



WEB COPY



CrI.O.P.No.27470 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CrI.O.P.No.27470 of 2019 and
CrI.M.P.No.14641 of 2019

1.S.Dorairaj

2.D.BalajiKarthic

... Petitioners / Accused 1 & 2

/vs/

1.The State Rep by

The Inspector of Police,
T-2, Ambattur Estate Police Station,
Ambattur, Thiruvallur District.

2.A.Manova

Respondents

...

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records in Cr.No.547 of 2019 dated 30.08.2019 on the file of the first respondent police and quash the same.

For Petitioners

... Mr.Vijay Mehanath for
M/s.AAV Partners

For Respondents

... Mr.A.Gopinath,
Govt. Advocate (CrI.Side) for R1
Mr.N.V.Margandeyan for R2



CrI.O.P.No.27470 of 2019

ORDER

This Criminal Original Petition has been filed to call for the records in Cr.No.547 of 2019 dated 30.08.2019 on the file of the first respondent police 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 and 2 in the said case. The second respondent / defacto complainant has given a complaint by stating that the petitioners have damaged the CC TV Cameras fixed in the subject property. On the said complaint, a case has been registered by the first respondent police in FIR No.547 of 2019 for the offences under Section 3(1) of Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992.

4. The learned counsel for the petitioners submitted that the first petitioner is the owner of the property and he has purchased the subject property from its original owner John Wesley and his sister Christibel; the



Crl.O.P.No.27470 of 2019

defacto complainant is an encroacher in the property and he had given a complaint against the petitioners; further the very act under which the case has been registered itself was repealed and it is no more in force.

5. The learned Government Advocate (Crl.Side) submitted that only if the investigation is allowed to go, the real facts can be unearthed; even if a wrong provision is invoked, alteration report can be filed at any point of time depending upon the materials collected during the course of investigation.

6. The learned counsel for the second respondent submitted that the second respondent is an agreement holder for the subject property and subsequent to the agreement, he is in possession of the property; ignoring the said agreement, the sale has been made and hence the petitioners cannot be called as the owners of the subject property; when the second respondent is in possession of the property, he fixed CC TV Cameras in order to watch the encroachment or damages caused in the property.



7. The case has been registered for the offence under Section 3(1) of

Tamil Nadu Public Property (Prevention of Damage & Loss) Act, 1992.

After the enactment of Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992, by virtue of Section 15 of the said Act, the Tamil Nadu Public Property (Prevention of Destruction & Loss) Act, 1982 got repealed. Though it is correct on the part of the learned Government Advocate who submitted that the penal provisions can be corrected or altered at any point of time, it is seen that the private property of a person of this nature does not fall within the definition of a property as defined under Section 2(4) of the Tamil Nadu Property (Prevention of Damage & Loss) Act, 1992 also.

8. There is no quarrel on the point that the property was originally owned by John Welsey and Christibel. The defacto complainant and the petitioners claim title only through the said owner. The dispute between the petitioners and the defacto complainant obviously appears to be civil in nature. It is not the claim of the second respondent that the subject property falls within the classification of A to J under Section 2(4) of the Act. Hence there is a fundamental illegality in registering the FIR itself for a dispute



CrI.O.P.No.27470 of 2019

which is apparently civil in nature.

WEB COPY

9. In view of the above stated reasons, this Criminal Original Petition is allowed and the proceedings in Cr.No.547 of 2019 dated 30.08.2019 is quashed. Consequently, connected miscellaneous petition is closed.

06.01.2023

Index: Yes/No

Internet: Yes/No

gsk

To

- 1.The Inspector of Police,
T-2, Ambattur Estate Police Station,
Ambattur, Thiruvallur District.
- 2.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.O.P.No.27470 of 2019

R.N.MANJULA ,J.

gsk

Crl.O.P.No.27470 of 2019 and
Crl.M.P.No.14641 of 2019

06.01.2023