



WEB COPY



Crl.R.C.No.1016 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2024

CORAM:

THE HON'BLE **MR.JUSTICE M.DHANDAPANI**

Crl.R.C.No.1016 of 2024

1.Baby @ Bathmavathy

2.Anitha

3.Gowtham

.....Petitioners

Vs.

Rukkumani

...Respondent

Prayer : Criminal Revision Case has been filed under Section 397 r/w Section 401 of Cr.P.C., to set aside the impugned order dated 07.10.2022 passed by the Judicial Magistrate Court, Sathiyamangalam in C.M.P.No.1264 of 2021.

For Petitioners : Mr.R.Thirumoorthy

For Respondent : Mr.R.Nalliappan

ORDER

This Criminal Revision Case has been filed to set aside the order dated 07.10.2022 in C.M.P.No.1264 of 2021 by the Judicial Magistrate Court, Sathiyamangalam .



Crl.R.C.No.1016 of 2024

2. Learned counsel for the petitioner would submit that the petitioners are facing private complaint proceedings instituted by the respondent in CMP No. 1264 of 2021 pending on the file of the learned Judicial Magistrate, Sathivamangalam. The 2nd petitioner is the daughter of the 1st petitioner and the 3rd petitioner is the husband of the 2nd petitioner and son-in-law to the 1st petitioner. The respondent filed a private complaint alleging that she is a retired Deputy Tahsildar and her father-in-law possessed property in the Survey Number 307 at Shenbagathur Village, Sathiyamangalam Taluk, Erode District. Oral partition has taken place for the said property and the parties were holding possession of their respective land. The 1st petitioner is the wife of respondent's brother-in-law and there was a passage dispute to the agricultural land, which was in existence, in which the respondent instructed the petitioners not to enter into the passage which led to the land of the respondent but the same was not obeyed by the petitioners. While so, on 14.04.2021 the petitioners trespassed into the agricultural land along with their henchmen and removed the gate which was put up to protect agriculture land of the respondent. Further, the petitioners have



Crl.R.C.No.1016 of 2024

abused the respondent in filthy language and also removed the water pipeline. In this regard, when the respondent questioned the petitioner, they issued a life threat to the respondent.

3. Moreover, on 15.04.2021, at about night hours, the petitioners went to one Palanisamy's house who was cultivating the agriculture land of the respondent on lease basis and issued life threat to him. Thereafter, on 17.04.2021, the petitioners and others have trespassed into the agricultural land of the respondent and damaged the land by using JCB. Hence, the respondent lodged a complaint to the Superintendent of Police, Erode and sent a complaint through registered post on 17.04.2021 which was received by Superintendent of Police, Erode on 19.04.2021 but action has not been taken. Therefore, the respondent filed a private complaint as against 7 members including Inspector of Police and the learned Judicial Magistrate took cognizance as against the petitioners but declined to take cognizance as against the persons shown in S. Nos.4 to 7 of the said complaint.

4. Learned counsel appearing for the petitioners submitted that the learned Judicial Magistrate Court, Sathiyamangalam had taken



Crl.R.C.No.1016 of 2024

cognizance as against the petitioners by passing order dated 07.10.2022

in CMP No. 1264 of 2021, without adverting to the fact that the respondent has filed a civil suit and also instituted criminal case against the petitioners, which is impermissible. A civil transaction has been given a criminal colour and without appreciating the same, the dated 07.10.2022 has come to the passed, which has led to the filing of the present criminal revision.

5. On the above contentions, this Court heard the learned counsel appearing for the respondent, who submitted that the act of the petitioners in demolishing the land and the crops therein of the petitioners is clearly an act attracting penal consequences and rightly the court below has taken cognizance which does not warrant any interference at the hands of this Court.

6. This Court gave its anxious consideration to the submission advanced by the learned counsel on either side and perused the materials available on record.

7. Time and again, this Court as well as the Supreme Court has cautioned the courts about the necessary precautions to be taken



Crl.R.C.No.1016 of 2024

while quashing the charge sheet at the initial stage. Useful reference in this regard can be had to the decision of the Apex Court in ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)*** wherein the Apex Court held as under :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, which we have extracted illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:



WEB COPY



Crl.R.C.No.1016 of 2024

- (1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- (2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
- (3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- (4) where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*



WEB COPY



Crl.R.C.No.1016 of 2024

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

(Emphasis Supplied)

8. The above decision of the Supreme Court unambiguously makes



Crl.R.C.No.1016 of 2024

it clear that extra-ordinary power under Article 226 of the Constitution or the inherent powers under Section 482 of Code of Criminal Procedure can be exercised either to prevent abuse of the process of any Court or otherwise to meet the ends of justice. Further, if the charge do not disclose a cognizable offence and make out a case against the accused, and uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, then the Court can interfere with the charge sheet.

9. The Court below had taken cognizance of the entire complaint under Section 200 of Cr.P.C. Even a bare perusal of the complaint reveals that the petitioners and the respondent are close relatives and the respondent claims that there was an oral partition and on the basis of the oral partition, the parties to the *lis* are enjoying the property. The whole case of the respondent is on the basis of certain acts, alleged to have been committed by the petitioners in the enjoyment of the land, as the respondent had objected to the usage of a passage by



Crl.R.C.No.1016 of 2024

the petitioners. From the above, it is clearly evident that as a consequence of a civil dispute, the parties are at loggerheads and to wreak vengeance against the petitioners, the complaint had come to be filed.

10. It should not be lost sight of that in respect of the very same dispute, a civil proceeding has been instituted by the respondent against the petitioners, which is also pending consideration. When such being the case, the proper course for the respondent would be to agitate the same before civil forum and any complaint on the very same set of facts before the criminal forum would be nothing but an act of forum shopping to which this court cannot be a party to. The respondent cannot pick and choose the manner in which the respondent would have its grievance ventilated.

11. Therefore, from the above it is manifestly clear that the whole complaint is attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance against the petitioners and is squarely falls within the ratio laid down by the Apex Court in *Bhajan Lal case (supra)*. Therefore, this Court has no



Crl.R.C.No.1016 of 2024

hesitation to interfere with the order impugned herein.

WEB COPY

12. Accordingly, this Criminal Revision Case is allowed and the order passed by the Trial Court in C.M.P.No.1264 of 2021 is set aside. However, liberty is granted to the parties to agitate their rights in the pending civil dispute before the appropriate forum in the manner known to law. No costs. Consequently connected miscellaneous petition is closed.

19.06.2024

msv

Index : Yes/No
Speaking Order : Yes/No
NCC : Yes/No

To
The Judicial Magistrate Court,
Sathiyamangalam

Page No:10/12



WEB COPY



Crl.R.C.No.1016 of 2024

M.DHANDAPANI, J.

msv

Crl.R.C.No.1016 of 2024

19.06.2024

Page No:11/12



WEB COPY



Crl.R.C.No.1016 of 2024