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CrI.O.P.(MD)Nos.10162, 11591, 11914 and 12289 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/12/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP(MD)Nos.10162, 11591, 11914 and 12289 of 2023

and

CrI.MP(MD)Nos.9384 and 9630 of 2023

(1)CrI.OP(MD)No.10162 of 2023:-

M.Murugan

: Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District
at Nagercoil.

2.The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.

3.The Superintendent of Police,
CBCID,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery,
Periyamedu,
Chennai-600 007.

: Respondents

PRAYER:-Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to issue appropriate direction to the first respondent to transfer the investigation in Crime No.66 of 2023, dated 23/05/2023 on the file of the 2nd respondent to the 3rd respondent and file a final report before the jurisdictional magistrate within the time limit that may be stipulated by this court.



Cr.O.P.(MD)Nos.10162, 11591, 11914 and 12289 of 2023



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For Petitioner : Mr.G.Kandhavadivelan

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

(2)Cr1.OP(MD)No.11591 of 2023:-

M.Murugan : Petitioner

Vs.

- 1.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.
- 2.The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
- 3.C.Robidson
(R3 impleaded as per the order,
dated 12/10/2023 made in
Cr1.MP(MD)No.13591 of 2023
in Cr1.OP(MD)No.11591 of 2023)

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, directing the 1st and 2nd respondents to give proper protection to the petitioners for their life and liberty as per the complaint made through online by the petitioner dated 17/06/2023 and pass such further or other orders.



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For Petitioner : Mr.S.Sureshkumar
For R1 and R2 : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)
For 3rd Respondent : Mr.R.Anand

(3)Cr1.OP(MD)No.11914 of 2023:-

M.Murugan : Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.

2.The Inspector of Police,
Vadasery Police Station,
Nagercoil.

3.The Sub Inspector of Police,
Vadasery Police Station,
Nagercoil.

: Respondents

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the impugned summons in Ref:No.Nil, dated 19/06/2023 issued by the 3rd respondent and quash the same and pass such other further orders.

For Petitioner : Mr.G.Kandhavadivelan

For Respondents : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



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(4)CrI.OP(MD)No.12289 of 2023:-

M.Murugan

: Petitioner

Vs.

1.The Superintendent of Police,
Kanyakumari District,
at Nagercoil.

2.The Sub Inspector of Police,
DCB cum Anti Land Grabbing Special Cell,
Nagercoil,
Kanyakumari District.

3.Mrs.Bamila Moses

: Respondents

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the impugned summons in Ref: No.153/2023-P2/21342/2023, dated 19/06/2023 issued by the 2nd respondent and quash the same and pass such other further orders.

For Petitioner

: Mr.S.Sureshkumar

For R1 and R2

: Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

COMMON ORDER

CrI.OP(MD)No.10162 of 2023 has been filed seeking for direction to the 1st respondent to transfer the investigation in Crime No.66 of 2022 on the file of the



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2nd respondent to the 3rd respondent and file a final report before the jurisdiction Magistrate within time limit. CrI.OP(MD)No.11591 of 2023 is filed seeking for direction to the respondents 1 and 2 to give police protection to the petitioner's life and liberty, whereas CrI.OP(MD)Nos.11914 and 12289 of 2023 have been filed seeking quashment of the impugned summons issued by the police.

2.The facts in brief:-

(i)The petitioner herein namely Murugan filed a suit in O.S No.139 of 2023 against the third respondents in CrI.OP(MD)Nos.11591 and 12289 of 2023 and others on the file of the Principal District Court, Nagercoil stating that Dr.Bamila Moses is the absolute owner of the property situated in Balamore Main Road, Vadasery Village. A building was constructed and that was under the management of the 1st defendant's husband namely Johnsily Moses, who is now deceased.

(ii)According to the petitioner, the 2nd defendant namely C.Robitson @ Robinson, who is the 3rd respondent in CrI.OP(MD)No.11591 of 2023 is the benami of the 1st defendant. J.Godwin Moses is the son of Dr.Bamila Moses.



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He became the tenant under Dr.Bamila Moses. It was an unregistered agreement. Advance amount of Rs.5,00,000/- was paid and monthly rent was fixed at Rs.15,000/-. From 2014 onwards, he became the tenant and running a hotel and tiffin centre called 'Sheema Restaurant' till 2017.

(iii)After expiry of the tenancy, in the month of January 2018, on coming to know that the owner proposed to sell the property, an agreement was reached between them for the value of Rs.36,00,000/-. Later, he started a business called 'Sheema Restaurant'. Electricity service connection is standing in the name of one Muthusamy. The tenancy was in force till 05/01/2023. Due to sudden demise of the 1st defendant's husband, he approached Dr.Bamila Moses to execute a sale deed after receiving the balance amount. At that time, the 1st defendant told him that to comply the existing tenancy. But later, he came to know that the property was sold to the 3rd respondent herein, on 19/02/2021. On coming to know that Dr.Bamila Moses/3rd respondent in Crl.OP(MD)No.12289 of 2023 colluded together and cheated the petitioner. So with this, he filed the suit in O.S No.139 of 2023 on the file of the I Additional District Judge, Nagercoil to declare that the sale deed, dated 19/12/2021 is not valid; and for execution of the sale deed in favour of



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him, after receiving the balance sale consideration; and for permanent injunction in respect of the possession of the property, etc. The suit was filed in the month of February, 2023.

(iv) Pending suit, a complaint was lodged by this petitioner, on 23/05/2023 stating that he is the tenant under Dr.Bamila Moses from 2012. He has also stated about the othi deeds in the year 2018. At that time, Dr.Bamila Moses and J.Godwin Moses threatened him to vacate the building. In 2012, the complex was purchased by C.Robitson @ Robinson. He was making arrangement to vacate him. Over which, a case was registered against C.Robitson @ Robinson for the theft of camera put up on the premises. Enquiry in CSR No.834 of 2021 was undertaken. Since theft continued, he sent a complaint to the Superintendent of Police, Kanyakumari District. But no action was taken. On 17/05/2023, he was called for enquiry and he also appeared before the Inspector of Police, Vadachery Police Station along with his Advocate. But the accused did not appear.

(v) On coming to know about the case filed by him, the accused along with known five Advocates in the night at about 11.30 pm, caused severe damage to the building



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and committed theft of articles worth about Rs.90,00,000/-. On coming to know about the occurrence, he immediately went to that place. He was prevented from making obstruction and his mobile phone was also snatched by one Prabhu @ JCB Prabhu, criminally intimidated and assaulted. In that occurrence, his wife was also assaulted. The worth of the articles stolen by the accused is Rs.1.15 Crores. On the basis of the above said occurrence, a case in Crime No.66 of 2023 was registered for the offences under sections 147, 148, 294(b), 323, 427, 380 and 506(ii) of IPC.

3.In the above said factual background, CrI.OP(MD)No.10162 of 2023 is filed seeking transfer of the investigation in Crime No.66 of 2023 to the Superintendent of Police, CBCID, Chennai stating that heavy damage was caused by the accused persons and he is in continuous possession of the property; threat and other criminal activities continued, on 28/05/2023 and on 29/05/2023. In spite of information to the police, no proper action was taken. But one Lady Sub-Inspector of Police insisted the petitioner to make a compromise. Only at that time, he came to know the occurrence that took place, on 22/05/2023 with the connivance of the police. Even though, really Rs.1.25 Crores and his mobile phone,



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computer and other documents were stolen, no recovery was made so far. If the investigation is carried on by the 2nd respondent, he will not get any fair investigation and justice will not also be done. So with this, he filed Crl.OP(MD)No.10162 of 2023 seeking transfer of the investigation as stated above.

4.Crl.OP(MD)No.11591 of 2023 was filed by the petitioner stating that since no proper action was taken by the respondents police on his complaint on coming to know that Crl.OP(MD)No.10162 of 2023 was filed by him, the 2nd respondent refused to entertain any complaint from the petitioner stating that he will not give any police protection. In pursuance of the above said refusal on the part of the 2nd respondent, this petition is filed seeking police protection to the life and limb of the petitioner, on the basis of the representation, dated 17/06/2023.

5.Crl.OP(MD)No.11914 of 2023 is filed stating that pending suit in O.S No.139 of 2023 and the investigation in Crime No.66 of 2023 and hearing of Crl.OP(MD)No.11591 of 2023, on 10/06/2023, one Magesh appears to have given a complaint against the petitioner, over which summon was issued to him to appear, on 20/06/2023.



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6. Seeking quashment of the summon, this petition is filed stating that he already lodged a complaint against Magesh, who is an Advocate. But the above said Magesh was also one among the persons. The complaint was registered for the offences under sections 147, 148, 294(b), 323, 427, 380 and 506(ii) of IPC, for the occurrence took place on 23/05/2023. But the FIR was registered only against five Advocates. No steps have been taken by the respondents 1 to 3 to identify the Advocates, who were involved in the occurrence. On that account, he filed CrI.OP(MD)No.11914 of 2023.

7. Another CrI.OP(MD)No.12289 of 2023 is filed by this petitioner stating that Dr.Bamila Moses appears to have lodged a complaint against the petitioner, over which, summon, dated 19/06/2023 was issued. In the petition, he is repeating the averments made in CrI.OP(MD)No.11914 of 2023. In the light of the above said facts narrated, summon issued by the 2nd respondent is liable to be quashed.

8. Heard both sides.

9. It is an issue between the Tenant-cum-Agreement Holder and the 3rd respondent. Things went out of the



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control, because of the strained relationship. What actually went wrong with them is a matter for investigation or for the trial court to take into account in O.S No.139 of 2023 on the file of the Principal District Court, Nagercoil.

10.I am not entering into that issue, reasoning for the strained relationship between them. But the petitioner is not clear in his case as to whether the sale agreement was entered into between them or it is only an othi document. Because in the petition in CrI.OP(MD)No.10162 of 2023, he has stated that it was a sale agreement. But suppressing the existence of the sale agreement, the 3rd respondent sold the property. In the petition, it has been stated by the petitioner that C.Robitson @ Robinson along with others ransacked the articles in the building, for which only the case in Crime No.66 of 2023 has been registered.

11.At the time of argument, the learned counsel appearing for the petitioner would submit that when the occurrence was happening, he informed the police. But the police did not immediately come to the spot. Had they came to the spot immediately, the occurrence would not have taken place at all. But reading of the complaint



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does not indicate anything over this issue or point as the case may be.

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12.According to the petitioner, some five Advocates are also present in the scene of occurrence, who also involved in causing heavy damage. Those persons were not properly identified. On the basis of the complaint given by one of the Advocate namely Magesh, summon has been issued.

13.It is the case of the petitioner that in spite of the above said ransack and damage, he repaired the building and continued to be in possession. But this was objected by the 3rd respondent stating that he voluntarily vacated the premises after the tenancy period was over. It is the habit of the petitioner to demand ransom amount from the building owners for vacating premises etc., over which, some cases have also been registered against him.

14.But from the perusal of the records, it was noticed that some of the stocks were available in the building. When a question was put to the learned counsel appearing for the 3rd respondent, but he replied that no stock is available. There are only empty boxes.



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15.Now whatever it may be, it is a disputed fact. It is completely within the jurisdiction of the Investigating Officer and the trial court in the civil suit. So I will confine myself only with regard to the limited issue.

16.With regard to quashment of summon, I am completely at loss to understand the reasoning given by the petitioner. Whether the complaint given by one Magesh against this petitioner is true or not cannot be and should not be a matter for consideration by this court. Simply because, he has made allegations against the Investigating Officer, that will not give any right to him to resist the summon. So the petitioner has to necessarily appear before the 3rd respondent herein to answer the complaint given by Magesh and Robin. I expressed this opinion at the time of hearing itself.

17.Regarding police protection, as stated above, it is an issue between the erstwhile Landlord and the Tenant or the Agreement Holder and owner of the property, whatever capacity that may be called. But except that issue, there is no ground to believe that the petitioner was put to under life threat by the 3rd respondent and others.



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18.Subsequent to the occurrence, even though, it has been stated that on two or three occasions, some rowdy elements tried to cause damage and assault him, absolutely no substantial proof has been filed. Unless there is a life threat to the petitioner, he cannot maintain the request for police protection. Under the guise of getting police protection, it appears that he wants to protect the possession of the building, which I am of the considered view is not permissible in view of the pendency of the suit in O.S No.139 of 2023. That petition is liable to be rejected accordingly, it is rejected.

19.Regarding transfer of the investigation, in the light of the above said factual background, I am of the considered view that the investigation is being taken in a proper manner.

20.Perusal of the CD file also does not indicate any biased attitude on the part of the 2nd respondent. During the course of investigation, C.Robitson @ Robinson has given explanation that after getting proper order from the Municipal Authorities, he started to demolish the building. But never entered into any controversy with this petitioner. So as stated above, it is completely a matter for investigation and the issue has to be tried by



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the civil court in O.S No.139 of 2023 on the file of the Principal District Court, Nagercoil.

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21.Further, it is seen that spot inspection was made and CCTV footages were also verified. But the identification of the vehicles and persons are now under investigation. So, I find no necessity or ground has been proved by the petitioner to transfer the investigation. But however, in view of the factual position, let the investigation be completed by the Deputy Superintendent of Police, Nagercoil. Accordingly, Crl.OP(MD)No.10162 of 2023 is **disposed of** with a direction to the Deputy Superintendent of Police, Nagercoil to take up the further investigation in this matter and complete the same within a period five months from the date of receipt of a copy of this order. A report be filed within a period of three months before the concerned court.

22.In the result, Crl.OP(MD)Nos.11591, 11914 and 12289 of 2023 are **dismissed**. Crl.OP(MD)No.10162 of 2023 is **disposed of** as indicated above. Consequently, connected Miscellaneous Petitions are closed

21/12/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Superintendent of Police,
Kanyakumari District
at Nagercoil.
- 2.The Inspector of Police,
Vadasery Police Station,
Kanyakumari District.
- 3.The Superintendent of Police,
CBCID,
No.132, Commissioner Office Building,
EVK Sampath Road,
Vepery,
Periyamedu,
Chennai-600 007.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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