



CrI.O.P.No.13799 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: **19.01.2022**

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

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1. Sheshadri
2. Bhanuprakash
3. M.Murali
4. Kodhandan
5. Muthu
6. Ashok
7. Prasuraman

.. Petitioners/A1 to A7

Vs.

T.R.Renuka

.. Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., seeking to call for the records pertaining to C.C.No.11 of 2016 pending on the file of the learned Judicial Magistrate, Pallipattu and quash the same.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.A.Prakash Adiapadam



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ORDER

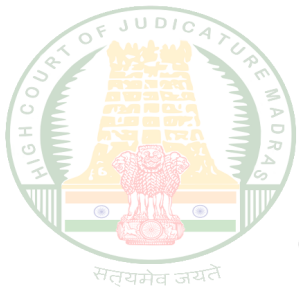
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To quash the criminal proceedings pending against the petitioners/A1 to A7, on the file of the learned Judicial Magistrate, Pallipattu in C.C.No.11 of 2016 for offence under Sections 147, 294(b), 324, 354 and 506(i) of I.P.C., the petitioners/A1 to A7, are before this Court with this criminal original petition.

2. The facts leading to filing of the quash petition, in brief, is as follows:

(i) There is a dispute between the petitioners/accused and the respondent/complainant in respect of a vacant house site situated near the respondent's house at Sholingar Road, Pallipattu. According to the respondent/complainant, she is the owner of the house site and she is in possession and enjoyment of the same and she had kept bricks in the said vacant site.

(ii) On 17.10.2015, the petitioners trespassed into her property and tried to remove the bricks and when the same was questioned by the respondent, the petitioners attacked her indiscriminately and outraged her modesty.



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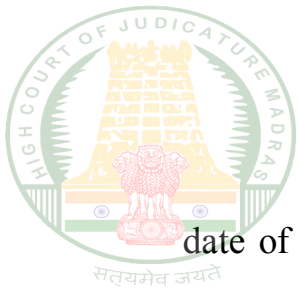
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(iii) In the above circumstance, earlier the respondent filed a

complaint before the R.K.Pettai Police Station. Based on the complaint, FIR was registered for offence under Sections 147, 294(b), 324, 354 and 506(i) I.P.C.

(iv) After investigation, a Referred Charge Sheet (RCS) has been filed closing the complaint as mistake of fact. Thereafter, she filed a protest petition before the concerned jurisdictional Magistrate and in the meantime she has also filed a private complaint before the learned District Munsif cum Judicial Magistrate, Pallipattu. Considering the fact that already a private complaint has been filed by the respondent, the learned Judicial Magistrate closed the protest petition and accepted the private complaint. After taking sworn statement in the private complaint filed by the respondent, the learned Judicial Magistrate issued process. To quash the private complaint the present criminal original petition has been filed.

3. The learned counsel appearing for the petitioners/accused submitted that the second respondent is the owner of the disputed property and he has purchased the property by means of a registered sale deed from one Baskar on 26.09.2013, for a valuable consideration and right from the



date of purchase, he has been in possession and enjoyment of the property.

Subsequently, the respondent claiming right over the property by virtue of a sale agreement said to have been executed by one Ms.Annapoorani Ammal in the year 1991 tried to interfere with his possession. In the above circumstances, the second petitioner filed a civil suit in O.S.No.38 of 2017, to restrain the respondent/complainant from interfering with his property. The respondent/complainant also filed another suit in O.S.No.56 of 2017, against the second petitioner and one Ms.Annapoorani Ammal for specific performance of contract pursuant to the sale agreement said to have been entered into between respondent/complainant and Ms.Annapoorani Ammal. Now both the suits are pending trial. In the above circumstances only to harass the petitioners, the police complaint has been given which was closed as mistake of fact and thereafter the present private complaint has been filed. The learned Judicial Magistrate without even applying his mind to find out whether any prima facie case is made out against the petitioners or not, mechanically issued the process under Section 204 Cr.P.C.

4. Further according to the learned counsel, it is only a civil dispute between the parties and no prima facie case is made out against the petitioners and there is no ground to proceed against the petitioners and hence the private complaint is liable to be quashed.



WEB COPY 5. Per contra, the learned counsel appearing for the respondent vehemently contended that the respondent/complainant has entered into a sale agreement with the original owner Ms.Annapoorni Ammal and paid part of the sale consideration and on the date of sale agreement, possession has been handed over to the respondent/complainant and she has been in possession and enjoyment of the same.

6. The learned counsel further submitted that the second petitioner/A2 is stated to have purchased the property from one Mr.Baskar, who has nothing to do with the disputed property and by virtue of that sale deed he is now trying to interfere with the possession of the respondent. On the date of occurrence, rowdy elements numbering 40 entered the premises and they molested her and outraged her modesty. Hence a police complaint has been filed which was closed as mistake of fact and thereafter the present private complaint has been filed. The learned Judicial Magistrate after applying his mind has rightly come to the conclusion that prima facie case is made out against the accused and issued process.

7. According to the learned counsel appearing for the respondent the



second respondent has absolutely no right of title over the disputed property

and with money and muscle power he is trying to interfere with her possession and the petitioners have also attacked her and therefore the complaint has also been filed.

8. Further according to the learned counsel it is not a civil dispute as all the accused assaulted the respondent/complainant and caused physical injury and outraged her modesty. Hence, prima facie case is made out against the petitioners and there is no reason to quash the complaint.

9. I have considered the rival submissions and also perused the records.

10. Admittedly, there is a civil dispute between the parties regarding title over the property and two civil suits are pending between them. The respondent/complainant claiming title over the property, by virtue of a sale agreement said to have been entered into with Ms.Annapoorni Ammal. According to A2, he purchased the property for a valuable consideration from one Mr.Baskar, who had earlier purchased the property from Ms.Annapoorni Ammal, and he has been in possession of the property and only the



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respondent/complainant is trying to interfere with his possession and hence a civil suit has been filed and the same is pending and only to harass the petitioners a false complaint has been filed.

11. Earlier, a police complaint filed by the respondent/complainant has been investigated and closed as mistake of fact. Subsequently a protest petition has been filed and the same was also closed by the concerned jurisdictional Magistrate. Admittedly the earlier police complaint has been closed after investigation as mistake of fact and the protest petition filed by the respondent/complainant was also closed by the learned Judicial Magistrate. In the meantime, the present private complaint has been filed for the very same occurrence on the very same allegations. Perusal of the original records it could be seen that after filing of the present complaint, recording the sworn statement of the respondent/complainant, the learned Judicial Magistrate without even applying his mind simply put a rubber stamp in the docket sheet stating that the case is taken on file in C.C.No.11 of 2016 for offence under 147, 294(b), 324, 354 and 506(i) of I.P.C., and issued summons to the accused. The learned Judicial Magistrate has mechanically issued process without even being satisfied that a prima facie case is made out for proceeding against the accused, which is impermissible



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in law. It is well settled that before taking cognizance of the offence and

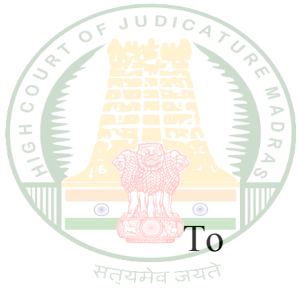
issuance of process under Section 204 Cr.P.C. the learned Judicial Magistrate is expected to apply his mind and find out whether any prima facie case is made out against the accused, which is totally absent in this case. That apart, it is only a civil dispute between the parties and both the parties have already approached the civil Court and their respective civil suits are pending adjudication. Now, it is for the Civil Court to decide the title dispute between them.

12. Considering those circumstances, this Court is of the view that it is only a civil dispute between the parties and criminal colour has been given to it. The learned Judicial Magistrate has also without applying his mind has taken cognizance and issued process.

13. In the above circumstances, this private complaint is liable to be quashed and accordingly quashed. The criminal original petition is allowed.

19.01.2022

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The Judicial Magistrate,
Pallipattu



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V.BHARATHIDASAN, J.

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