



CrI.O.P.(MD)No.17368 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/10/2023

CORAM

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

CrI.OP (MD)No.17368 of 2022

and

CrI.MP (MD)Nos.11752 and 11754 of 2022

1.Thiruneelakandan
2.Marimuthu
3.Amutha @ Angaiyarkanni
4.Palani @ Ramaiya
5.Arthi @ Annalakshmi : Petitioners/A1 to A5

Vs.

1.State represented by
The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District.
(Crime No.180 of 2021) : R1/Complainant
2.Geetha : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the charge sheet in CC No. 55 of 2022 on the file of the Judicial Magistrate, Aranthangi and to quash the same in so far as the petitioners are concerned and pass such further or other orders.

For Petitioners : Mr.T.Lenin Kumar
For 1st Respondent : Mr.M.Vaikkam Karunanith
Government Advocate
(Criminal side)
For 2nd Respondent : Ms.P.Geetha
(Party-in-person)



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the case in CC No.55 of 2022 on the file of the Judicial Magistrate, Aranthangi.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that the marriage between herself and her husband namely Puliprabakaran took place, on 01/09/2008 at her own expenses as per the customary rites. Knowing that the de-facto complainant is coming from a wealth family, her brother-in-law namely Thiruneelakandan and father-in-law namely Marimuthu and sister-in-law namely Amutha and her husband namely Puliprabakaran advised her to start a business. They also stated out of the above said jewelry. Property to be purchased in the name of her husband. Believing their words, she arranged a site. A sale agreement was entered between her father and the vendor, on 07/01/2009. Advance amount of Rs.1,50,000/- was also paid. At that time, her husband was working in IT company. For the purpose starting the business, he resigned the job and came to Aranthangi. Balance amount of Rs.6,35,000/- was arranged by selling her sreedhana articles. But pressure was made to execute the sale deed in name of brother-in-law or in the name of father-in-law.



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That was not accepted by her. So, they started making trouble. Due to continuous pressure, she consented property to be purchased in the name of her brother-in-law. But the original documents are retained by her. In the above said property, they started a drinking water plant at their own costs. But for the purpose of getting service connection, a nominal partnership deed was executed. The accused conspired to remove her husband from the above said business. Police protection petition filed by Thiruneelakandan was dismissed with costs. He was also prevented from entering into the business premises. On 22/05/2016, the accused persons along with their henchmen numbering about 50, trespassed into the business premises, tried to assault, criminally intimidated and locked in a room. Over which, a complaint was given, for which CSR No.284 of 2016 was also registered. Due to non renewal of the business, business was stopped. But the machineries and other articles found missing. On enquiry, it reveals that the said Thiruneelakandan along with henchmen, stolen away the properties. Again complaint was given in CSR No.360 of 2016. Thiruneelakandan admitted that he has stolen away the said articles worth about Rs.45,00,000/- and sold in the old iron shop. Thiruneelakandan is facing the criminal charges. On the basis of the above said



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occurrence, a case in Crime No.55 of 2022 was registered for the offences under sections 147, 148, 294(b), 342, 506(ii), 379, 420, 498(A) IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2022. After completing the investigation, final report was filed and it was taken cognizance in CC No.55 of 2022 by the Judicial Magistrate, Aranthangi.

3. Seeking quashment of the same, A1 to A5 are before this court by way of filing this petition.

4. Finding that it is an issue between the close relatives, the matter was referred to the Mediation and Conciliation attached to this Bench, but no settlement could be arrived. It was heard on various dates. The de-facto complainant herself appeared as party in person and argued the matter.

5. The learned counsel appearing for the petitioners would submit that it is a partnership venture; The dispute between the partners have been given criminal colour; The offences mentioned in the final report, *prima facie* are not attracted; The complaint has been given by suppressing the pendency of the suit in O.S No.91 of 2016 on the file of the District Munsif, Aranthangi over the



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above said issue; There is a long delay in preferring the complaint; According to the de-facto complainant, the offence said to have been committed on 02/03/2012, another offence said to have been committed on 22/05/2016 followed by the alleged theft of articles on 27/09/2019; Pending investigation, A10-Stalin died; After a long delay, the present complaint has been given.

6.For which, the second respondent would submit that each and every time, she gave a complaint, but no proper action was taken. Only CSRs were issued. Finally, she approached the Central Women Commission. Based upon the recommendation made by the Women Commission only, the present complaint has been registered. So according to her, the delay may not affect the prosecution.

7.No doubt that it is an issue between the close relatives. The case of the de-facto complainant is that only out of her own sources, the property was purchased in the name of A1 namely Thiruneelakandan; But however, the business was conducted only by her and her husband. The partnership deed is only a nominal document, which will not give any right to A1 in anyway.



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attracted to the factual circumstances of the case.

According to him, there is no allegation to the effect that with an intention to commit the offence of mischief and trespass, the accused persons trespassed into the property, when the property is standing in the name of the first petitioner. According to the petitioners, question of trespass will not arise.

11.He is also referring to the document, dated 05/03/2009. I have already discussed the above said document in the earlier portion of the order.

12.As stated above, when the agreement is standing in the name of the father of the second respondent, naturally presumption arises that the property was intended to be purchased for the benefit of the second respondent. As mentioned above, whether the document is a nominal document or not cannot be a matter for consideration by this court sitting under section 482 Cr.P.C jurisdiction. These are the factual aspects. Depending upon the finding of the ownership only, whether the offences punishable under sections 147, 148 and 379 are attracted can be found out. The same answer lies to section 420 IPC also.



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13.Regarding section 294(b) IPC, it has been stated by the petitioners that even as per the allegations made in the complaint and in the final report, specific words alleged to have been uttered by the members of the unlawful assembly is not mentioned, so also the persons, who made the above said insult. But in the final report, it has been stated that all the accused persons abused her in filthy language.

14.Similarly, according to the petitioners, for the offence under section 506(ii) IPC also, the ingredients are not mentioned in the final report. The specific averment is that all the accused persons armed with weapons, criminally intimidated not to enter into the company. On seeing the unruly mob, the second respondent alleged to have locked in a room. So this basis averment with regard to the offences under sections 342 and 506(ii) IPC are not also mentioned.

15.The learned counsel appearing for the petitioners would rely upon the judgment of this court reported in the case of ***Sterling Holiday Resorts (India) Limited, Chennai Vs. Murli Khemchand [2014(1)CTC 174]*** for the purpose of argument that since the property belongs to the first petitioner, the question of theft and trespass



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may not be attracted. But that was decided on its own facts and circumstances. But here, we are dealing with entirely different issue.

16.No doubt that some of the penal provisions viz., section 498(A) IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 are not attracted to the ground situation. It is a matter for consideration by the trial court at the time of framing appropriate charges. Similarly, the involvement of the other accused persons can also be a matter for consideration at the time of trial. So, I find no reason to quash the proceedings at the initial stage. At the time of framing the charges, the petitioners are at liberty to raise their grounds. So, when the factual issues are involved, as mentioned above, the contention on the part of the petitioners that the criminal complaint and the final report are nothing, but *mala fide* exercise of the right will not lie. So, I find no reason to allow this petition. But considering the relationship between the parties and many of the accused are in-laws of the second respondent herein, their personal appearance is dispensed with.



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17.In the result, this criminal original petition is **dismissed**. But however, considering the relationship between the parties and many of the accused are in-laws of the second respondent herein, their personal appearance is dispensed with on condition that the petitioners shall appear before the concerned trial court within a period of 15 days from the date of receipt of a copy of this order and file an undertaking affidavit, by fixing their recent passport size photograph to the effect that they will appear before the trial court as when required and must ensure their proper representation through Advocate. Accordingly, Crl.MP(MD)No.11754 of 2022 is allowed. Consequently, connected Crl.MP(MD)No.11752 of 2022 is closed.

12/10/2023

Index:Yes/No
Internet:Yes/No

er
To,

- 1.The Judicial Magistrate,
Aranthangi.
- 2.The Inspector of Police,
Aranthangi Police Station,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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