



Crl.O.P.(MD).No.15321 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :05.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

Crl.O.P.(MD).No.15321 of 2020

and

Crl.M.P(MD) No.7425 of 2021

1. B.Muthu Venkatraman
2. Santhi
3. Yehtiraju

... Petitioners

Vs.

1. The Inspector of Police
Fort Police Station,
Trichy City

2. T.V.Sreenivasan

..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.1563 of 2020 on the file of the first respondent police and quash the same as illegal.

For Petitioners : Mr.R.Ramanujam

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

For R-2 : No appearance



ORDER

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This Criminal Original Petition has been filed to quash the First Information Report in Crime No.1563 of 2020 on the file of the first respondent police.

2. When the matter is taken up for hearing the learned Additional Public Prosecutor represented that already the case has been investigated and final report has been filed and the same was taken on file in S.T.C. No.6158 of 2023 by the learned Judicial Magistrate No.I, Trichy.

3. According to the petitioners based on the complaint given by the second respondent the first respondent had registered a case in Crime No.1563 of 2020 for the offences under Sections 341,448,294(b), 506(ii) of IPC. In fact there is a civil dispute between the parties and these petitioners and their predecessors have been in possession and enjoyment of the properties and the second respondent is attempting to evict the petitioners from the property thereby civil suit is also pending between the parties. Whiles, in order to vacate these petitioners the present complaint has been lodged by the second respondent. Already the same complainant for the very same allegation lodged complaint and First Information Reports have been registered in Crime Nos.824 of 2016 and 1118 of 2017 and the same are pending for adjudication. Whiles



now this complaint has been given only to vacate the petitioners from the said property. Even according to the complaint no offences are made out and the allegations against the petitioners are general, vague and omnibus allegations. The allegations set out in the complaint and the First Information Report does not constitute any offence as mentioned in the First Information Report. Therefore the pending First Information Report is nothing but abuse of process of law, hence the First Information Report is liable to be quashed.

4. No counter was filed by the respondents.

5. The learned counsel appearing for the petitioners would contend that the petitioners and their forefathers have been in possession and enjoyment of the property comprised in T.S. No.5/2(Old T.S. No. 1054) to an extent of 1752 sq.ft and the second respondent is claiming the property which belongs to Kannika Parameswari Temple and thereby civil suit is pending between the parties. Already the same petitioners have given so many complaints in Crime Nos.824 of 2016 and 1118 of 2017 and the same are pending. Now in order to settle the above said civil suit this false complaint has been given as against these petitioners. In the mean time the first petitioner died on 09.02.2022 and the other petitioners have not involved in the said occurrence and even according to the averments in the complaint and the First Information Report the



allegations are not specific and general, omnibus allegations. Based on the general and omnibus allegations no warrant for trial and thereby the above said First Information Report is liable to be quashed. He further relied on the judgment of the Hon'ble Apex Court in the case of **N.S. Madhanagopal and another .vs. K.Lalitha** reported in **2022 Live Law (SC) 844**. He would further submit that already this Court has granted interim stay inspite of that the respondent police have filed final report before the Court and the same was also taken on file.

6. The learned Additional Public Prosecutor appearing for the first respondent would contend that originally the property belongs to Kannika Parameswari Temple and the second respondent is the President of the temple committee and these petitioners were respectively tenants for some time and thereafter they vacated the suit property. Then encroached the property in the year 2016 and thereby civil suit is also pending and two cases registered against these petitioners and the same are pending for disposal. While so the first petitioner died and on the date of occurrence these petitioners trespassed into the property and when the same was questioned by the defacto complainant these petitioners abused filthy words and criminally intimidated and thereby he gave complaint before the first respondent and the first respondent also registered a case in Crime No.1563 of 2020 and then the first respondent investigated the case. As per the investigation since *prima*



facie materials available as against these petitioners they filed final report and now the case is pending in STC No. 6158 of 2023 and at this juncture the petitioners have to appear before the trial Court and face the trial, hence the petition is liable to be dismissed.

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

8. On perusal of the record it is observed that there is a civil dispute pending between the parties with regard to the house site. According to the petitioners they have been in possession and enjoyment of the property for more than the statutory period and their predecessors were in possession and enjoyment over the property and civil suit is also pending between the parties. Whileso inorder to settle the above said civil dispute the second respondent has filed so many complaints and the present complaint is nothing but abuse of process of law. According to the second respondent these petitioners encroached the property in the year 2016 and while the same was questioned by the second respondent these petitioners committed the above said offence.

9. It is an admitted fact that civil dispute is pending between the parties. The main accused died during pendency of this petition and this Court perused the First Information Report. A perusal of the First



Information Report reveals that already two cases were registered against these petitioners and the same are pending for the very same property. Further civil dispute is also pending between the parties. While so on the date of occurrence i.e., 12.10.2020 at about 10.00 a.m., when the defacto complainant and others asked the petitioners about this encroachment at that time the dispute the first petitioner along with his wife and son criminally intimidated and abused using abusive words. There is no specific allegations and the allegation is that all the petitioners abused using obscene words and caused criminal intimidation. Those allegations are general, omnibus and already the Hon'ble Apex Court in the case of ***Kahkashan Kausar and Sonam and Ors.vs. State of Bihar and Ors in Criminal Appeal No.195 of 2022***, has clearly stated that based on general, omnibus allegations the prosecution has no warrant. In the case on hand the allegations mentioned in the First Information Report are general, omnibus and no specific overt act has been attributed as against these petitioners.

10. Further as per the judgment submitted by the learned counsel for the petitioners in ***N.S.Madhanagopal and another .vs. K.Lalitha*** reported in ***2022 Livelaw(SC)844*** , it is held that :

“It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the



accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamatory words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out “

11. As per the judgment in order to attract the provisions under Section 294 (b) of IPC there should be some annoyance to some others. So far as offence under Section 341 of IPC is concerned there is no whisper in the First Information Report that the petitioners have wrongfully restrained the defacto complainant. The learned counsel appearing for the petitioners brought to the knowledge of the Court there is an exemption under Section 339 of IPC, which reads as follows:

“339. Wrongful restraint —

Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

Exception —The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section .



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12. Even as admitted by the second respondent the petitioners are in possession of the property from the year 2016. As far as Section 448 of IPC is concerned the second respondent himself admitted that these petitioners encroached the property in the year 2016 and on the date of occurrence they were in possession of the property and thereby the petitioners also filed civil suit and thereby there is no question of trespass would arise since the petitioners are in possession of the property. So far as offence under Section 506(ii) of IPC is concerned there is no mention about the criminal intimidation in the First Information Report. The allegations mentioned in the First Information Report are general, omnibus and this Court has also discussed about the same. Therefore with these omnibus allegations the petitioners need not face the ordeal of trial. Though the respondent completed investigation and filed final report even in the First Information Report there is no whisper about the commission of offence and civil litigation is also pending between the parties, thereby the pending S.T.C. No.6158 of 2023 on the file the learned Judicial Magistrate No.I, Trichy is liable to be quashed.

13. With the above said discussion, this Criminal Original Petition is allowed and First Information Report in Crime Number 1563 of 2020 on the file of the first respondent and the proceedings in S.T.C.



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No.6158 of 2023 on the file the learned Judicial Magistrate No.I, Trichy is quashed in so far as the petitioners are concerned. Consequently connected miscellaneous petition is closed.

05.09.2023

Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate No.I, Trichy
2. The Inspector of Police
Fort Police Station,
Trichy City
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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