

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P.No.13301 of 2009 and M.P.No.1 of 2009

B.Banalal

...Petitioner/Accused

Vs

N.Deverajan

...Respondent/Complainant

Prayer :- Criminal Original Petition filed under Section 482 of Cr.P.C., to to call for the records and quash the same and thereby render justice in C.C.No.112 of 2009 on the file of the learned Judicial Magistrate No.II, Walajahpet.

For Petitioner : Mr.D.Deivasigamani

For Respondent : Mr.M.V.Muralidaran

O R D E R

The petitioner is an accused in C.C.No.112 of 2009. The respondent herein filed a private complaint before the learned Judicial Magistrate No.II, Walajapet against the petitioner stating that the petitioner has committed offence punishable under Sections 294(b), 288, 427 and 506(i) of IPC.

2.The petitioner has filed this petition to quash the complaint stating that the respondent herein had no right over the property bearing door No.95, Vethelaikara street, Walajapet and the petitioner has purchased the said property from Subramani @ Balasubramanian son of Nagappan and registered sale deed dated 12.10.2006 for valid consideration and also put up construction in the property.

3.It is submitted by the learned counsel for the petitioner that the respondent filed a suit in O.S.No.744 of 1995 against the vendor of the petitioner Balasubramanian for partition and the suit was also dismissed and the appeal filed by the respondent with the delay was also not entertained by the Lower Appellate Court and the application to condone the delay was dismissed and therefore the respondent has no title or right over the property. However, the respondent has given a complaint as if he was residing in the said property and the petitioner demolished the house and also abused the respondent when the respondent questioned the act of the petitioner. He therefore submitted that the respondent has no right over the property and he was not in possession of the

property and the petitioner is the absolute owner of the property and therefore, no offence has been made out and therefore the case is liable to be quashed.

4.It is submitted by the learned counsel for the respondent that though the suit filed by the respondent was dismissed for default and the application to condone the delay in filing the appeal was also dismissed, the respondent filed a revision against the order and the same is pending before this Court. He also submitted that the respondent was in possession of the property and when he was in possession of the property, the petitioner demolished a portion of the property and when that was questioned, the petitioner abused and therefore, a case was filed.

5.It is seen from the typed set of papers that the petitioner purchased the property bearing door No.95, Vethelaikara street, Walajapet and registered sale deed dated 12.10.2006 from Balasubramanian son of Nagappan. It is also admitted that the respondent is also one of the sons of Nagappan and he filed a suit in O.S.No.744 of 1995 and the suit was dismissed on 30.06.2005 and the appeal was filed with the delay and the delay was not condoned and the Revision is pending before this Court.

6. Therefore, having regard to the sale deed and the fact that the suit filed by the respondent was dismissed, it cannot be contended by the respondent that he was in possession of the property and the petitioner without any right demolished the wall and also abused the respondent. As per the complaint the criminal act was committed by the petitioner, when the respondent questioned the act of the petitioner in demolishing the wall and when the respondent has no title or possession over the property, it is highly doubtful, whether such incident would have happened.

7.Considering the same, the learned Magistrate ought not to have taken cognizance and the petition is allowed and the Case in C.C.No.112 of 2009 on the file of the learned Judicial Magistrate No.II, Wallajahpet is quashed. Consequently connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//
Sub Assistant Registrar

To

1.The Judicial Magistrate No.2,
Walajahpet.

2. The Chief Judicial Magistrate, Vellore.

3. The Public Prosecutor,
High Court, Madras.

+ 1 cc to MR. M.V. Muralidaran, Advocate SR.11017

+ 1 Mr.S. Deivasigamani, AdvocateSR.11123

Crl.O.P.No.13301 of 2009 and
M.P.No.1 of 2009

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