



Crl.O.P.No.15224 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 09.09.2024

Pronounced on: 12.09.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.15224 of 2024
& Crl.M.P.Nos.9319 & 9318 of 2024

1. Ramya.
2. Palanisamy.
3. K.C.Perumal.
4. K.C.Poomalai.
5. Mahendran.
6. Jagadeesh.
7. Vijaya Kumar.
8. Thangavel.
9. Muthusamy.
10. M.Shanmugam.
11. Seethalakshmi.
12. Poovendran.
13. Sangameshwaran.
14. M.Sakthivel.
15. Saraswathi.
16. Gunasekaran.
17. Jagannathan.
18. Eswari.
19. Duraisamy.
20. Desa Kumar.
21. Shanmuga Perumal.
22. K.Karuppana Gounder.
23. Ganapathi.

.... Petitioners/ Accused 1 to 23

/versus/

Buvaneshwari.

.... Respondent/Complainant



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Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in STC.No.95 of 2024 on the file of the Judicial Magistrate No.1, Bhavani taken on file for offences under Sections 341, 323 and 506(ii) of I.P.C

For Petitioners : Mr.C.Arun Kumar.

For Respondent : Mr.MA.P.Thangavel.

ORDER

This Criminal Original Petition is filed to quash the private complaint taken cognizance by the Learned Judicial Magistrate-I, Bhavani in STC.No.95 of 2024.

2. The learned counsel appearing for the petitioner submits that the Court below has taken cognizance of the private complaint for the offence under Sections 341, 323 & 506(ii) IPC without applying its mind and a cryptic order been passed without testing the veracity of the material placed by the complainant.

3. The allegation in the complaint is that the complainant



family running a Trust and a goshala is functioning in the land which belongs to the complainant. On 26/09/2022, the petitioners herein (23 in number) trespassed into the said land, damaged the property using JCB and abused, assaulted, criminally intimidated the complainant and her family members. Again, there was criminal trespass and attempt to grab the property on 01/11/2022 and 02/11/2022. The complaints given to the local police and to the higher official were refused to be registered on the pretext that it is a civil dispute, disregarding the fact that there was forcible trespass and damage to property beside physical assault. Hence, the private complaint. Along with the complaint, the C.C.T.V footages to show the petitioners visit to the disputed land and causing damage and photographs were enclosed.

4. The petitioners contend that the first petitioner was married to one Mahalingam and on his demise, she got remarried to one Palanisamy. The complainant/Buvanshwari is the sister of Mahalingam. In the year 2010, the first petitioner, the complainant and Najappan (father-in-law of the first petitioner, father of the complainant) entered into a partition deed and got the property divided among themselves mutually and continued to enjoy the property as per the partition deed.



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While so, the complainant filed a suit in O.S.No.26/2018 to declare the said partition deed duly registered as document No:2506/2010, dated 07.07.2010 is not legally sustainable. Ramasamy, the father of the first petitioner filed O.S.No.15/2019 in respect of the property and both the suits were disposed *vide* common judgment dated 08/08/2022. The suit of the complainant was dismissed. While being so, the complainant, who is squatting over the property of the first petitioner, to pre-empt the petitioners from taking the legal recourse based on the decree passed on 08/08/2022, had lodged the complaint with falsehood, as if the complainant is the absolute owner of the property and she and her family members were wrongfully restrained and caused hurt.

5. According to the learned counsel for the petitioners, suppressing the suit and the decree against the complainant, private complaint has been filed with malafide intention. The petitioners herein being the owner of the property, offence under Section 341 IPC is not made out. Mere allegation of taking treatment as outpatient will not attract offence of voluntarily causing hurt under Section 323 IPC. The allegation of threat is not real, nonetheless, mere uttering words without any action cannot be termed as an act of criminal intimidation. The



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exaggerated version of the incident was properly considered by the police and same was closed as civil dispute. Whereas, the Judicial Magistrate without proper appreciation of the complaint had taken cognizance of the complaint.

6. The learned Counsel for the petitioners specifically submits that the complainant alleges that the incident of criminal trespass and causing hurt been recorded in the C.C.T.V footage and same is relied. However, from the adjudication of the Learned Magistrate on 03.05.2024, it is patent that the complainant has not produced the C.C.T.V footage, photos or pen drive along with the complaint. The complainant directed to produce the same on the next hearing date. Thus, without production and perusal of the C.C.T.V footage, the trial Court has taken cognizance of the complaint and had caused summons to the accused.

7. The Learned counsel appearing for the complainant by reading out the complaint and the adjudication of the Judicial Magistrate submitted that, taking advantage of the common judgment, the



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petitioners had attempted to take forcible possession from the complainant. The Civil Court decree will not justify criminal trespass and criminal intimidation. The act of crime committed by the petitioners been fully described in the complaint as well as supported by the CD produced to the Court. It is incorrect to say that the CD's, photo's and pen drive were not produced to the Court along with the complaint. The Court adjudication on the respective dates been misread to mislead this Court as if those documents were not at all produced to the Court. In fact, the Court in its adjudication dated 03/05/2024 had clearly recorded that the copies of the complaint and documents were furnished to the accused who were present on that date. The material objects like the CD's, Photos and Pen drive alone were not furnished to them. Hence, the complainant was directed to furnish those material objects on the next hearing date, the case thus adjourned to 25/06/2024.

8. Heard the Learned Counsels on either side.

9. The private complaint alleging wrongful restraint, hurt, criminal intimidation been taken on file by the Judicial Magistrate as



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S.T.C.No.95/2024 and process issued to the accused persons. The complaint presented on 13/04/2023 in Crl.M.P.No.3320/2023 been under consideration of the Judicial Magistrate till 23/02/2024. Before satisfying that the accused 1 to 31 might have committed offences under Section 341, 323 and 506(ii) IPC., the learned magistrate had examined the complainant and considered 18 exhibits produced. The adjudication of the Judicial Magistrate dated 23/02/2024 reads as below:-

“Records perused. Complainant side heard. On perusal of evidence of the complainant and Ex.P1 to P8, it appears that the accused 1 to 31 may have committed the alleged offence U/s.341, 323, 506(ii) IPC. Therefore, this court is of the opinion that it is reasonable to inquire that by sending summons. Prima facie case is made out. Hence office is directed to assign STC Numbered. Accordingly this CMP is disposed.”

10. On 03/05/2024, for A-1, A-2, A-5, A-6, A-7, A-9, A10, A-12 to A-23, A-28, A-29 and A-31, copies were furnished except CD's, Photos and pen-drive and the complainant is directed to furnish the same on the next hearing date i.e., 25/06/2024.

11. The deposition of the complainant (PW-1) on 22/11/2023



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reveals that the photo's (25 numbers), CD's (28 numbers) and pen-drive (2 numbers) marked as Ex.P-13, Ex.P-14 and Ex.P-15 respectively along with certificate under Section 65-B of the Indian Evidence Act. While so, it is not appropriate to claim that those material evidences not produced to the Court. Further, for taking cognizance of the offence a *prima facie* satisfaction about commission of crime is sufficient. Law does not contemplates a trial before taking cognizance of a crime on a complaint given under Section 200 of Cr.P.C. From the records, it is clearly found that the Learned Judicial Magistrate had recorded the statement of the complainant, perused 18 documents marked as exhibits and then on recording her satisfaction, issued process to the accused persons. Therefore, there is no doubt about the application of mind before taking cognizance.

12. As a result, this *Criminal Original Petition stands dismissed*. Consequently, connected Miscellaneous Petitions are closed.

12.09.2024

Index :Yes.



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Speaking Order/Non-Speaking Order.

bsm

To:-

1. The Judicial Magistrate No.1, Bhavani.



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DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery order made in
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