



Crl.R.C.No.1861 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 17.11.2023	Orders Pronounced On .11.2023
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Crl.R.C.No.1861 of 2023
and
Crl.M.P.No.17476 of 2023

1.S.Abdul Rahman
2.M.Kannan
3.K.Manikanda Raj

... Petitioners

Vs.

The State rep. by
The Assistant Commissioner of Police,
Central Crime Branch,
Forgery Investigation Wing,
Vepery, Chennai – 600 007.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to call for the records and set aside the impugned order made in Crl.M.P.No.8910 of 2023 dated 19.10.2023 on the file of the III Metropolitan Magistrate Court at George Town, Chennai.



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For Petitioner : Ms.A.Sajidha Meera Rumana
for Ms.T.Kalaivani

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioners/A1, A2 & A5 in C.C.No.840 of 2023, who are facing trial for the offence under Sections 147, 148, 448, 294(b) and 506(ii) IPC filed discharge petition before the learned III Metropolitan Magistrate, George Town, Chennai in Crl.M.P.No.5910 of 2023. The Lower Court by order dated 19.10.2023 dismissed the petition finding prima facie case against the petitioners. Against which, the present revision is filed.

2.The gist of the case against the petitioners is that the property situated in Old No.129, New No.98, Coral Merchant Street, Mannadi, Chennai was attempted to be taken away by one Azizul Karim using forged documents and by force. The said property was initially let out to Azizul Karim by the family members of P.K.Arun and thereafter, a complaint was lodged by the father of the said P.K.Arun for the said act. When the owners



of the property were enjoying the peaceful possession of the said property, the first petitioner/A1 trespassed into the property by force to take away the property from the peaceful possession of the defacto complainant by force and the other accused, namely, A2/M.Kannan, A3/S.Pandian, A4/R.Vincent and A5/Manikandaraj joined him. On 21.11.2022 at about 6.30 p.m, the accused persons entered into the property by force with wedge, hammer and cutting machine to remove the lock and to take away the property. When the same was resisted by the defacto complainant and his relatives, the accused persons, who were in an aggressive mood, since case registered against the said Azizul Karim and he was detained under the Goondas Act, assaulted the defacto complainant and his family members. Further, the accused persons abused the defacto complainant in filthy language and threatened them to vacate the property within one week otherwise they would be done away. The accused persons also caused damage to the lock, chain and other articles. Thereafter, complaint was lodged, based on which case in Crime No.222 of 2021 registered and on completion of investigation, charge sheet filed listing 16 witnesses and documents. Further A3/S.Pandian died during the investigation.



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3.The learned counsel for the petitioners submitted that the primary ground on which the revision is filed that the Lower Court failed to make judicious approach in deciding the points for consideration in discharging the petitioners. Further, the Lower Court misdirected itself by giving a different finding. He would submit that the alleged occurrence took place on 21.11.2022 but the defacto complainant lodged a complaint on 22.11.2022 with a delay and there is no reason for the delay which the Lower Court failed to consider. He would further submit that the first petitioner is the close relative of Azizul Karim, on his arrest and detention the first petitioner was entrusted with the property to maintain and take care of the property. The other accused persons were along with him. Admittedly, a civil suit is pending with regard to the said property and no Civil Court had given orders for any eviction. Such being the case, the petitioners being termed as trespassers of the property and taking forcible possession would not be proper. He further submitted that there were several litigations between the said Azizul Karim and the owners of the property, but the same will not give license or right to the defacto complainant to lodge a false case against the petitioners. He would also submit that the petitioners 2 and 3 were said to



be merely present at the scene of occurrence and nothing more. He further submitted that the respondent police failed to consider these aspects but mechanically completed the investigation and the Lower Court also failed to consider the same.

4.Learned Additional Public Prosecutor submits that the first petitioner is a close relative of Azizul Karim. He would submit that the tenancy of Azizul Karim was by force and also by using forged documents. Further the address was used to all illegal activities. He would further submit that forged orders with false particulars obtained and created by Azizul Karim as though orders have been passed in his favour. These factors were considered by the respondent police during investigation and charge sheet filed against him and others. Further, several petitions were filed by him before the Lower Court as well as before the High Court, wherein the High Court had dismissed all the petitions. Against which, he had also approached the Apex Court wherein the Apex Court dismissed the petition filed by them with regard to the earlier incident. This incident is an off-shoot of earlier incident claiming right over the property after the



detention of the said Azizul Karim. The petitioners justification is that the first petitioner was entrusted with the property to be taken care of. But except for the verbal claim, there is no other material to show that he was entrusted with lawful custody of the property. On the other hand, the petitioners using wedge, hammer and cutting machine had removed the lock, broke open the gate and attempted to make forcible entry which was restricted by the defacto complainant and his family members, at that time, the petitioners and other accused abused them, threatened and assaulted them. Further, the other accused, namely, A2 to A5 were all muscle men who were aiding and actively taking part in the forcible eviction of the defacto complainant. He further submitted that on the complaint of the defacto complainant, investigation conducted, the respondent police visited the scene of occurrence, recorded the statement of witnesses, prepared observation mahazar and rough sketch and on completion of investigation, charge sheet was filed. The Lower Court finding that prima facie case made against the petitioners and others had taken the same on file and issued summons to the accused.



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5.Learned Additional Public Prosecutor further submitted that A1 and A2 were granted anticipatory bail by the Sessions Court when the case was initially with N3 Muthialpet Police Station in Crime No.20 of 2021. As regards A3, he is no more and as regards A4 and A5, they were issued Section 41A notice. He also placed reliance on the order passed by this Court in ***W.P.No.2517 of 2021 [P.S.Kirubakaran vs. The Commissioner of Police, EVK Sampath Road, Vepery, Chennai-7 and others]***, wherein this Court by order dated 17.08.2021 in detail discussed the nature of the case. The reference is for the limited purpose to show how this case originated. He further submitted that the points raised by the petitioners are disputed facts which ought to be decided only during trial. Hence, he prayed for dismissal of the petition.

6.Considering the submissions made and on perusal of the materials, it is seen that admittedly the first petitioner is the close relative of Azizul Karim, against whom several cases are pending. The defacto complainant and his family members are the owners of the property and they are in possession of the property. Their possession attempted to be dislodged by



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force by the petitioners. These facts have been clearly spoken to by the witnesses who were examined and there are specific overtact attributed against the petitioners. The points raised by the petitioners are factual in nature and there are prima facie material available against the petitioners. Thus, the Lower Court by a detailed order had rightly dismissed the discharge petition filed by the petitioners. In view of the same, this Court finds no reason to interfere with the order passed by the Lower Court.

7. Accordingly, the criminal revision petition stands dismissed. Consequently, connected miscellaneous petition is closed.

.11.2023

Speaking Order/Non Speaking Order
Index : Yes/No
Neutral Citation: Yes/No
cse



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To

- 1.The III Metropolitan Magistrate,
George Town,
Chennai.
- 2.The Assistant Commissioner of Police,
Central Crime Branch,
Forgery Investigation Wing,
Vepery, Chennai – 600 007.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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Pre-delivery order made in

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.11.2023