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CrI.O.P(MD).No.4121 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.07.2023

Pronounced on : 18.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

CrI.O.P(MD).No.4121 of 2020

and

CrI.M.P(MD) No.2274 of 2020

1.Yesudhasan @ Yesudhasan
2. Bejacks Mickle @ Bejox Michael

...Petitioners

Vs

1.The Sub Inspector of Police
Colachel,
Kanyakumari District

2. Nithin

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in Crime No.59 of 2019 on the file of the Sub Inspector of Police, Colachel, Kanyakumari District and quash the same as against the petitioners.

For Petitioners : Mrs.J.Anandhavalli

For R-1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2 : Mr.A.C.Asaithambi



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ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.59 of 2019 on the file of the Sub Inspector of Police, Colachel, Kanyakumari District.

2. According to the petitioners, the first petitioner is the father of the second petitioner and the second respondent is the son of the first petitioner's brother Thomas Arul Raj. The first petitioner is running a mini bus service under the name and style of "Pankiraj Transport Corporation" (in short 'PTC'). Two mini buses bearing Reg.Nos.TN 74 Y 2747 and TN 74 Y 4063 are part of the above said fleet of mini buses. The above said buses stood registered in the name of the said Pankiraj, due to the first petitioner's adoration for him. The said Pankiraj had executed a deed dated 25.01.2012 relinquishing all his rights with regard to the said two mini buses in favour of the first petitioner. The father of the second respondent used to visit the office of the first petitioner to meet the father of Pankiraj, At that time the father of the second respondent committed theft of registration certificate books of the above said two mini buses belonging to the first petitioner. For that criminal complaint was lodged and no action was taken by the police. Thereafter the first petitioner issued notice dated 27.04.2017 to the Regional Transport Officer, Marthandam and others and the second respondent has issued reply stating that Pankiraj had executed



settlement deed dated 22.11.2016 in favour of the second respondent with respect to the above said two mini buses. Thereafter the first petitioner filed a civil suit in O.S. No.47 of 2017 before the Vacation Civil Judge of Kanyakumari at Nagercoil, subsequently numbered as O.S.No.47 of 2017 on the file of the learned Principal District Judge of Kanyakumari at Nagercoil against the second respondent and his father for declaration of the above said document dated 26.11.2016 as null and void and the same is pending. While the facts are being so, the first respondent had given a complaint before the learned Judicial Magistrate, Eraniel under Section 156(3) of Cr.P.C., alleging that the petitioners and others committed theft of one mini bus bearing Reg. No.TN 74 Y 4063 from the common depot at Sirayanvilai and thereafter the said case has been forwarded to the Colachel Police Station and based on the above said complaint the impugned First Information Report has been registered in Crime No.59 of 2019. In fact the said buses were under the possession of the petitioners and no occurrence had happened as alleged in the complaint and the First Information Report. Only to harass the petitioners the present complaint has been lodged, hence the First Information Report is liable to be quashed.

3. No counter was filed by the respondents



4.The learned counsel appearing for the petitioners contended that the petitioners owned the disputed property and the possession of the vehicle was with them. Infact originally the buses belongs to the one Pankiraj and the said Pankiraj had given the buses to the petitioners through settlement deed dated 25.01.2012 and thereafter the buses were even plying under the management of the first petitioner. While the facts are being so, the second respondent created false documents and settlement deed and the same was under challenge before the Civil Court in O.S. No.47 of 2017 before the learned Principal District Judge of Kanyakumari. The second respondent had given false complaint alleging that the said buses were stolen by the petitioners. Even according to the complaint the alleged date of occurrence is on 10.10.2018 and the complaint was lodged on 04.04.2019 and there is an inordinate delay. Since the petitioners are the owner of the property commission of theft will not arise and only to harass the petitioners the First Information Report has been registered and it is pure abuse of process of law and hence the First Information Report is liable to be quashed.

5. The learned counsel appearing for the second respondent contended that the above said buses belongs to the second respondent and it was parked in the common depot at Sirayanvilai. On the date of occurrence the petitioners along with others had taken the buses



without the consent of the petitioners and at that time the second respondent was in Delhi and after coming to know about the same, he gave a complaint on 13.10.2019 before the Colachel police station. No action has been taken, thereafter he had sent the copy of the complaint to the concerned Superintendent of Police on 13.10.2018 and no action was taken, therefore he has filed complaint under section 156(3) before the concerned Magistrate and it was forwarded to the first respondent and this First Information Report came to be registered.

6. The learned Additional Public Prosecutor appearing for the first respondent represented that based on the complaint received from the learned Judicial Magistrate, Eraniel the first respondent registered the First Information Report and after proper investigation filed final report and the same is pending for further proceedings.

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

8. On perusal of the records it is observed that there is a dispute between the parties with regard to mini buses and the same is also admitted by both the parties. Originally the mini buses belongs to Pankiraj and both of them claiming the said mini buses through



separate settlement deeds. Infact the first petitioner herein has filed civil suit for declaration with regard to the settlement deed which was alleged to have been executed in favour of the second respondent. While the facts are being so, the second respondent had given representation before the transport authorities for transfer of permit in his favour regarding mini buses. The transport authorities have directed him to produce the legal heir certificate and consent from the other legal heirs of the deceased persons. Thereafter so many writ petitions have been filed by the parties and finally on 10.12.2018, this Court in W.P(MD) No.21095 of 2018 has passed the following order, which reads as follows:

“6.I too feel inclined to adopt the same course of action. The third respondent no doubt has initiated a civil suit questioning the very validity of the settlement deed said to have been executed in favour of the writ petitioner. But then, no interim order has been granted in the said civil suit. But, at the same time, the present proceedings will have to abide by the outcome of the civil suit. This Court called upon the writ petitioner to indicate his willingness to act like a party receiver. The learned counsel appearing for the writ petitioner answered in the affirmative. The learned counsel for the writ petitioner submitted that the petitioner will deposit 50% of the net profits to the credit of O.S No.47 of 2017 on the file of the District Judge, Nagercoil.

7.Recording the said undertaking and respectfully following the decisions of the Hon'ble Madras High Court referred to above, I am of the view that in the interest of the travelling public and to preserve the permits in question, the order impugned in this writ petition deserves to be quashed. It is accordingly quashed. The first respondent is directed to effect transfer on the permits in question in favour of the writ petitioner within a period of three



weeks from the date of receipt of a copy of this order. The writ petitioner shall however hold the same not only for his benefit but for the benefit of the other legal heirs. Of course, this will be subject to the outcome of O.S No.47 of 2017 on the file of the District Judge, Nagercoil. It is open to the third respondent to verify the accounts submitted by the writ petitioner. It is also open to the civil court to pass appropriate directions in that regard”

9. In view of the above said order, it is clear that the ownership of the property has to be decided through the suit in O.S. No.47 of 2017 on the file of the District Judge, Nagercoil. In the meantime permit is to be transferred in favour of the second respondent herein. Further the second respondent should deposit 50% of net profit to the credit of O.S. No.47 of 2017 on the file of the District Judge, Nagercoil. But thereafter on 04.04.2019 the same petitioner, i.e., R2 herein in W.P(MD) No.21095 of 2018 who got favourable order dated 10.12.2018 in his favour once again filed a complaint before the learned Judicial Magistrate, Eraniel dated 25.01.2019 stating that two mini buses bearing Reg. Nos. TN 74 Y 4603 and TN 74 Y 2747 were parked in the common depot and the other bus bearing Reg. No. TN 74 Y 4603 was stolen by the petitioner and other accused persons on 10.10.2018 at about 6.00pm. If the alleged occurrence had taken place on 10.10.2018, the second respondent herein would have stated the same in the writ petition which was disposed on 10.12.2018 i.e., after alleged date of occurrence.



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10. But nothing found in the order of the said writ petition dated 10.12.2018 with regard to the alleged contents of the complaint, whereas the second respondent got order in his favour with regard to the same property, again filed complaint dated 25.01.2019 before the magistrate concerned and the same was forwarded to the first respondent and based on which the impugned First Information Report has been registered by the first respondent. When the occurrence had taken place on 10.10.2018 what else prevented the second respondent to take action immediately that too without any mention before the court and got order dated 10.12.2018. Even according to the complaint he returned from Delhi on 13.10.2018 and thereafter he gave complaint before the first respondent police, but they did not register the case, thereafter on 14.12.2018 he has sent the representation to the Superintendent of Police, Kaniyakumari District. But no documents filed by him to prove that he gave complaint and police had not taken any action on his complaint. When the second respondent came to the knowledge about the alleged theft on 13.10.2018, the same was not brought to the knowledge of the Court while arriving compromise in W.P(MD) No.21095 of 2018 dated 10.12.2018. Had the occurrence was taken place as alleged in the complaint, the second respondent herein ought to have brought to the knowledge Court while passing order dated 10.12.2018, whereas the first petitioner is claiming that the



property in question belongs to him and the same was in his possession and civil suit is also pending.

11. Further in the said W.P(MD)No.21095 of 2018 the petitioner herein who was arrayed as third respondent has stated that one of the two buses is very much lying in his custody and physical possession. The same is reflected in the order dated 10.12.2018. The date of the presentation of the complaint is dated 25.01.2019. The petitioner herein prior to the complaint itself pleaded that one of the buses is under his custody and possession, thereby possession of vehicle itself is in question and one of the main ingredient to constitute the offence of theft in possession. There is no ingredients for the offence of theft when the possession itself in question. Further after hearing both side counsels and as argued by them, this Court passed orders in WP(MD) No.21095 of 2018, dated 10.12.2018, but the very same petitioner in that writ petition who is the second respondent herein once again later filed this impugned complaint by suppressing the real facts and order of this Court dated 10.12.2018 and the same is pure abuse of process of law. Though charge sheet is filed in trial Court, this Court can invoke the inherent powers to prevent the abuse of process of law. Therefore, this Court by invoking the provisions under Section 482 of Cr.P.C inclined to quash the First Information Report.



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12. Accordingly the Criminal Original Petition is allowed and First Information Report in Crime No.59 of 2019 on the file of the first respondent police is hereby quashed. Consequently connected miscellaneous petition is closed.

18.07.2023

NCC : Yes/No
Internet : Yes/No
Index : Yes/No
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To

- 1.The Sub Inspector of Police
Colachel,
Kanyakumari District
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P. DHANABAL,J.

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