



Crl OP No.22359 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **28.03.2023**
PRONOUNCED ON : **06.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 22359 of 2019
and
Crl.M.P. No. 11627 of 2019

1. Thyagaraja Gurukkal
2. Vasu @ Srinivasan Gurukkal
3. Ganesa Gurukkal
4. Dharani Gurukkal
5. Rajinikant Gurukkal ... Petitioners

Versus

1. The Inspector of Police,
Thirukazhukundram Police Station,
Kanchipuram District.
(Crime No. 248 of 2019)
2. Adi Saiva Sivachariyargal Sangam,
No.68, Old No.112, Big Street,
Thirukazhukundram Village & Taluk,
Kancheepuram District.

Rep., by its Secretary U.Subburayan,
S/o.Umamaheswara Gurukkal,
Door No.60, Big Street,
Thirukazhukundram,
Kanchipuram District. ... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and to quash the First Information Report in Crime No.248 of 2019 dated 09.07.2019 on the file of the Inspector of Police, Thirukazhukundram Police Station, Kanchipuram District.

For Petitioners : Mr. R. Vijayakumar.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.

Mr. R. Ganeshkumar for R2.

ORDER

The petition is to quash the First Information Report in Crime No.248 of 2019 on the file of the Respondent Police.

2.It is alleged in the First Information Report that the Second respondent is the owner of a land and the building situated over it. The Sangam is in existence for nearly 80 years; that there are proceedings pending between the accused and the defacto complainant before this Court in W.P. No.14035 of 2012 and a Special Leave Petition in S.L.P. (Civil) No.8065 of 2019 before the Hon'ble Supreme Court; that while so,



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the petitioners had trespassed into the land belonging to the Second respondent and with the help of JCB Excavator demolished the building standing there on; that thereafter they abused the office bearers and the members of the Second respondent and thus, they had committed the offence under Sections 447, 294 (b) of the Indian Penal Code and Section 3 (1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The said First Information Report was registered pursuant to the directions issued by the learned District Munsif cum Judicial Magistrate, Thirukazhukundram in Crl.M.P.No.2914 of 2019 dated 19.06.2019.

3.The learned counsel for the petitioners submitted that the impugned First Information Report is an abuse of process of law. The Second respondent had suppressed the orders passed by this Court in the litigations between them and the petitioners. Initially, the Second respondent filed a suit in O.S.No.14 of 2006 before the District Munsif cum Judicial Magistrate, Thirukazhukundram for bare injunction restraining the petitioners from interfering in the peaceful possession of the property. The learned District Munsif dismissed the Suit on 30.08.2011 stating that they had not filed genuine and relevant document to prove their claim. Thereafter, the Second respondent preferred an



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Appeal before the Additional Subordinate Judge, Chengalpattu in A.S.

No.28 of 2011. The learned Subordinate Judge had allowed the appeal and set aside the Judgment of the trial Court and held that the Second respondent had valid title over the property by the Judgment dated 31.03.2015. The petitioners challenged the said Judgment in Second Appeal No. 535 of 2015 before this Court and this Court had set aside the Judgment of the Sub Court and confirmed the Judgment of the trial Court. The Second respondent has preferred a Special Leave Petition in S.L.P. (Civil) No.8065 of 2019 and the same is pending before the Hon'ble Supreme Court.

4.The learned counsel further submitted that suppressing all these facts and vaguely mentioning that a Special Leave Petition is pending, the Second respondent has lodged the impugned First Information Report. Further, it is seen that the First Information Report does not state as to when the petitioners went into the land allegedly belonging to the Second respondent and demolished the building. The Second respondent had also suppressed the fact that the patta has been granted by the revenue authorities in favour of the first petitioner. In fact PW1, who deposed on behalf of the Second respondent in O.S. No. 14 of 2006 which was



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recorded between 05.12.2006 and 30.10.2007 had stated that the building was already dilapidated and one portion had already fallen down. Therefore, the allegation that the petitioners demolished the building is an after thought and made only to some how implicate the petitioners in a criminal case. That apart, the Second respondent had also suppressed the fact that the writ petition filed by the Second respondent / defacto complainant Sangam has been dismissed by this Court. The learned counsel therefore, submitted that all these proceedings pending before various Courts would show that the petitioners are in possession of the property and the allegation that they trespassed into their own property cannot be countenanced. In any event, the issue cannot be decided by a Police Officer when there are orders in favour of the petitioners in the Civil and the Writ proceedings. The learned counsel further submitted that there is no averment to show as to how the alleged words said to have been uttered by the petitioners would amount to offence under Section 294 (b) of the Indian Penal Code.

5.The learned counsel for the Second respondent would submit that since First Information Report has been registered on the basis of the petition filed by the Second respondent under Section 156 (3) of the



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Criminal Procedure Code, it should not be interfered in a quash petition;

that the proceedings should be allowed to continue and the respondent

Police has to investigate and come to a logical conclusion; and that the

First Information Report cannot be stalled at the very initial stage itself.

The learned counsel further submitted that the first appellate court had

decided in favour of the Second respondent and this Court though had

observed that the petitioners have not established title, did not go into the

question whether the petitioners are in possession of the property. The

Second respondent is still in possession of the property and they have

challenged the finding of this Court in Second Appeal No. 535 of 2015

before the Hon'ble supreme Court. The learned counsel further submitted

that the petitioners have misrepresented to the revenue authorities and

obtained a false patta and based on all these documents, they have

trespassed into the land belonging to the Second respondent and

demolished the building. The learned counsel for the Second respondent

further submitted that this Court would not ordinarily interfere in a First

Information Report and would allow the investigation to go on. The

learned counsel also relied upon the Judgment of the Hon'ble Supreme

Court in ***HDFC Securities Limited and Others Vs State of***

Maharashtra and another reported in (2017) 1 SCC 640 wherein, the



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Hon'ble Supreme Court held that the order passed under Section 156 (3) of the Criminal procedure Code cannot be interfered with since the accused had no right to challenge the same until cognizance is taken by the learned Magistrate. The learned counsel therefore, submitted that the impugned First Information Report has to be investigated by the respondent police and merely, because there are civil proceedings pending between the parties, the offences committed by the petitioners cannot be condoned.

6.The learned Additional Public Prosecutor reiterated the submissions made by the learned counsel for the second respondent and prayed for dismissal of the quash petition.

7.This Court on perusal of the First Information Report finds that the allegation is that the petitioners entered into the land which is said to be belonging to the Second respondent and demolished the building using JCB excavators and when questioned by the members of the Second respondent, they insulted them. The petitioners have been charged for the offence under Sections 447, 294 (b) of the Indian Penal Code and Section 3 (1) of the Tamil Nadu Property (Prevention of Damage and



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Loss) Act, 1992. This Court is of the view that the question as to whether there was any trespass by the petitioners cannot be gone into by the respondent Police. The police will have to then ascertain as to who is in possession. This question was the subject matter of O.S. No. 14 of 2006 and subsequently before this Court in S.A. No.535 of 2015. This Court had held as follows;

“19. In the light of the above discussions, the first appellate court had erred in going into the question of title in the absence of prayer of declaration of title by the plaintiff, particularly when the plaintiff's title to the suit property is under challenge in toto by the defendants and therefore the first appellate court should have rejected the plaintiff's suit as not maintainable barely laid for permanent injunction without seeking the relief of declaration of title to the suit property. The first appellate court is also found to have erred in accepting the plaintiff's case based upon the tax receipts and service connection documents by failing to take note of the fact that the above said documents do not serve the case of the plaintiff to establish its legal possession and enjoyment of the suit property as described in the plaint and furthermore, the projected documents mainly marked in the first appellate court had come into existence after the institution of the lis. The first



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appellate court has failed to give valid and acceptable reasons for setting aside the well considered reasonings of the trial court for non suiting the plaintiff, particularly, for its acceptability to the settlement deed marked as Ex.A1. The first appellate court is also found to have erred in indirectly upholding the claim of title to the suit property of the plaintiff by analysing the materials placed on record as if the suit laid by the plaintiff is a title suit involving declaratory reliefs and in such view of the matter, the judgment and decree of the first appellate court upholding the plaintiff's claim of legal possession and enjoyment of the suit property, cannot be sustained as per law. The substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.”

The above observations of this Court would show that the plaintiff / Second respondent had not established that it was in lawful possession and enjoyment of the Suit property. The Second respondent has challenged the said Judgment before the Hon'ble Supreme Court in S.L.P. (Civil) No.8065 of 2019 . While so, in order to ascertain whether a trespass was committed by the petitioners, the inspector of police has to go into the question as to who is in possession of the property and render



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a finding on an issue which is pending before the Hon'ble Supreme Court.

WEB CO This cannot be permitted.

8. That apart, this Court in the writ proceedings challenging the Patta proceedings granted in favour of the Second respondent / defacto complainant Sangam in ***T.S.Thiyagaraja Gurukkal and Ors. Vs. The Director of Town Panchayat, Kuralagam, Chennai and Ors.,*** in ***W.P.No. 14035 of 2012*** dated ***12.09.2022***, has held as follows;

“6. The lis between the petitioners and the fourth respondent in respect of the property is admitted. From a reading of the judgment in S.A.No.535 of 2015, it can be seen that the fourth respondent claimed title to the property on the basis of the document/Ex.A1, dated 29.04.1899. This Court observed that the fourth respondent has neither proved that Ex.A1 refers to the suit property, nor proved proper title of the predecessors~in~interest to execute Ex.A1. The question of possession was also decided by stating that the fourth respondent/plaintiff has not produced any independent document to prove their possession. The alternative plea of adverse possession has been discussed and it is held that the fourth respondent has not prescribed title by adverse possession. This Court also observed that since



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the plaintiff has not filed the suit for declaration of title, the suit filed for permanent injunction is not maintainable.

7. The judgment of this Court in S.A.No.535 of 2015 shows that this Court has categorically held that the fourth respondent/plaintiff has no title or possession over the property. In the said circumstances, the Writ Petitioners challenging the planning permission obtained by the fourth respondent has merits. Hence, the fourth respondent cannot be permitted to put up construction on the basis of the impugned proceedings.”

Further, it appears that the petitioners had thereafter obtained patta. Whether this patta is valid cannot be the subject matter of investigation by the police. The above observations made in S.A. No.535 of 2015 and W.P.No. 14035 of 2012 would show that the second respondent has neither established title nor possession. In such circumstances, the offence under Section 447 of the Indian Penal Code is not made out.

9. That apart there is no allegation as regards the offence under Section 294 (b) of the Indian Penal Code. The only allegation is that the



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members of the petitioners had humiliated the members of the Second respondent. There is nothing to suggest that any obscene words causing annoyance to others had been uttered by the petitioners in order to invoke the offence under Section 294(b) of the Indian Penal Code. Hence, the offence under Section 294 (b) of the Indian Penal Code is also not made out.

10.As regards the offence under Section 3 (1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, again the Inspector of Police cannot go into the question as to whether the property or building belongs to the Sangam or the petitioners at this stage. Only if the Inspector of Police is able to come to the conclusion as to whose building was demolished, the offence under Section 3 (1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 would be made out. However, in the instant case, the Inspector of Police cannot go into that issue. Therefore, the instant First Information Report is an abuse of process of law and cannot be allowed to continue.

11.The learned counsel for the Second respondent's submission that a First Information Report registered pursuant to the direction issued



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by the learned Magistrate cannot be quashed is stated only to be rejected.

The power of this Court under Section 482 of the Criminal Procedure Code cannot be circumscribed by a direction issued by the learned Magistrate to register a First Information Report. The Judgment relied upon by the learned counsel for the Second respondent in Hon'ble Supreme Court in *HDFC Securities Limited and Others Vs State of Maharashtra and another* reported in (2017) 1 SCC 640, relates to a case where the petitioners therein had challenged the order passed by the learned Magistrate under Section 156 (3) of the Criminal Procedure Code. In the instant case, pursuant to the order passed by the learned magistrate, the respondent police has registered a First Information Report. Once a First Information Report is registered, if it is found that the allegations do not attract cognizable offences and are malafide, it can be quashed as per the dictum of the Hon'ble Supreme Court in *State of Haryana and Ors. Vs. Bhajan Lal and Ors.*, reported in 1992 SCC (Cri) 426. In the facts and circumstances of the instant case, it cannot be said that this Court has no jurisdiction to quash the First Information Report where the Second respondent had suppressed the civil proceedings and orders that were passed against it in various civil proceedings. The impugned First Information Report therefore deserves to be quashed.



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WEB COPY 12.Hence, this Criminal Original Petition is allowed and the First Information Report in Crime No.248 of 2019 dated 09.07.2019 on the file of the Inspector of Police, Thirukazhukundram Police Station, Kanchipuram District is quashed. Consequently, the connected Miscellaneous Petition is closed.

06.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

SUNDER MOHAN, J

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To

1. The Inspector of Police,
Thirukazhukundram Police Station,
Kanchipuram District.
2. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

Crl.O.P. No. 22359 of 2019
and
Crl.M.P. No. 11627 of 2019

Dated: 06.04.2023