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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.06.2022

PRONOUNCED ON: 07 .07.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.3653 of 2019

and

Crl.M.P.(MD)No.2109 of 2019

P.Velumani : Petitioner/Accused No.2

Vs.

1.The State represented through
The Inspector of Police,
Town West Police Station,
Dindigul.
In Cr.No.450 of 2010.

2.G.Nagarajan : 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to C.C.No.129 of 2018, on the file of the learned Judicial Magistrate No.I, Dindigul and quash the same as against the petitioner.

For Petitioner : Mr.M.Sheik Abdullah

For Respondents : Mr.K.Sanjai Gandhi
Government Advocate(Crl.Side)

: No Appearance for R.2

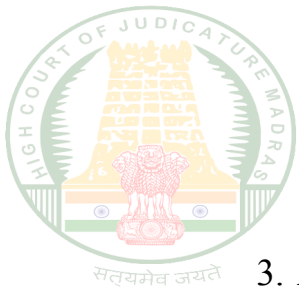


ORDER

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This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to C.C.No.129 of 2018, pending on the file of the Court of Judicial Magistrate No.I, Dindigul and quash the same.

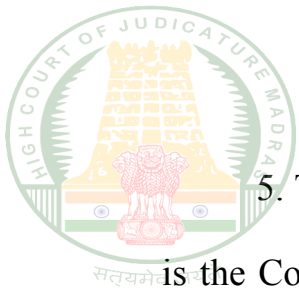
2. The petitioner is the second accused in C.C.No.129 of 2018, on the file of the Judicial Magistrate Court No.I, Dindigul. On the basis of the complaint lodged by the second respondent, F.I.R., came to be registered in Cr.No.450 of 2010, on the file of the Dindigul Town West Police Station, for the offences under Sections 147, 454, 360, 341 and 506(i) I.P.C., against 5 persons including the petitioner. The first respondent, after completing investigation, has laid the final report dated 12.07.2010, for the offences under Sections 147, 454, 341 and 506(i) I.P.C., against 5 persons including the petitioner and the case was taken on file in C.C.No.408 of 2020, on the file of the Judicial Magistrate No.I, Dindigul. It is not in dispute that since the petitioner was shown as absconding accused and after filing of the charge sheet, NBW was issued and pending, the case as against two persons including the petitioner, was ordered to be split up from the mother case in C.C.No.408 of 2010 and the same was taken on file in C.C.No. 129 of 2018.



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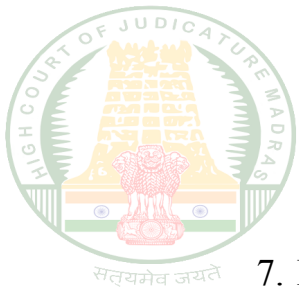
3. Admittedly, the accused Kalavathi and the defacto complainant's wife Chitra are sisters and are the daughters of one Seenivasan and his wife Janaki. It is not in dispute that the said Seenivasan was owning some properties including the property in dispute, that while the said Seenivasan was alive, he had settled some properties to his daughters and effected a family arrangement, that subsequently the said Seenivasan had died on 16.07.2006 leaving behind his wife and two daughters and that thereafter, the mother Janaki had died on 16.10.2009. It is also not in dispute that during the life time of mother Janaki, the defacto complainant's wife Chitra and her family members were residing in the property in dispute along with her mother Janaki and after the death of the said Janaki, disputes arose between the sisters and as a result of which, the accused Kalavathy has filed three civil suits in O.S.Nos.65 of 2009, 89 of 2009 and 277 of 2010 against the defacto complainant's wife Chitra and that the defacto complainant has filed a writ petition in W.P.No.195 of 2010 against the said Kalavathi and her husband.

4. Considering the above, it is very much clear that there existed property dispute between the accused Kalavathi's family and the defacto complainant's family and consequently Court proceedings.



5. The petitioner is a practicing Advocate in the Courts at Dindigul and he is the Counsel on record for the accused Balaguru and Leelavathy. The case of the prosecution is that on 22.04.2010 at about 06.00p.m., when the defacto complainant and his family members went to Trichendur, all the five accused broke open the door of the defacto complainant's house, trespassed into the house and had stolen Rs.1,00,000/- cash, one Laptop and some documents, that when the defacto complainant and his wife returned to their home from Trichendur, they were prevented from entering into their house and that the accused Leelavathi and Balaguru had caused criminal intimidation.

6. As already pointed out, it is pertinent to note that originally F.I.R. came to be registered for the alleged offences under Sections 147, 454, 380, 341 and 506(i) I.P.C. The first respondent, after initial investigation, has altered the case from the offences under Sections 147, 454, 380, 341 and 506(i) I.P.C into Sections 147, 454, 341 and 506(i) I.P.C., and submitted the alteration report dated 22.04.2010 before the jurisdictional Court. As rightly pointed out by the learned Counsel for the petitioner, in the alteration report, the Sub-Inspector of Police has specifically observed that the alleged complaint of stealing of Rs. 1,00,000/- cash, Laptop and other documents was not true, that there was no stolen of such articles and that the defacto complainant with evil intention to implicate the accused with theft case, has raised false allegations.



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7. It is pertinent to note that the main charges levelled against the present petitioner in the charge sheet are under Sections 147, 454 and 341 I.P.C. In the complaint, the defacto complainant has raised allegations as if all the accused had committed the alleged offences, but the charge sheet has been laid against the main accused Balaguru and Kalavathi for the offences under Sections 147, 454, 341 and 506(i) I.P.C., and against the three accused including the petitioner for the offences under Sections 147, 454 and 341 I.P.C. As rightly pointed out by the learned Counsel for the petitioner, the defacto complainant and his wife Chitra and three other eye-witnesses in their statements recorded under Section 161 Cr.P.C., have specifically stated that when the defacto complainant and his family members were entering into their house after visiting Tiruchendur, the accused by broke open the lock of the house, were found inside the house and at that time, the accused Balaguru and his wife Kalavathi had threatened the defacto complainant's family members that they would kill them if they enter into the house. As already pointed out, the only allegation is that the petitioner was present in the house property in dispute along with the other accused.

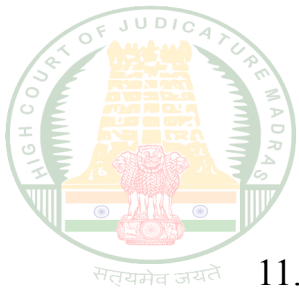
8. The learned Counsel for the petitioner would submit that in the suit pending in O.S.No.277 of 2010, an Advocate Commissioner was appointed in I.A.No.367 of 2010 for inspecting the disputed property, that the plaintiff's



Counsel has requested the Advocate Commissioner to visit the disputed property and gave a memo at about 08.00p.m., on 22.04.2010 and that the Advocate Commissioner had visited the disputed property on 22.04.2010 itself along with the plaintiff's Counsel, the petitioner herein and Photographer Poul.

9. The learned Advocate Commissioner in his interim report dated 26.04.2010, has specifically stated that he visited the disputed property, that he found ten to twenty persons not connected with the parties to the suit, that two Police Constables were present at that place and after some time, Dindigul Town West Police Inspector came along with Advocate Vijayakumar and that since there arose some disputes, he returned without executing his warrant of commission.

10. As rightly contended by the learned Counsel for the petitioner, the petitioner, being the Counsel on record for the accused Balaguru and Kalavathi, had accompanied the Advocate Commissioner to the disputed property after 08.00p.m. Moreover, according to the prosecution, the defacto complainant has preferred a complaint before the Police at 09.00p.m., and thereafter, F.I.R., came to be registered and that the Investigating Officer had visited the property and prepared the observation mahazar and rough sketch at about 10.00p.m, on that day.



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11. Advocates, in addition to being professionals, are also officers of the courts and play a vital role in the administration of justice. The legal profession cannot be equated with any other traditional profession and it is not commercial in nature and is a noble profession considering the nature of duties to be performed and its impact on the society. The Advocates are supposed to be fearless and independent in the protection of rights of litigants. It is their duty to press their clients' cases strenuously and to the best of their ability and an Advocate must, no doubt, give his very best to every cause that he pleads for his client. The nature of work of an Advocate is not only limited to the Courts and they are expected to visit the property in dispute or the scene of occurrence to have first hand and direct information about the property in dispute or the occurrence scene. Moreover it is their bounder duty to accompany the Advocate Commissioner appointed in the cases for inspecting the disputed property and for other purposes.

12. In the case on hand, admittedly, it is not the case of the prosecution that the petitioner has some other connection with the parties or with the disputed property, except the professional relationship with the accused Balaguru and Kalavathi. As already pointed out, as per the Advocate Commissioner's interim report, the petitioner had visited the disputed property along with the



Advocate Commissioner after 08.00p.m, on the occurrence day. Even assuming that the complainant's version is true and the petitioner was very much present in the disputed property along with other accused, there is no material to show that the petitioner broke open the lock of the disputed property and committed house trespass.

13. Section 454 I.P.C., contemplates punishment for committing lurking house-trespass or house-breaking in order to commit any act punishable by imprisonment and the punishment prescribed is imprisonment upto three years and in case if the intended crime is theft, the imprisonment is upto ten years. Section 443 I.P.C., defines lurking house trespass. In order to attract Section 443 I.P.C., the prosecution has to show that not only the accused committed house trespass, but also the accused had taken precautions to hide the trespass from someone, who has the authority to exclude or remove the trespasser. In the present case, as already pointed out, though the F.I.R. was lodged for the offences under Section 380 I.P.C., subsequently the same was removed.

14. The learned Counsel for the petitioner would further submit that the petitioner is an Advocate practicing for the past 29 years and a member of the Dindigul Bar Association and he has been appearing in all the Courts at Dindigul, but the first respondent has purposely indicated that the petitioner was

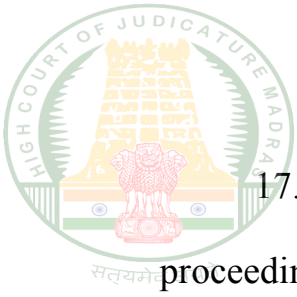


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absconding and filed a final report as if he was absconding continuously, that even in the complaint and in the charge sheet, the petitioner has only been referred as an Advocate and as such, the first respondent has not offered any reason or explanation for showing the petitioner as absconding accused.

15. As rightly contended by the learned Counsel for the petitioner, a new trend has been emerging in implicating the Advocates as accused along with their clients with ulterior motive of achieving the intended result quickly or immediately. The practice of implicating the Advocates along with their clients for the offences alleged to have committed by the clients is to be condemned and such a practice is to be deprecated.

16. Considering the above facts and circumstances, this Court is of the clear view that permitting the prosecution to proceed against the petitioner is totally unwarranted and the same would amount to be an abuse of process of the law. Hence, this Court decides that the proceedings as against the petitioner in C.C.No.129 of 2018, pending on the file of the Judicial Magistrate Court No.I, Dindigul, is liable to be quashed.



17. In the result, the Criminal Original Petition is allowed and the proceeding in C.C.No.129 of 2018, pending on the file of the Judicial Magistrate Court No.I, Dindigul as against the petitioner is quashed. Consequently, the connected Miscellaneous Petition is closed.

07.07.2022

Index : Yes/No

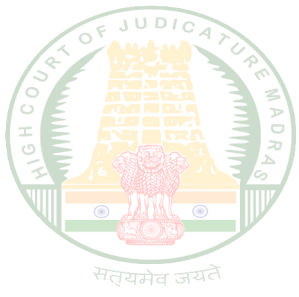
Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.I, Dindigul.
2. The Inspector of Police,
Town West Police Station, Dindigul.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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CrI.O.P.(MD)No.3653 of

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY ORDER MADE IN

CrI.O.P.(MD)No.3653 of 2019

07.07.2022