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Crl.O.P.(MD)No.19431 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.01.2023**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGO VAN**

Crl.O.P.(MD) No.19431 of 2019
and Crl.M.P.(MD).No.11408 of 2019

1.A.Nagaraj

2.P.Eswarasamy @ Karthick

3.P.Ramesh

... Petitioners/Accused No.1 to 3

Vs.

1.The Inspector of Police,
Palani Taluk Police Station,
Dindigul District,
in Crime No.264 of 2019

... 1st Respondent/Complainant

2.M.Dhandapani

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in FIR in Crime No.264 of 2019, dated 02.08.2019, on the file of the 1st respondent police and quash the same.

For Petitioner : Mr.M.Ramu

For Respondents : Mr.M.Sakthi Kumar for R1
Government Advocate (Crl. Side)

Mr.M.Solai Samy for R2



ORDER

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This petition has been filed to quash the FIR in Crime No.264 of 2019 on the file of the first respondent.

2.The case of the prosecution in brief:

The defacto complainant, who is the second respondent herein has lodged the complaint before the respondent police with the following allegations. He entered into lease agreement with one Renuka as power agent of the owner Dhanasekaran for Rs.25 Lakhs to run the Brick Kiln. Over the above said, the first accused namely Nagaraj made trouble. Against him, already a complaint was lodged. On 25.05.2019, the first accused stolen a JCB vehicle worth about Rs.10 lakhs. Over which a complaint was given before the Taluk Police Station, Palani and also enquiry was undertaken in C.S.R.No.235 of 2019. Again on 25.07.2019 at about 10.00 p.m., the accused tress passed into the Brick Kiln and stolen away the goods worth about Rs.8 Lakhs. That vehicle was also intercepted. Along with the vehicle he lodged the complaint. At the time of attempt preventing the commission of robbery, the accused made criminal intimidation. On the basis of the above said complaint a case was registered in Crime No.264 of 2019 for the offences punishable under Sections 447, 379 (NP) of IPC against three persons. Seeking



quashment of the FIR this petition has been filed by all the three persons, on the ground that the first petitioner entered into an agreement with the above said Dhanasekaran for six years to run the Brick Chamber. The above said land was purchased from one Manickam in the year 2012. The above said lease agreement was a registered one. Later he developed the Business. On 17.02.2018, the defacto complainant trespassed into the property and robbed money. A suit in O.S.No.50 of 2019 was filed before the learned District Munsif, Palani, against the above said Renuka and others for permanent injunction. An interim injunction was also granted in I.A.No.2 of 2019. Later, he lodged a complaint. He wanted to shift the materials through a Lorry, which was stopped by the second respondent and lodged the false complaint.

3.Heard both sides.

4.Reading of the materials available on record shows that one Renuka, who is alleged to be the power of attorney of the above said Dhanasekaran are sister and brother. Now these petitioners claim that the above said Dhanasekaran leased out the property in the capacity of owner. The above said Renuka in the capacity of power of attorney alleged to have leased out the property to the defacto complainant herein.



Whether on the date of the alleged lease agreement between Renuka and the second respondent herein, the above said power of attorney was in existence or not is a matter for consideration in the civil suit and as well as in the investigation process.

5.It has been stated in the petition that the Renuka created the power of attorney and entered into a collusive agreement with the second respondent. Later that power of attorney was also revoked by Dhanasekaran. These are all the factual issues, which cannot be taken into account at this stage by this Court, since in respect of the above said issue a civil suit is also pending.

6.The learned counsel for the second respondent further submitted that he is also ready to vacate the premises. But he has erected the shed and the cost must be paid by the owner.

7.The learned Additional Public Prosecutor submitted that now investigation has been completed and during the course of investigation it was found that the defacto complainant was in possession of the property. The final report has also been filed before the learned Judicial Magistrate, Palani on 10.09.2019. But, however finding that there is



interim order, the parties are permitted to argue the matter on merits.

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8.In reply, the learned counsel for the petitioner would submit that in respect of the above said issue, suit is also pending and so the criminal prosecution must be quashed. As I mentioned earlier, factual issues are involved.

9.It is also seen that in respect of the above said issue complaints and counter complaints have been filed by both sides. In the light of the above said issue, which involves factual considerations, it cannot be gone into at this stage by this Court. I am of the considered view that the petition is liable to be dismissed and accordingly, **dismissed**. However, since suit is also pending, let the trial in respect of the Cr.No.264 of 2019 on the file of the first respondent be completed by the trial Court namely Judicial Magistrate Court, Palani, within a period of **five** months from the date of receipt of a copy of this order. In view of the above said issue involved, personal appearance of the petitioners are dispensed with before the trial Court with conditions.

(i)The petitioners shall appear before the trial Court namely the Judicial Magistrate, Palani, within a period of 15 days from the date of receipt



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of a copy of this order and file an undertaking affidavit, by affixing their recent passport size photograph, to the effect that they will appear before the trial Court as and when required. They must ensure their proper representation through Advocate.

Consequently, connected miscellaneous petition is closed.

Index : Yes/No
Internet : Yes/No
TM

05.01.2023

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate, Palani.
- 2.The Inspector of Police,
Palani Taluk Police Station,
Dindigul District,
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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