



Crl.O.P(MD).No.17758 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.17758 of 2019

and

Crl.M.P(MD) No.10447 of 2019

Kandasamy

...Petitioner

Vs

1. Balasubramaniyan(Died)

2. Muthukumar

(Amended as per the order of this Court dated
16.03.2022 in Crl.M.P(MD) No.3510/2022
in Crl.O.P(MD)No.17758 of 2019)

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records relating to the impugned proceedings in connection with C.C.No.211 of 2019 on the file of the learned Judicial Magistrate No.I, Sivagangai and quash the same.

For Petitioner

: Mr.A.Mohan

For Respondent

: No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.211 of 2019 pending on the file of the learned Judicial Magistrate No.I, Sivagangai.



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2. According to the petitioner, the First Information Report has been registered alleging that due to enmity between the petitioner and the respondent, on 14.11.2017 at about 04.00 p.m., while the respondent was cutting the neem trees, the petitioner and three others scolded the respondent by abusing filthy language and prevented him from cutting the trees. It is further alleged that the petitioner and three others have trespassed into the house of the respondent and assaulted him with aruval and thereby, caused injuries on him. Thereafter, based on the complaint given by the defacto complainant in Crime No.516 of 2017, First Information Report came to be registered for the offences under Sections 294(b), 324, 427 and 506(ii) of I.P.C. In fact, the disputed land belongs to the petitioner and in order to create dispute, the respondent and six others have trespassed into the land on 14.11.2017 along with weapons and all of them initiated to cut the trees. Counter case in Crime No.517 of 2017 has also been registered against the respondent and six others for the offences under Sections 147, 294(b), 427 and 307 of IPC. After completing the investigation, the Investigation Officer has filed final report by deleting the name of the petitioner stating that he was not all involved in the occurrence. Challenging the deletion of the name of petitioner in the final report, the respondent filed a protest petition before the learned Judicial Magistrate No.I, Sivagangai in Cr.M.P.No.3410 of 2019 and



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the same was disposed of by the learned Magistrate with liberty to the respondent to work out his remedy by invoking Section 200 of Cr.P.C., by an order dated 12.04.2019. The respondent filed the private complaint against the petitioner for the commission of the said offence.

3. When the matter is taken up for hearing today, there is no representation on behalf of the respondent .

4. The learned counsel for the petitioner contended that since *prima facie* case has not been made out as against the petitioner, the Investigation Officer has deleted the name of the petitioner in the final report. However, the respondent filed a private complaint before the Magistrate and the learned Magistrate has taken cognizance for the offences under Sections 294(b), 324, 427 and 506(ii) of I.P.C. The petitioner had not at all involved in the case and only to rope the petitioner in a criminal case, the present case has been filed and the same is abuse of process of law.

5. This Court heard the arguments advanced by the learned counsel for the petitioner. Since the respondent has not appeared before this Court, this Court is inclined to pass orders with the available records.



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6. It is submitted on the side of the petitioner that counter case is also pending. Even as per the private complaint, the learned Magistrate has examined witnesses in the said private complaint and after satisfying that the *prima facie* has been made out, has taken it on file. It is admitted by the petitioner that he was arrayed as accused in the said case. During investigation, there is no material as against the petitioner and thereby, the police has filed final report by deleting the name of the petitioner. However, in the present complaint, the learned Magistrate has taken cognizance based on the materials available in that private complaint. As per the allegations made in the complaint, *prima facie* has been made out and thereby, the learned Magistrate has taken the case on file. Further there are cases in counter and the offence are severe in nature and elaborate trial is needed. It is admitted fact that there is a property dispute between the parties. Once the learned Magistrate has taken cognizance the petitioner can approach the trial Court by filing appropriate application to work out his remedy if the *prima facie* case materials available in his favour . There is no material and grounds available in this petition to invoke the provision as per section 482 of Cr.P.C., and there is no abuse of process of law. Hence, the petition is liable to be dismissed.



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7. At this juncture, the learned counsel appearing for the petitioner represented before this Court that the personal appearance of the petitioner before the trial Court may be dispensed with.

8. As far as dispensing with the personal appearance of the petitioner before the trial Court is concerned, it can only be decided by the trial Court on application filed by the petitioner. On such application, the trial Court is directed to consider the same in accordance with law.

9. The learned counsel for the petitioner represented before this Court since the private complaint is pending before the same Court in C.C. No.344 of 2019, the parent case in C.C. No.211 of 2019 may be clubbed together and joint trial may be ordered. In this context, liberty is given to the petitioner to approach the trial Court for filing appropriate application and the same shall also be considered by the trial Court in accordance with law. All the grounds raised by the petitioner in this petition can be agitated before the trial Court.



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10. With the above observations and directions, this criminal original petition is disposed of. Consequently connected miscellaneous petition is closed.

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NCC : Yes/No
Internet : Yes/No
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To

The Judicial Magistrate No.I, Sivagangai



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P. DHANABAL,J.

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