



CrI.O.P.Nos.17196 and 16807 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:11.07.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

CrI.O.P.Nos.17196 and 16807 of 2022
and
CrI.M.P.Nos.10396 and 10127 of 2022

CrI.O.P.No.17196 of 2022

P.Rajesh

.. Petitioner/Accused

/versus/

1.State Rep.by Inspector of Police,
Inspector of Police,
ALFSC-Central Crime Branch,
Tambaram Police Commissionerate,
Soliganallur, Chennai.

.. 1st Respondent /Complainant

2.A.Kalaiyarasi

.. 2nd Respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records culminating in the Notice Reference No.13/2022 No.13/2022, dated 21.06.2022, served by the Inspector of Police, ALFSC-Central Crime Branch, Tambaram Police Commissionerate, on the petitioner in Crime No.46 of 2014 and quash the same.



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Crl.O.P.Nos.17196 and 16807 of 2022

For Petitioner :Mr.B.Harikrishnan
For R1 :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)
For R2 :Mr.K.Venkateswaran

Crl.O.P.No.16807 of 2022

1.J.Sathish Kumar
2.Sruthi
3.Sona .. Petitioners/Accused

/versus/

1.State Rep.by Inspector of Police,
Central Crime Branch-II,
Tambaram, Tambaram Commissioner
Office, Sholinganallur, Chennai-119. .. 1st Respondent/
Complainant

2.A.Kalaiyarasi .. 2nd Respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of
Cr.P.C., to call for entire records in Crime No.46 of 2014 on the file of the
1st respondent police and quash the FIR against the petitioners.

For Petitioner :Mr.B.Harikrishnan
For R1 :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side)
For R2 :Mr.K.Venkateswaran

COMMON ORDER



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These Criminal Original Petitions are filed to quash the complaint registered in Crime No.46 of 2014 on the file of the first respondent. The complaint is by one Kalaiyarasi against four accused. In this case, as per A1, A2 and A3, Crl.O.P.No.16807 of 2022 has been filed and A4, who is the subsequent purchaser and present title holder for a piece of land measuring to an extent of 10,900 sq.ft. has preferred a petition in Crl.O.P.No.17196 of 2022.

2. The contention of the learned counsel appearing for the petitioner in Crl.O.P.No.17196 of 2022 is that he is the bona fide purchaser of the land measuring to an extent of 10,900 sq.ft and put up a construction and fenced the boundary with compound wall. The complainant, who is the neighbouring land owner alleging that the portion of the land had been encroached had given a complaint as if the petitioner had grabbed her land by manipulating records. He also submitted that his vendor Sathish Kumar, who purchased the property in the year 2001, sold the property to the fourth accused Rajesh in the year 2019. The CMDA planning approval was obtained and thereafter, put up



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construction in the year 2023. The defacto complainant filed the writ petition questioning the grant of planning approval but the same was dismissed. The dispute was in relation to pathway, which according to the complainant was 20 feet breath running along the property of the complainant as well as the accused. Whereas the revenue records does not indicate existence of any pathway in the said survey number. In spite of that the complaint has been given as if the land of the complainant been grabbed, this complaint been registered and taken up for investigation.

3. The learned counsel appearing for the defacto complainant submitted that the act of the fourth accused and his predecessor in title had intentional encroachment the complainant's land and pathway thereby depriving her access to the land. The civil suit pending regarding the pathway cannot take away the criminality of the petitioner. Therefore, the petitions to quash are liable to be dismissed.

4. This Court, on hearing the submissions made by the learned counsels and on perusal of the records, finds that initially when these two



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petitions came up for consideration, after hearing the parties, appointed an Advocate Commissioner to find out, whether there is any encroachment of road by the petitioner. Pursuant to this direction, the Advocate Commissioner submitted his report dated 29.04.2024. It is also to be noted that regarding the dispute of existence of the alleged pathway, O.S.No.429 of 2022 is pending between the parties on the file of District Court, Chengalpet. In the course of hearing, as per the direction of this Court the fourth accused Rajesh in whose name presently the property stands has given an undertaking affidavit that he will restrict his claim over the disputed land from 20 feet to 16 feet and gave up his right in four feet on the front of his property.

5. As far as four feet on the entrance of the property, the undertaking affidavit taken on record and this Court thought fit that based on the undertaking affidavit, the parties can settle their dispute, which is pending before the Civil Court. However, it did not happen and now the matter has again been taken up for consideration.

6. The above narration of the fact and dispute between the



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parties clearly show that there is dispute between the neighbouring land owners is with regard to the proper identification of the property. Admittedly, the fourth accused is not in possession over and above 10,900 sq.ft. the extent which he has purchased and also there is no material to show that he had intentionally encroached upon the other man land. While so, when there is no element of criminality made out, the complaint for the offence under Sections 447,465,468,420,506(i)of IPC cannot sustain.

7. The complainant has to seek redressal before the Civil Court. The undertaking affidavit given to this Court by the 4th accused will bind on the fourth accused.

8. In the result, **the Criminal Original Petitions to quash Crime 46 of 2014 are allowed.** Consequently, the complaint in Crime No.46 of 2014 on the file of the first respondent police stands quashed. Consequently, connected Miscellaneous Petitions are closed.



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Index:yes/no
Neutral Citation:yes/no
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To:

1. Inspector of Police, ALFSC-Central Crime Branch,
Tambaram Police Commissionerate,
Soliganallur, Chennai.

2. Inspector of Police, Central Crime Branch-II,
Tambaram, Tambaram Commissioner
Office, Sholinganallur, Chennai-119.

3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J

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and
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