



CrI.O.P.(MD).No.9545 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CrI.O.P.(MD).No.9545 of 2021

and

CrI.M.P(MD) No.4876 of 2021

1. Rajan
2. Dhanalakshmi

... Petitioners

Vs.

1. The Inspector of Police
Bodinayakkanur Town Police Station,
Theni District

2. Vijaya

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating to the First Information Report in Crime No.153 of 2021 dated 18.3.2021 on the file of the Inspector of Police, Bodinayakkanur Town Police Station, Theni District and quash the same as against the petitioners.

For Petitioners : Mr.P.Senguttuarasan

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

For R-2 : Mr.A.Ganesan



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.153 of 2021 dated 18.3.2021 on the file of the Inspector of Police, Bodinayakkanur Town Police Station, Theni District.

2. According to the petitioners based on the complaint given by the second respondent, the first respondent registered a case in Crime No.153 of 2021 for the offences under Sections 294(b), 323, 342 and 506(i) of IPC @ 341, 294(b), 323, 342, 506(i) of IPC and Section 4 of TNPHW Act. According to the defacto complainant civil suit in O.S. No. 322 of 1997 was filed before the District Munsif Court, Bodinayakkanur and decreed in favour of the defacto complainant. Against the said judgment and decree appeal was filed in A.S.No.4 of 1996 before the District Court, Theni and the same was dismissed. Thereafter second appeal in S.A.(MD) No.628 of 2007 was filed and the same was also dismissed. In the meantime the defacto complainant went to the disputed property for taking possession in her favour. The first petitioner prevented the same and also stated that he has filed a civil suit in O.S. No.200 of 2012 and the same is pending before the District Munsif Court, Bodinayakannur. The defacto complainant is struggling long time and she also has been in possession in one part of the property and the first



petitioner trespassed into another part of the property. The same was complained by the defacto complainant before the first respondent. In and the same was enquired by the first respondent. In the meantime the suit filed by the first petitioner was dismissed on 12.03.2021. The defacto complainant along with her daughter and her relative Navaneethan and car driver and one George went to the property for recovering the same, at that the first petitioner and others prevented them and abused the defacto complainant by using filthy language and also threatened them and pulled the daughter of the defacto complainant and car driver inside the room and locked the same and the same was informed to Theni District Control room No.100 and the first respondent police recovered the above said persons and thereby the present case has been registered. Infact these petitioners have not committed any offence as alleged in the First Information Report. The first petitioner is having a Trust and running the hostel for poor children. He was the lessee of the property from one Pavunraj who is the brother of the defacto complainant and the same was extended periodically. Inorder of wreck vengeance for the civil dispute this First Information Report has been registered and the same is clear abuse of process of Court.

3. The second respondent filed counter and stated that the second respondent is the owner of the property and she got the property through Will. One portion of the property was occupied by her brother



illegally and she has also filed a suit and the same was decreed in her favour. Thereafter her brother filed appeal and he same was also dismissed. She has filed Execution Petition to take possession of the property and at that time one Rajan/A1 filed suit in O.S.No.200 of 2012 and the same was also dismissed. After getting decree the trespasser did not vacate the premises and hence she has asked to vacate the place at that time one Rajan/A1 pushed her down and hit her and also uttered filthy language and threatened her with dire consequences and also illegally confined the defacto complainant and her daughter and then she called the emergency number 100 and they came and rescued them. The defacto complainant had taken treatment in the Government hospital, Bodi, thereby she gave a complaint before the respondent police. Since the petitioners are influential persons the police refused to register the First Information Report, thereby the Deputy Superintendent of Police has taken action as against the trespasser. Inorder to grab the property the accused persons committed some illegal activities and for the above said act complaint was lodged, hence the petition is liable to be dismissed.

4. The learned counsel appearing for the petitioners would contend that the first petitioner is the lessee and he legally got possession of the property from the owner of the property and as per the lease he has been enjoying the property. Therefore the first petitioner



filed a suit in O.S. No.200 of 2012 before the District Munsif Court, Bodinayakanur and the same was dismissed. However on the date of occurrence the second respondent along with others entered into premises of the petitioners and they only assaulted the petitioners and committed the offence and for that the petitioners have given complaint but the police have not taken any action. Per contra based on the complaint given by the second respondent with false allegations the present First Information Report has been registered. Due to civil dispute between the parties in order to give criminal colour to the civil dispute this false complaint with allegations has been lodged as against the petitioner and another lady aged about 70 years. Even according to the First Information Report no offences are made out as against these petitioners and thereby the First Information Report is liable to be quashed.

5. The learned counsel appearing for the second respondent would contend that these petitioners illegally occupied the property of the second respondent and the property originally belongs to the second respondent and she got the property through Will. Already there was a dispute between the second respondent and her brother in respect of the property and civil suit was filed and the same was decreed in her favour and his brother filed A.S. No. 4 of 1996 before the District Court, Theni and the same was also dismissed and the second respondent is the



absolute owner of the property. These petitioners alleged to be lessee from her brother also filed a suit and the same was also dismissed. Thereafter when the second respondent went to the disputed house and asked to vacate the petitioner they assaulted and abused using abusive words and wrongfully restrained thereby he gave a complaint and the First Information Report was registered and now the case was investigated and also filed final report. As per the final report, there are *prima facie* materials available as against these petitioners and hence the petitioners have to face the trial and at this stage the petition is liable to be dismissed.

6. The learned Additional Public Prosecutor appearing for the first respondent would contend that already investigation was completed and charge sheet was filed before the learned Judicial Magistrate, Bodinayakanur and the same was taken on file in C.C.No.289 of 2023 and thereby the petitioners have to face the trial and at this stage the petition is liable to be dismissed.

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

8. It is an admitted fact that there is a dispute pending between the parties with regard to vacating the premises. The second respondent



also admitted that she filed Execution Petition for taking delivery and the same is also pending. At this stage the second respondent went to the place of occurrence at that time the said occurrence said to have taken place, when the case is pending before the civil Court for taking delivery. As per the First Information Report and final report these petitioners assaulted the second respondent and others when they asked to vacate the premises.

9. On careful perusal of the First Information Report and the records it is revealed that while the execution proceedings are pending before the civil Court for taking delivery of property the second respondent and others went to the house of the petitioners and asked to vacate the property and thereby the occurrence was happened. The second respondent once filed an execution petition for taking delivery they have to wait till the order passed by the trial Court and the petitioners have to be evicted in due process of law but the second respondent and others without waiting for the result went to the place of occurrence and asked to vacate the premises. These facts show that the second respondent and others attempted to evict the petitioners without due process of law. The petitioners have a right to protect their possession when the proceedings are pending before the Court.



10. It is admitted by both side counsels that after the registration of the case the petitioners have vacated the premises and now the petitioners are not in possession of the property. Recording the said submission and considering that in order to protect their possession these petitioners restrained the second respondent and others who tried to vacate the petitioners during pending civil proceedings, hence by invoking Section 95 of IPC this Court can quash the proceedings since the acts are trivial in nature.

11. The offences under Section 341 and 342 of IPC would not attract since the second respondent has to take possession through civil Court according to law and the allegations are also vague and not specific. Further the second respondent herself admitted that so far delivery was not given from the Court. Further as per the contention of the petitioner already premises has been vacated during pendency of this petition.. So far as offence under Sections 294(b) and 506(ii) of IPC are concerned on perusal of the contents of the First Information Report it is revealed that due to civil dispute between the parties criminal colour has been given to the civil case and the allegations are general and omnibus. So far as section 323 of IPC is concerned even according to the final report the defacto complainant has not went to the hospital for taking treatment and the allegations against the petitioners are general and omnibus and are not specific, thereby the pending First Information



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Report and the C.C.No.289 of 2023 on the file of the learned Judicial Magistrate, Bodinayakanur are liable to be quashed

12. Accordingly this Criminal Original Petition is allowed and the First Information Report and the Charge sheet in C.C.No.289 of 2023 on the file of the learned Judicial Magistrate, Bodinayakanur are hereby quashed in their entirety. Consequently connected miscellaneous petition is closed.

19.09.2023

Index : Yes / No

Internet : Yes / No

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To

1.The Judicial Magistrate, Bodinayakanur

2. The Inspector of Police
Bodinayakkanur Town Police Station,
Theni District

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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