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Crl.O.P.No.29443 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.29443 of 2018
and Crl.M.P.No.17277 of 2018

1. K.Krishnaveni
2. K.Kousalya

... Petitioners

Vs.

1. The State of Tamil Nadu,
represented by the Inspector of Police,
C1, Kattoor Police Station,
Coimbatore.

2. K.Jeganathan

... Respondents

PRAYER:- Criminal Original Petition filed under Section 482 of Cr.P.C
praying to call for the records of Charge Sheet in C.C.No.169 of 2018 on the
file of the Judicial Magistrate No.II, Coimbatore and quash the same.

For Petitioners : No appearance

For R1 : Mr.L.Baskaran
Government Advocate (Criminal Side)

For R2 : Mr.P.Chandrasekar



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ORDER

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This Criminal Original Petition has been filed calling for the records in C.C.No.169 of 2018 on the file of the Judicial Magistrate No.II, Coimbatore and to quash the same.

2. The second respondent is the defacto complainant and he lodged a complaint alleging that he was doing business in the name and style of “Net Fusion Technologies” at No.227, Tatabad, 110 feet road, Coimbatore-641 012 for the past 13 years. He was a tenant under one Eswarimmal for the said premises. When he went out of station and returned to his shop, he was shocked to find that the banners of the shop were removed, lock was broke open and the properties including valuable computers etc., were taken by the accused who are residing at the backside of the shop to the value of Rs.7 Lakhs. When it was questioned by the defacto complainant, he was threatened with dire consequences by the accused. Hence, he lodged a complaint before the first respondent. However, no action has been taken and as such, the second respondent was constrained to file a direction petition before this Court in CrI.O.P.No.26512 of 2017. On the direction issued by this Court, the first respondent registered the FIR in Crime No.1398 of 2017, for the offences under Sections 427, 454, 380 and 506(ii) IPC. After completion of investigation, the



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first respondent filed final report and the same has been taken cognizance by the Trial Court in C.C.No.169 of 2018 for the offences under Sections 427, 380, 457 and 506(2) of IPC.

3. The petitioners averred that the entire allegations are civil in nature and no offence is made out as against the petitioners as alleged by the defacto complainant. The petitioners are the owners of the premises. The defacto complainant failed to pay the monthly rent and also refused to vacate the shop. In fact, the defacto complainant filed a suit in O.S.No.1427 of 2012 as against the first petitioner and Eswarimmal, Vanaja and Raviprakash for injunction restraining them from disturbing his peaceful possession and enjoyment of the subject property. The first petitioner also filed an eviction petition in R.C.O.P.No.59 of 2014 as against the defacto complainant, on the ground of wilful default in payment of monthly rents. Subsequently, the suit filed by the defacto complainant was dismissed for default. The first petitioner also filed a petition for fixation of fair rent in R.C.O.P.No.33 of 2014 before the Rent Controller Court, Coimbatore. Pending R.C.O.P and suit filed by the petitioners, the second respondent himself vacated the premises. On the other hand, he foisted a false complaint, as if the petitioners had forcibly evicted him and looted his articles which were kept in the shop.

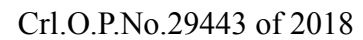


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4. Per contra, the learned counsel for the second respondent would submit that the petitioners are not the owners of the property. The first petitioner claims to be the wife of the deceased Kandasamy and also claims the property which stands in the name of wife of the deceased Kandasamy viz., one Easwariammal. She had rented out the premises to the petitioners to run a computer shop. He regularly paid monthly rents to his landlady viz., Easwariammal. Unnecessarily, the first petitioner filed an eviction petition and also fixation of fair rent as against the defacto complainant and both are pending. In fact, she is also not a legally wedded wife of the deceased Kandasamy and the same was confirmed by the High Court of Kerala and by the Hon'ble Supreme Court of India. Therefore, the defacto complainant was forcibly evicted from the premises and looted the things worth about Rs.7 Lakhs by the petitioners. Therefore, all the offences are clearly made out as against the petitioners.

5. The learned Government Advocate (Crl.side) appearing for the first respondent submitted that the petitioners already challenged the FIR registered in Crime No.1398 of 2017 on the file of the first respondent, in Crl.O.P.No.4637 of 2018 and the same was dismissed by this Court by an order



6. There is no representation on behalf of the petitioners. Heard the learned Government Advocate (Criminal Side) for the first respondent and the learned counsel for the second respondent and perused the materials available on record.

7. There are totally two accused, in which the petitioners are arrayed as A1 and A2. Admittedly, the second respondent is the tenant of the premises situated at No.227, Tatabad, 110 feet road, Coimbatore-641 012. He is running a business in the name and style of “Net Fusion Technologies” in the said premises. While being so, the petitioners also claim to be the owner of the premises and filed an eviction petition in R.C.O.P.No.59 of 2014, on the ground of wilful default of payment of monthly rent against the second respondent. They also filed another petition in R.C.O.P.No.33 of 2014 for fixation of fair rent for the said premises. Both the petitions are pending. The specific



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contention of the second respondent is that the first petitioner is not a land lady.

The original owner of the premises is one Easwariammal w/o Kandasamy. The said Kandasamy purchased the property in the name of Easwariammal, who is none other than his wife. Thereafter, the said premises was rented out in favour of the second respondent herein by the said Easwariammal. The first petitioner is claiming to be wife of the said Kandasamy and filed petitions before the learned Rent Controller, Coimbatore for eviction as well as fixation of fair rent. He is also paying monthly rent to the said Easwariammal. In fact, in another proceedings, the High Court of Kerala held in C.R.P.No.870 of 1987 that the first petitioner is not a legally wedded wife to claim the subject property and compensation under the Land Ceiling Act. It was challenged before the Hon'ble Supreme Court of India by the first petitioner and the Hon'ble Supreme Court of India also confirmed the order passed by the High Court of Kerala. Therefore, the claim of the first petitioner as second wife of Kandasamy is denied and she has no title over the subject property in which the second respondent is doing business in the name and style of "Net Fusion Technologies". Therefore, the first petitioner filed vexatious petitions before the Rent Controller for eviction, on the ground of wilful default and also for fixation of fair rent. While being so, the petitioners forcibly evicted the second respondent from the premises and also looted the valuables which were kept in



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the shop to the tune of Rs.7 Lakhs. Further, the petitioners filed a quash petition before this Court in Crime No.4637 of 2019 to quash the FIR registered in Crime No.1398 of 2017 on the file of the first respondent herein. This Court dismissed the quash petition by an order dated 31.07.2018 and observed that the subject property in question belongs to Kandasamy and after his demise, the said property devolved on his wife Easwariammal. There was dispute between the said Easwariammal and the first petitioner with regard to their status of wife of late Kandasamy. Further, this Court, ordered that the first respondent shall put back the second respondent in the shop and ensure that the second respondent is not illegally dispossessed by the petitioners. Thereafter, the second respondent was put in possession of the subject property and now, he is in possession and enjoyment of the subject property and he is also paying the rent to the said Easwariammal. Therefore, there are materials to attract offences under Sections 427, 380, 457 and 506(2) of IPC.

8. In this regard, it is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court



while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

9. Recently, the Hon'ble Supreme Court of India dealing the very same issue in ***CrI.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not



sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

10. Further the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which



form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioners are mixed question of facts and it cannot be considered in a quash petition under Section 482 Cr.P.C.

11. The provisions of inherent jurisdiction under Section 482 Cr.P.C can be invoked only to meet out the ends of justice and to prevent the abuse of process of law.



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12. Therefore, this Court is not inclined to quash the proceedings in C.C.No.169 of 2018 on the file of the Judicial Magistrate No.II, Coimbatore. Considering the age of the first petitioner, the personal appearance of the first petitioner is dispensed with and she shall be represented by a counsel after filing appropriate application. However, the first petitioner shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment.

13. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous petition is closed. The trial Court is directed to complete the trial within a period of three months from the date of receipt of a copy of this order.

01.11.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
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G.K.ILANTHIRAIYAN, J.

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To

1. The Judicial Magistrate No.II, Coimbatore.
2. The Inspector of Police,
C1, Kattoor Police Station,
Coimbatore.
- 3.The Public Prosecutor
Madras High Court.

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