **allowed**. Consequently, the connected miscellaneous petition is closed.

18.04.2023

jv

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Judicial Magistrate No.7,
Coimbatore.



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SUNDER MOHAN, J.

jv

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