



Crl.O.P.(MD)No.4835 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.4835 of 2022
Crl.M.P(MD).Nos.3411 and 3412 of 2022

- 1.Thandapandi @ G.A.M.Thandapani
- 2.Vasanthi
- 3.Thil Prasath @ Prasath ... Petitioners / Accused Nos.1 to 3

Vs.

- 1.The State rep.by
The Inspector of Police,
Theni Police Station,
Theni District.
Crime No.827 of 2019.

- 2.Mahalakshmi ...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the proceedings in C.C.No.217 of 2020 on the file of the learned Judicial Magistrate, Theni and quash the same.

For petitioner : Mr.B.Brijesh Kishore

For R-1 : Mr.P.Kottaichamy
Government Advocate
(Criminal Side)

For R2 : No appearance



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Crl.O.P.(MD)No.4835 of 2022

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.217 of 2020 on the file of the learned Judicial Magistrate, Theni, against the petitioners herein.

2. The case of the prosecution is that the defacto complainant borrowed a sum of Rs.5,00,000/- from the first petitioner on 12.09.2018 by executing a general power of attorney to the first petitioner, in respect of the subject property. The first petitioner, with an intention to grab the property from the defacto complainant, has executed a sale deed in favour of his wife/second petitioner on 25.09.2018. After coming to know about the same, the defacto complainant cancelled the power deed on 09.04.2019 and thereafter, the first petitioner and his wife made severe trouble to the defacto complainant, due to which, the defacto complainant filed a suit in O.S.No.97 of 2019 before the civil Court seeking to declare the registered sale deed standing in the name of the second petitioner as null and void. While so, on 13.11.2019, the petitioners and 40 persons trespassed into the house of the defacto complainant and damaged valuable cloths and the articles worth about Rs.2,00,000/- and took away a sum of Rs.5.50 lakhs and other



documents, and insisted the defacto complainant to withdraw the civil case and when she shouted, the accused persons fled away from the scene of occurrence. Hence, the complaint.

3. The learned counsel appearing for the petitioner submits that the first petitioner is the husband of the second petitioner and the defacto complainant has executed a power of attorney on 12.09.2018 in favour of the first petitioner for the purpose of selling the property belonging to the defacto complainant, after borrowing some amount from the first petitioner and immediately after the execution of power of attorney in favour of the first petitioner, the entire sale consideration was paid to the defacto complainant to the tune of Rs.73,50,000/-. On the basis of the power of attorney, the first petitioner has executed a sale deed in favour of his wife on 25.09.2018. Thereafter, the defacto complainant has cancelled the power of attorney executed in favour of the first petitioner which is not sustainable one. For the very same issue, the defacto complainant has filed a suit in O.S.No.97 of 2019 before the District Munsif Court, Theni, to cancel the sale deed dated 25.09.2018 as against the petitioners and the suit was dismissed, as against which, the defacto complainant has preferred an appeal and the same is pending. When the very same issue was already adjudicated before the civil Court in



Crl.O.P.(MD)No.4835 of 2022

O.S.No.97 of 2019 by the defacto complainant, filing the criminal complaint before the first respondent Police against the petitioners is not tenable one. The allegations made against the petitioners in the First Information Report did not constitute an offence and did not disclose the commission of offence to make out a case against the petitioners. Without verifying the veracity of the complaint, the first respondent Police has also filed a charge sheet before the trial Court. He relied on the decision of the Hon'ble Supreme Court of India in the case of ***State of Haryana – Vs - Bhajan Lal (1992 SCC (Crl.) 426)***

4. The learned Government Advocate (Crl. Side) appearing for the first respondent Police would submit that there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and the charges against the petitioner have to be gone into only at the time of trial and hence, he prayed for dismissal of the petition.

5. Admittedly, the petitioners are the accused Nos.1 to 3 in Crime No.827 of 2019 on the file of the first respondent Police, which was registered on the complaint made by the defacto complainant that showing the subject property, she borrowed a sum of Rs.5,00,000/- from



the first petitioner by executing the general power of attorney, however, by misusing the power of attorney, the first petitioner has executed a sale deed in favour of his wife which was questioned by the defacto complainant, due to which, the first petitioner and his wife was making trouble to the defacto complainant and therefore, she filed a suit in O.S.No.97 of 2019 before the District Munsif Court, Theni to cancel the registered sale deed standing in the name of the second petitioner, because of which, the accused persons entered into the house of the defacto complainant and damaged the articles and took away some amount.

6. From the materials available on record, it reveals that before lodging the criminal complaint against the petitioners, the defacto complainant has filed a suit in O.S.No.97 of 2019 before the learned District Munsif Court, Theni and both the parties have adjudicated the issue before the trial Court and the suit was dismissed. While so, subsequently, filing the criminal complaint against the petitioners is not sustainable one and the civil dispute does not give a criminal colour. When the very same issue was adjudicated before the civil Court in O.S.No.97 of 2019, it cannot be adjudicated again before the criminal Court. It is relevant to refer here the judgment of the Hon'ble Supreme



Court of India in the case of ***State of Haryana – Vs - Bhajan Lal (1992***

SCC (Crl.) 426) and the relevant portion is extracted hereunder:-

“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 extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of 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 exhaustive list of myriad kinds of cases wherein such power should be exercised:

(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 FIR 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.



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CrI.O.P.(MD)No.4835 of 2022

(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.

(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.”



7. In the light of the decision rendered by the Hon'ble Supreme Court of India in the above case as cited supra, it is clear that when the allegations made in the First Information Report do not constitute an offence or make out a case against the accused persons, making the accused persons to face the trial is fallible. In this case, the allegations made in the First Information Report did not constitute any offence to proceed against the accused persons and the subject matter was already adjudicated before the civil Court in O.S.No.97 of 2019 which was dismissed, against which, appeal has been filed by the defacto complainant. This Court, time and again, has held that the dispute of civil nature does not convert into a criminal colour. Hence, this Court is inclined to quash the proceedings in C.C.No.217 of 2020 pending on the file of the learned Judicial Magistrate, Theni, and accordingly, it is quashed against the petitioners herein.

8. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

27.02.2024

Index : Yes/No
Internet : Yes/No
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Crl.O.P.(MD)No.4835 of 2022

To

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



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Crl.O.P.(MD)No.4835 of 2022

M.DHANDAPANI. J.

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Crl.O.P.(MD)No.4835 of 2022

27.02.2024