



Crl.O.P.No.24163 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.24163 of 2022

and

Crl.M.P.Nos.15315 & 15316 of 2022

Rizwanudeen

... Petitioner

Versus

1. State rep. by
The Inspector of Police,
Vaitheeswaran Koil Police Station,
Nagapattinam Dt.
(Crime No.450 of 2015)

2. Balu

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C.No. 86 of 2016 pending on the file of the Judicial Magistrate, Sirkazhi and quash the same.



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For Petitioner : Mr.M.Vinoth
For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) for R1

R2- No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the charge sheet in C.C. No. 86 of 2016 on the file of Judicial Magistrate Court, Sirkazhi.

2. Heard the learned counsel for petitioner and learned Government Advocate (Crl. Side) appearing for 1st respondent. In spite of opportunity given to the 2nd respondent, there is no representation on the side of him.

3. The petitioner is ranked as A1 in the F.I.R. in Crime No.450 of 2015 and subsequently, the charge sheet has been filed for offences under Sec.454, 448, 506(i) r/w 109 of I.P.C. and the same was taken on file in C.C.No.86 of 2016 on the file of Judicial Magistrate, Sirkazhi and the same is pending. Now, the petitioner had filed this petition praying to quash the said charge sheet.



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4. The learned counsel for petitioner would submit that he is a landlord, under whom, the 2nd respondent/defacto complainant was the tenant from the year of 2005. He would submit that there was a dispute between them in respect of payment of rent and the petition in R.C.O.P.No.3 of 2012 was filed before the District Munsif Court, Sirkazhi. In the meanwhile, to avoid legal proceedings, the 2nd respondent/defacto complainant gave a false complaint as if the petitioner threatened him to vacate the premises, however on 13.12.2015, the 2nd and 3rd accused broke open the door of the property and removed the articles. The learned counsel would submit that the petitioner has been falsely implicated in this case by the 1st respondent police as per the complaint given by the 2nd respondent/defacto complainant. Hence, he prayed to quash the proceedings initiated against him.

5. Records perused. On perusal of records, it reveals that a civil suit was filed by the 2nd respondent/defacto complainant in O.S.No.18 of 2016, which was also dismissed on 19.12.2018. Aggrieved over the



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same, an appeal was filed by the 2nd respondent in A.S.No. 69 of 2019 before the Principal Sub-Court, Mayiladuthurai and the same was allowed on 29.07.2021. Against which, the petitioner filed a Civil Revision Petition in C.R.P.No. 949 of 2022 before this court, which was allowed in favour of petitioner. To that effect, the order of this court was produced.

6. On perusal of the said order, it reveals that the recovery suit filed by the 2nd respondent was dismissed by allowing the said C.R.P. and as on date, the order is in force. So, the fact reveals that there was a rental agreement between the petitioner and 2nd respondent. Thereafter, for vacating the premises, R.C.O.P.No.3 of 2012 was filed. According to the petitioner, there is arrears of rent also and in the year of 2013 itself, the possession was also handed over to him. Subsequently, the property was leased out to another man viz., Manoharan on 07.10.2020. So, all these facts and circumstances clearly reveals that 2nd respondent/defacto complainant is not in enjoyment of property and the petitioner has also obtained the court order in his favour. However, based upon a complaint,



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a final report was filed against the petitioner for an offence under Sec.454, 448, 506(i) r/w 109 of I.P.C.. As per the complaint, the petitioner along with other accused trespassed and attempted to break open the door of house property. But, admittedly, the petitioner initiated R.C.O.P. proceedings to vacate him from the premises and as on date, the possession was also with the petitioner and the property was leased out to third party. In respect of alleged occurrence, the prosecution relied on two witnesses as eyewitness in order to prove that there was alleged wordy quarrel happened on that day. But, all those witnesses are clearly associated with P.W.1. Even as per the complaint, he was not present at the time of alleged break open. Therefore, there is no direct witness on the side of prosecution that on the alleged date of occurrence, the petitioner and others came to the property and made attempt to break open the door. When there is no material evidence to prove that the petitioner along with other accused came to the property and attempted to break open the premises, there is no prima facie evidence to prove the offence. Furthermore, a civil suit is also pending between the parties. The petitioner has also filed R.C.O.P.No. 12 of 2022 was filed for eviction on



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the ground of default, since there is arrears of rent for two years.

Therefore, I do not find any ingredient to attract the offence initiated against the petitioner. In spite of opportunity given to the 2nd respondent, there is no representation on his side. Accordingly, this Criminal Original Petition is allowed and the proceedings in charge sheet in C.C.No.86 of 2016 on the file of Judicial Magistrate, Sirkazhi is quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

07.03.2024

Index: Yes/No

Internet: Yes/No

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To

1. The Inspector of Police,
Vaitheeswaran Koil Police Station,
Nagapattinam Dt.
2. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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