

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.12.2015

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

CrI.R.C.No.412 of 2014

R.Damodharan
S/o.Ramasamy Nadar

.. Petitioner

vs.

1.State represented by its
Inspector of Police,
Tambaram Police Station,
Tambaram.

2.S.R.Sriram Sekar
S/o.B.V.Ramudu Iyer

.. Respondents

Criminal Revision filed under section 397 and 401 Cr.P.C.
against the order of learned Assistant Sessions Judge, Tambaram,
passed in C.M.P.No.575 of 2013 in S.C.No.202 of 2013 on
20.03.2014.

For Petitioner : Mr.H.S.Mohamed Rafi

For Respondents: Mr.V.Arul
Government Advocate [CrI.side] [R1]
No appearance [R2]

O R D E R

This revision arises against the order of learned Assistant
Sessions Judge, Tambaram, passed in C.M.P.No.575 of 2013 in
S.C.No.202 of 2013 on 20.03.2014.

2. The case of the prosecution is that an agreement for
sale was entered into between petitioner and second
respondent/A1 on 03.08.2007 in respect of property measuring an
extent of 6 cents. The sale consideration has been fixed at
Rs.1,55,00,000/-. Second respondent has paid an advance of
Rs.1,06,00,000/- and promised to pay the balance within three
months. Believing such representation, petitioner executed a
Power of Attorney in favour of second respondent, who without
paying the balance and in exercise of power registered the

property in favour of his wife. Aggrieved thereby, petitioner preferred O.S.No.285 of 2008 on the file of Tambaram Civil Court and the same is pending. However, second respondent/A1 along with accused 2 to 4 illegally demolished the building on the property. A case in Crime No.396 of 2009 on the file of first respondent for offences u/s.3(1) of TNPPDL Act, 1992 and 506(i) r/w 34 IPC was registered. Upon completion of investigation and filing of charge sheet, the case was taken up on file in S.C.No.202 of 2013 on the file of learned Assistant Sessions Judge, Tambaram. Petitioner moved C.M.P.No.575 of 2013 seeking discharge, which came to be allowed under orders dated 20.03.2014. Challenging the same, the present revision has been filed by petitioner/de facto complainant.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side] for the State.

4. Barring few exceptions, Criminal Law can be set in motion by anyone aware of commission of an offence. Therefore, this Court would not subscribe to the view of the Court below that as the petitioner was not the owner of the property on the date he preferred the complaint he could not have preferred the same. Time and time again, has resort to criminal proceedings as a means to achieve civil ends been deprecated. In the instant case, the petitioner has moved O.S.No.285 of 2008 on the file of Tambaram Civil Court relating to the very same transaction and the same is pending. Though normally at the stage of discharge it is only the evidence gathered by the prosecution that is to be looked into, there is no bar to refer to documents of sterling quality produced by the accused when doing so would serve the ends of justice. In the instant case, the second respondent has produced the following documents before the Court below:

- (1) Ex.P1/3.8.2007 certified copy of registered sale agreement entered into between the petitioner and complainant.
- (2) Ex.P2/3.8.07 xerox copy of unregistered agreement executed by the complainant in favour of the petitioner.
- (3) Ex.P3/3.8.2007 certified copy of General Power deed executed in favour of the petitioner/1st accused by the complainant and his wife.
- (4) Ex.P4/9.9.2008 xerox copy of demolition order obtained from Tambaram Municipality.
- (5) Ex.P5/24.9.2008 certified copy of sale deed executed in favour of Jayanthi, w/o. the petitioner/accused.

(6) Ex.P6/3.10.2008 xerox copy of registered
cancellation deed of General Power of Attorney deed.

It is the second respondent's case that as against the original agreement providing for sale of an extent of 6 cents (approximately 2610 sq.ft.) the actual extent was only 1851 sq.ft. and that he had paid a huge amount of Rs.1,10,00,000/- which the petitioner had agreed to adjust as the total consideration for the actual extent available. What is the actual consideration agreed upon by the parties is not an issue of much importance. The documents produced reveal that pursuant to agreement, a Power of Attorney stands executed by petitioner/de facto complainant and his wife in favour of second respondent wherein an unrestricted right of sale of property and demolition of building thereon stands conferred. Pursuant thereto and upon permission of the local authority and in keeping with the requisite of demolition within 60 days of permission, the building stands demolished. It is only thereafter that the petitioner has cancelled the Power of Attorney and proceeded to prefer a complaint. In the said circumstances, this Court is not inclined to interfere with the order of discharge passed by the Court below.

This Criminal Revision shall stand dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

gm
To

1. The Assistant Sessions Judge,
Tambaram.
2. -do-Thro' Principal District Sessions Judge,
3. The Inspector of Police,
Tambaram Police Station,
Tambaram.
4. The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.412 of 2014

aa16/02/2016