



Crl.O.P.(MD) No.3863 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD) No.3863 of 2021
and Crl.MP(MD)No.2143 of 2021

Vettrikumar

... Petitioner

Vs

1. The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District. Cr. No. 68 of 2021.

2. Jeyakumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to quash the first information report in Cr.No. 68 of 2021, dated 05.02.2021 on the file of the Inspector of Police, Tiruchendur Police Station, Thoothukudi District.

For Petitioner : Mr. Haroon Rasheed D.S

For Respondents : Mr.M.Sakthikumar (R1)
Government Advocate

Mr.R.J.Karthick (R2)



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ORDER

This Criminal Original Petition has been filed to quash the first information report in Cr.No. 68 of 2021, dated 05.02.2021, pending on the file of the Inspector of Police, Tiruchendur Police Station, Thoothukudi District.

2.The case of the prosecution is that the defacto complainant/second respondent is running a shop in the building situated in 4/49B, Gurunathapuram, Thiruchendur District. The said property is an undivided family property. The defacto complainant is paying taxes and enjoying the property. The disputed property stands in the name of one Rajakani Ammal, who is the mother of the petitioner and the defacto complainant. The mother of the petitioner died in the year 2017, leaving behind her seven legal heirs, including the petitioner and the defacto complainant. While so, on 22.01.2021 at about 08.00p.m., the petitioner taking advantage of the fact that the defacto complainant went to Coimbatore, he broke open the shop and ransacked the entire goods worth about Rs.1 lakhs, threatened the defacto complainant with criminal intimidation. Hence, a case has been registered as against the petitioner.



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3. According to the learned counsel for the petitioner, it is submitted that the first respondent has registered a case against the petitioner for alleged offence under Sections 427, 294(b), 506(ii) IPC in Cr.No.68 of 2021, dated 05.02.2021, based on the complaint given by the second respondent. The second respondent is none other than the younger brother of the petitioner. The property in S.No.687/83 stands in the name of Rajakani Ammal, who is the mother of the petitioner and the defacto complainant, who died in the year 1995. After her death, there was an oral partition between her legal heirs. The defacto complainant executed a sale deed in favour of the petitioner on 08.11.2005, in respect of his share. He purposely suppressed the real facts and disturbed the possession of the petitioner, for which, the petitioner had already filed a suit in O.S.No.38 of 2020, on the file of District Munsif Court, Tiruchendur and the same is pending. To wreck vengeance, this false case has been foisted against the petitioner. Though on the date of occurrence, the defacto complainant was not in the place of occurrence, only on presumption and evidence of hear-say witnesses, this false case has been lodged by the petitioner. Now, in this case, after completing the investigation, charge sheet has been filed in C.C.No.402 of 2023, on the file of Judicial



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Magistrate Court, Thiruchendur and the same is pending. The case has been filed based on false allegations. Even according to the FIR, no offence are made out, since the defacto complainant was not in the place of occurrence. Based on the hearsay evidence, false complaint was filed. Hence, the alleged FIR and charge sheet are liable to be quashed.

4.No counter was filed by the second respondent.

5.The learned counsel for the second respondent would contend that the petitioner is his own brother. The property is owned by his mother. After her death, it was under the common enjoyment of the legal heirs of his mother. There was a shop run by the second respondent and taking advantage of his absence, the petitioner damaged the property, worth about Rs.1 lakh and ransacked the entire goods by break open the shop and further threatened him with criminal intimidation. The same was informed to him through one Sankarapushpam and Iver Pandi. Therefore, he gave a complaint before the respondent Police and the same was registered in Cr.No.68 of 2021 for the offence under Sections 427, 294(b), 506(ii) IPC on 05.02.2021. Thereafter, the first respondent has conducted an investigation and since a prima facie has



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been made out against the petitioner, charge sheet has been filed before the concerned Court. Further, it is contended that the suit filed by the petitioner in O.S.No.38 of 2020 was dismissed after full trial. Hence, the petitioner has to face the trial and this petition is liable to be quashed.

6.The learned Government Advocate appearing for the official respondent would contend that based on the complaint given by the second respondent, a case in Cr.No.68 of 2021 was registered, thereafter, after completing the investigation, final report was filed before the learned Judicial Magistrate, Tiruchendur. Based on the final report, the case was taken on file in C.C.No.402 of 2023 and the same is pending. Since there are sufficient materials to implicate the petitioner in the offence, he has to face the trial. Hence, the petition is liable to be dismissed.

7.Heard both sides and perused the materials on record.

8.On perusal of records it is observed that according to the petitioner, he purchased the share of the defacto complainant in the year 2005 through a sale deed, dated 08.11.2005. But the second respondent has denied



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the same and his contention is that he only run the shop and when he was in outstation, the petitioner damaged the shop, caused criminal intimidation and abused him in obscene words.

8.It is an admitted fact that the petitioner has filed a suit in O.S.No.38 of 2020, on the file of District Munsif, Thiruchendur as against the second respondent and the same was dismissed, on the ground that the property has not been partitioned between the parties and without seeking for the relief of declaration, seeking only bare injunction is not maintainable.

9.On a perusal of sale deed produced by the petitioner, it is seen that the alleged disputed property was sold in the year 2005, for which, the second respondent has executed a sale deed in favour of the petitioner. The contention of the second respondent is that when he was in outstation on the day of occurrence, the petitioner damaged the property and caused criminal intimidation. He heard about the occurrence only through third parties. Though the suit was dismissed, on the ground that the property was not partitioned between the parties and the petitioner failed to seek for the relief of declaration, so far as, the second respondent is concerned he had already



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sold the property to the petitioner in the year 2005 itself. Therefore, the question of damage and other things would not arise. Even according to FIR, he was not in the place of occurrence on the day of occurrence and the complaint was lodged only based on the information received from the third parties.

10.It is an admitted fact that there is a civil dispute pending between the parties. So far as the offence under section 427 IPC is concerned, the property was already sold to the petitioner and as such, the question of damages would not arise and there is no reference about the particulars of properties, which were damaged. So far as the offence under section 294(b) IPC is concerned, the petitioner was not in the scene of occurrence and he received information from the third parties, who were present in the place of occurrence and they have not filed any complaint, since they have not got annoyed. Likewise, the offence under Section 506(ii) IPC also would not attract, since the second respondent was not present in the place of occurrence. Therefore, even according to the FIR, no offence is made as against the petitioner.



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11. In view of the above, pending FIR and CC are clear abuse of process of law. In order to, prevent the abuse of process of law, by invoking provision under Section 482 of Cr.P.C, the case in C.C.No.402 of 2023, on the file of learned Judicial Magistrate, Thiruchendur is hereby quashed.

12. Accordingly, this Criminal Original Petition stands allowed. Consequently the miscellaneous petition is closed.

28.08.2023

NCC : Yes/No
Index : Yes / No
Internet: Yes/ No
PNM

To

1. The Inspector of Police,
Tiruchendur Police Station,
Thoothukudi District. Cr. No. 68 of 2021.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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