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Crl.O.P(MD)No.13677 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.10.2022

DELIVERED ON : 30.06.2023

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P(MD).No.13677 of 2022

and

Crl.M.P.Nos.8737 and 8738 of 2022

1.Nagarajan

2.Santhi

3.Rajesh

: Petitioners/Accused Nos.1 to 3

Vs

1.The Inspector of Police,
Kenikarai Police Station,
Kenikarai,
Ramanathapuram,
Ramanathapuram District.
(In Crime No.342 of 2018)

: 1st Respondent/Complainant

2.Asarudeen

: 2nd Respondent/De-facto

Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to P.R.C.No.27 of 2021 on the file of the learned Judicial Magistrate No.II, Ramanathapuram and quash the same.

For Petitioners : Mr.AR.Kannappan



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For Respondent 1 : Mr.B.Nambiselvan
Additional Public Prosecutor

For Respondent 2 : No appearance

ORDER

This Criminal Original Petition had been filed seeking to quash the P.R.C.No.27 of 2021 on the file of the learned Judicial Magistrate No.II, Ramanathapuram.

2.The learned Counsel for the Petitioners would submit that the first Petitioner is the landlord and the second Respondent is the tenant. The second Respondent is running a shop in the name and style of Mr. and Mrs. Garments. After expiry of the lease period, the second Respondent as Tenant, refused to vacate and hand over the possession. The request of the first Petitioner/landlord to hand over possession of the property, as he needs the property for his own purpose, was refused by the second Respondent/tenant and also stated that instead of paying the rent, he will deposit the rent into Court. Therefore, there was a dispute between them. While so, with an ulterior motive to harass the Petitioner/landlord, the second Respondent had given a complaint as though the landlord/Petitioner herein broke open the lock and removed the garments meant for sale and



also stolen money from the shop. Based on the complaint preferred by the second Respondent/tenant, the first Respondent had registered CSR No.45 of 2016. There were talks held in the Police Station. The first Petitioner seeking the second Respondent to vacate the property and hand over possession to the first Petitioner. The second Respondent on the other hand refusing the same. While so, with the false complaint to the learned Judicial Magistrate No.II, Ramanathapuram, the second Respondent preferred a complaint as though the Petitioners have broke open the lock of the shop and removed the garments meant for sale and stolen the money. The learned Judicial Magistrate No.II, Ramanathapuram, had issued a direction to the first Respondent to register a case and investigate it. Based on the direction of the learned Judicial Magistrate No.II, Ramanathapuram, the first Respondent had laid final report as though the Petitioners had committed such offences, as alleged in the complaint attracting the provisions of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992.

3.It is the further contention of the learned Counsel for the Petitioners that as per the final report laid by the first Respondent, all the witnesses cited are hearsay witnesses. As per the complaint preferred by the second Respondent, the neighbours of the Petitioners had informed the second



Respondent that the first Petitioner as landlord broke open the lock and removed the garments meant for sale. If that be so, the Police ought to have cited direct witnesses. As per the charge sheet, there is no eye witnesses to the alleged occurrence. It is a case preferred by the second Respondent with an ulterior motive to cause harassment to the landlord/Petitioner herein. Therefore, the learned Counsel for the Petitioners seeks to quash the charge sheet on the ground that all the witnesses cited in the charge sheet are hearsay witnesses.

4.Mr.B.Nambiselvan, learned Additional Public Prosecutor vehemently objected to the line of arguments made by the learned Counsel for the Petitioners stating that the facts stated by the second Respondent/tenant are proved. What had been argued by the learned Counsel for the Petitioners can at best be treated as valuable defence of the Accused. The valuable defence of the Accused is to be raised only during trial and not at the stage of exercising extraordinary powers of the High Court under Section 482 of Cr.P.C. Therefore, this Criminal Original Petition lacks merits and is to be dismissed.

5.Point for consideration:



***Whether the final report filed by the first Respondent
before the Court of the learned Judicial Magistrate No.II,
Ramanathapuram in P.R.C.No.27 of 2021 is to be quashed?***

6.On perusal of the copy of the final report filed along with the Petition, it is found that as rightly pointed out by the learned Counsel for the Petitioners, all the cited witnesses are hearsay witnesses including the complainant. The complaint is based on hearsay statement of witnesses. If any witness had seen the occurrence, then the Investigation Officer should have examined those witnesses to the occurrence, who claimed to have informed the second Respondent. Those witnesses ought to have been cited as direct witnesses to the occurrence. No such witnesses had been cited by the Investigation Officer. Under those circumstances, when there is lack of direct witness, as rightly pointed out by the learned Counsel for the Petitioners, it is nothing but a cooked up case only to cause harassment to the Petitioners and to hold on the property by the second Respondent.

7.In the light of the above discussion, the point for consideration is answered in favour of the Petitioners and against the Respondents. The final report filed by the first Respondent before the Court of the learned Judicial Magistrate No.II, Ramanathapuram in P.R.C.No.27 of 2021 is to be



quashed. The Petitioners need not be directed to face rigours of trial.

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In the result, **this Criminal Original Petition is allowed.** The case pending in P.R.C.No.27 of 2021 on the file of the learned Judicial Magistrate No.II, Ramanathapuram, is quashed. Consequently, connected miscellaneous petitions are closed.

30.06.2023

Index :Yes/No
Internet : Yes/No
SRM



To

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- 1.The Judicial Magistrate No.II,
Ramanathapuram.
- 2.The Inspector of Police,
Kenikarai Police Station,
Kenikarai,
Ramanathapuram,
Ramanathapuram District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

SRM

Order made in
CrI.O.P(MD)No.13677 of 2022

30.06.2023