



CrI OP No.30080 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : **12.04.2023**
PRONOUNCED ON : **20.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 30080 of 2019
and
CrI.M.P. No. 16276 of 2019

K.M. Palanisamy ... Petitioner

Versus

1.The State rep., by
The Inspector of Police,
Crime No.390 of 2013,
District Crime Branch,
Namakkal.

2.T.S. Mathivanan ... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the criminal case in S.C. No. 73 of 2019 on the file of the learned Principal Sessions Judge, Namakkal, quash the same by allowing this criminal original petition.

For Petitioner : Mr. N. Manoharan.



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

Mr. D. Selvaraj for
Mr. C.S. Saravanan for R2.

ORDER

The petition is to quash the final report for the alleged offence under Section 436 of the Indian Penal Code and Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

2. It is alleged in the final report that the defacto complainant is a tenant under the petitioner; that the defacto complainant was running a hotel in the name of 'Mansati Varuval' on the premises; that the petitioner asked the defacto complainant to vacate and, since the defacto complainant did not vacate the premises, the petitioner, on 19.05.2013 at about 11.30 p.m., committed mischief by setting fire to the thatched shed in which the defacto complainant was running a hotel; that as a result of which, the furniture and groceries inside the hotel, worth Rs.1,45,000/- were damaged; that a Bolero jeep bearing Registration No.TN 36 U 4567 was also damaged; and hence, the petitioner was liable for the offence under Section 436 of the Indian Penal Code and Section 4 of the Tamil



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Nadu Property (Prevention of Damage and Loss) Act, 1992.

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3. (a) Mr. N. Manoharan, learned counsel for the petitioner submitted that a dispute between the landlord and tenant is sought to be criminalised; that the defacto complainant refused to vacate the premises inspite of a Judgment in a Civil Suit. The defacto complainant filed a Suit in O.S. No. 222 of 2013 on the file of the learned Additional District Munsif, Tiruchengode for a permanent injunction against the petitioner and others restraining them from interfering in his peaceful possession. The petitioner filed a counterclaim in the said Suit. The learned Judge, by the Judgment dated 28.02.2019 directed the defacto complainant to hand over the possession of the property to the petitioner within three months. The learned Judge had also observed that the defacto complainant's attitude in lodging a police complaint and demanding Rs.10,00,000/- for vacating the premises had caused inconvenience to the petitioner and others and hence the defacto complainant was liable to pay compensatory costs.

(b) The learned counsel further submitted that earlier this Court in



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Crl.O.P. Nos. 15628 & 15946 of 2013 had passed an order directing the investigation to be transferred from the Inspector of Police, Tiruchengode to the District Crime Branch, Namakkal. This Court also directed the complaint given by the petitioner's daughter against the defacto complainant to be investigated after registering a case. However without complying with the said direction, the Inspector of Police, Tiruchengode filed a final report on 07.12.2013 against the petitioner for the offence under Section 436 of the Indian Penal Code. The final report was taken on file and trial commenced. Witnesses were also examined. While so, the petitioner filed Crl.O.P. No.970 of 2017 pointing out that the final report filed by Tiruchengode Police is contrary to the order of this Court transferring the investigation to the District Crime Branch, Namakkal. This Court by the order dated 05.09.2017 found that the investigation of the subsequent trial was vitiated in view of the earlier orders of this Court. Hence, this Court quashed the final report in S.C. No. 50 of 2016 and directed the respondent herein to conduct a fresh investigation on both the complaints viz., the complaint of the petitioner's daughter and the complaint of the defacto complainant. However, after the said order, the respondent police filed a final report without proper investigation and also by erroneously adding the offence



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under Section 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

(c) The learned counsel submitted that since the Civil Court has already given a finding, it is binding on the criminal Court. He relied upon the Judgment of the Hon'ble Supreme Court in ***K.G. Premshanker Vs. Inspector of Police and another*** reported in ***(2002) 8 Supreme Court Cases 87***.

(d) The learned counsel further submitted that there is absolutely no evidence to show that the Bolero Jeep said to have been damaged in the fire accident belonged to the defacto complainant. The learned counsel also submitted that the fact that the petitioner demanded Rs.10,00,000/- for vacating the premises which has been admitted by him in his deposition before the Civil Court, would show that the complaint against the landlord is malafide and is to wreak vengeance against him.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that points raised by the petitioner cannot be gone



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into in a Petition to quash. This Court cannot conduct a mini trial in a petition under Section 482 of the Criminal Procedure Code to ascertain as to which of the two versions is true. The learned Additional Public Prosecutor further submitted that there are eyewitnesses to the occurrence who speak about the occurrence and hence prayed for dismissal of the quash petition.

5. The learned counsel for the second respondent submitted that the Civil Court did not go into the question as to whether the allegations in the criminal proceedings were true or false; and that the issue before the Civil Court was not whether the petitioner had set fire to the thatched shed of the defacto complainant. The learned counsel further submitted that the Honourable Supreme Court in ***Monica Kumar (DR.) and Another Vs. State of Uttarpradesh and Others*** reported in (2008) 8 ***Supreme Court Cases 781*** had held that where there are allegations to attract the offence then the prosecution cannot be quashed merely because the complaint was malafide. The learned counsel further submitted that the respondent Police in compliance with the orders of this Court had investigated into the complaint given by the petitioner's daughter against the defacto complainant and filed a final report against



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the defacto complainant and others. Hence, it cannot be said that the orders of this Court were violated by the respondent Police. He therefore prayed for the dismissal of the quash petition.

6. This Court finds that a Civil Suit filed by the defacto complainant in which the petitioner had filed a counterclaim ended in favour of the petitioner in O.S. No. 222 of 2013. Thereafter, it is stated that appeals were filed by both parties and the matter is remanded back to the trial Court. Be that as it may. The main submission of the learned counsel for the petitioner is that there is a finding in the Civil Court that the defacto complainant had demanded money for vacating the premises, and his attitude in lodging a police complaint was also commented upon. This Court finds, on perusal of the records, that the respondent police had examined several eyewitnesses to the alleged occurrence. In exercise of the power under Section 482 of the Criminal Procedure Code, this Court cannot conduct a mini trial to find out as to which of the versions is probable. The Civil Court had not specifically gone into this question of setting fire but had remarked about the conduct of the defacto complainant in not vacating the property and demanding money.



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However, the proceedings cannot be quashed merely because it is malafide unless it is found that the allegations are highly improbable.

In the instant case, that question has to be decided by the trial Court on the basis of the evidence adduced before it. Hence, this Court is not inclined to entertain this petition.

7. However, it is needless to say that the trial Court shall consider all the above facts and take an informed decision, considering the nature of the relationship between the parties, the age of the petitioner and the observations made by the Civil Court. Since the petitioner is an aged person, the appearance of the petitioner before the trial Court is dispensed with unless the trial Court considers his presence necessary for the progress of the trial.

8. With the above observations, this Criminal Original Petition is dismissed. Consequently, the connected Miscellaneous Petition is closed.

20.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
Crime No.390 of 2013,
District Crime Branch,
Namakkal.
2. The Principal Sessions Judge,
Namakkal.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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