



CrI.O.P.(MD)No.19851 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.(MD)No.19851 of 2021
and
CRL.M.P.(MD)No.11173 of 2021

1.M.Venkatesan

2.M.Kathiresan

3.M.Ravichandran

4.M.Panchavarnam

5.K.Suriya Prasath

... Petitioners / Accused Nos.1 to 3, 5& 6

Vs.

1.The Inspector of Police,

Sholavandan Police Station,

Madurai District.

(Crime No.354 of 2021)

... 1st Respondent / Complainant

2.Pitchaimani

... 2nd Respondent / Defacto

Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, praying this Court to call for records pursuant to the FIR in Crime No.354 of 2021 on the file of the 1st respondent Police and quash the same against the petitioners.



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For Petitioners : Mr.S.Gokulraj
For R1 : Mr.S.Meenakshi Sundaram,
Additional Public Prosecutor
For R2 : Mr.A.Haja Mohideen

ORDER

This Criminal Original Petition is filed to quash FIR in Crime No.354 of 2021 on the file of the 1st respondent Police, which was registered against the petitioners, who are the accused Nos.1 to 3, 5 and 6 for the offences punishable under Sections 147, 294(b), 447, 427 and 506(i) IPC.

2.The case of the prosecution is that the 2nd respondent / defacto complainant had lodged a complaint stating that his father, namely, Arunachalam Pillai had inherited the property in Survey Nos.4/3, 4/4, 4/5 and 4/6 situated at Thattankulam Village, Vadipatti Taluk, Madurai District in the year 1970. Since then they are in possession and enjoyment of the property. Earlier A5, who is the paternal aunt of the defacto complainant / sister of Arunachalam Pillai, along with her husband and sons had trespassed into their property and caused damage, for which Arunachalam Pillai / father of the defacto complainant had lodged a complaint on 04.09.2021 to the respondent Police. Since no action had been taken, he had filed a petition before this Court



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seeking necessary protection and this Court had restrained the accused persons from entering into the property of the defacto complainant.

3.This being so, on 15.09.2021 and 19.09.2021 the accused persons had trespassed into the defacto complainant's property and caused disturbance. On 27.09.2021 at about 08.00 a.m., when the defacto complainant was watering his land along with one Muthu, the petitioners herein and A5 had trespassed into the property and caused damage by draining out the water from the field. Hence, the defacto complainant lodged the present complaint and the same was registered in Crime No.354 of 2021.

4.The learned counsel for the petitioners submitted that A5 is none other than the paternal aunt of the defacto complainant. The defacto complainant's grandfather, namely, Shanmugam Pillai had six children, out of which three male members and three female members. Admittedly, no family partition had taken place. Hence, three female members are making claim over their father's property, which is annoying the defacto complainant as well as his father Arunachalam Pillai and hence, this false complaint has been lodged against the petitioners.



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5. Referring to the order passed in Crl.O.P.(MD)No.13458 of 2021, he further submitted that this Court, by order dated 25.10.2021, disposed of the said petition by observing that since the complaint was rightly closed by the respondent Police finding that the dispute is purely civil in nature, no further order is required. However, the defacto complainant had lodged a complaint with false allegations as if this Court has given protection order in his favour and the petitioners have violated the said protection order by entering into the property.

6. He further submitted that the 4th petitioner / A5 had also lodged complaints to the 1st respondent Police on 12.09.2021 and 24.09.2021, stating that the father of the defacto complainant has created bogus patta in respect of the land in question and threatened her and her family members. Both the complaints of the 4th petitioner / A5 and the defacto complainant's father were enquired together and closed as civil in nature. He further submitted that once the complaint has been closed as civil in nature, for the same set of allegations, how the criminal colour can be given and the First Information Report can be registered. In support of his submissions, he relied upon the guideline No.7 in the case of *State of Haryana and others Vs. Bhajan Lal and others* reported in *1992 Supp (1) SCC 335*.



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7.He further submitted that the Hon'ble Supreme Court of India in the case of *Sarabjit Singh Vs. State of Punjab and others* reported in (2013) 6 SCC 800, had quashed the proceedings on the ground that the accusation levelled in the complaint is without supporting materials. Hence, he prayed for quashing the First Information Report.

8.The learned Additional Public Prosecutor for the 1st respondent submitted that based on the complaint of the defacto complainant / 2nd respondent, the respondent Police has registered the case in Crime No.354 of 2021 and thereafter, conducted enquiry. Finding that it is a family dispute, both the parties were called and asked to approach the civil Court to get appropriate orders and declaration. However, neither of the parties had approached the civil Court but they are often entering into verbal assault. He further submitted that the veracity of the petitioners' contentions to be tested only during the investigation and if the contentions of the petitioners are found to be reasonable, then appropriate steps could be taken.

9.The learned counsel for the 2nd respondent / defacto complainant submitted that based on the complaint given by the defacto complainant, the



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respondent Police registered the case. Thereafter, the petitioners filed this petition. Due to which the respondent Police are unable to complete the investigation. The contentions of the petitioners can be tested only during the investigation. Further, the relationship between the parties is not disputed and the petitioners are claiming right over the property in question, for which they ought to have approached the competent civil Court, however, taking law into their hands, they created trouble by causing disturbance and damage to the agriculture activities of the defacto complainant. Hence, he prayed for dismissal of this petition.

10.Heard the learned counsel on either side and perused the materials available on record carefully.

11.It is seen that the 4th petitioner / A5 is the paternal aunt of the defacto complainant. Earlier to this complaint, on 04.09.2021 a complaint has been lodged by Arunachalam Pillai / father of the defacto complainant against the petitioners and others. On perusal of the complaint copy, which has been produced before this Court, it is seen that the complaint is almost identical to the present complaint. For the inaction of the complaint dated 04.09.2021, the defacto complainant's father had filed a direction petition before this Court in



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CrI.O.P.(MD)No.13458 of 2021, wherein this Court, considering the submissions made on either side, finding that it is a civil dispute between the brother and sister over the ancestral property, disposed of the said petition. This complaint is also similar in nature, which is also the dispute over the ancestral property between the paternal aunt and the defacto complainant.

12.Though in the complaint it is stated that the damage has been caused to the field, what is the damage and loss is not mentioned. Further, the property stands in the name of Shanmugam Pillai, who is the grandfather of the defacto complainant and father of the 4th petitioner / A5. Whether the property is in cultivation of the petitioners' family or the defacto complainant's family cannot be decided in a criminal complaint and it can be decided only before the civil Court. Therefore, it would be appropriate that the respondent Police shall advise both the defacto complainant and the accused persons to approach the Civil Court to get appropriate relief. In the event of finding any threat to the public law and order, the respondent Police shall refer the matter to the revenue authorities for appropriate orders and in this case admittedly, on the facts and circumstances, it is seen that threat is not followed with any action. It is only an empty threat.



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13. In view of the same, pendency of the above case would only do an obstacle for any rapprochement amongst the family members of the defacto complainant and the accused persons. Further, the dispute is primarily civil in nature. Therefore, the guideline No.7 of the *Bhajan Lal's* case is squarely applicable to the present case on hand. Hence, this Court is inclined to quash the FIR in Crime 354 of 2021 on the file of the 1st respondent Police against the petitioners as well as A4, who is also a similarly placed person. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

28.07.2023

NCC : Yes / No
Index : Yes/No
Internet : Yes/No

Yuva

To

1. The Inspector of Police,
Sholavandan Police Station,
Madurai District.



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2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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M.NIRMAL KUMAR, J.

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