

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18/11/2015

CORAM

THE HON'BLE MR.JUSTICE C.S.KARNAN

Crl.R.C.No.1913 of 2003

Order Reserved on 17.04.2012 Judgment Pronounced on 18.11.2015

Balaraman .. Petitioner

Vs.

1.Bhanumathi

2.Devakiammal .. Respondents

Prayer :- Criminal Revision is filed under Section 397 of Cr.P.C., against the order dated 08.09.2003 passed in C.C.No.6378 of 1989 on the file of IX Metropolitan Magistrate, Saidapet, Chennai-15 acquitting the respondents under Section 255(i) of Criminal Procedure Code.

For Petitioner : Mr.J.R.K.Bhavanantham

For Respondents: No Appearance

ORDER

The revision petitioner herein had filed a case in C.C.No.6378 of 1989 on the file of IX Metropolitan Magistrate, Saidapet, against the respondents herein / accused stating that the complainant's mother and his father had owned the property bearing Door No.3, S.P.Road, Adyar. The complainant's parents had enjoyed the property for more than 40 years. After the death of his father, the property had been partitioned amongst his mother and step mother. The partition took place before a Court of law. Thereafter, the complainant had executed the said decree and took possession. The possession is under lock and key. Under the circumstances, the accused and others had broken open the lock and thrown out the articles from his house. Hence, a criminal case had been levelled before the J-2 Police Station. The police authorities had not proceeded with the case. Hence, the complainant had filed the above case for the offence under Section 426, 448, 457 and 506(2) of I.P.C.

2. On the side of complainant, three witnesses were examined and 10 documents were marked namely Partition suit decree, Sketch indicating the property, Building sanction plan, Tax receipts, Delivery order, Court warrant, Bailiff report and names of witnesses, who were present at the time of delivering the property as per Court

order. On the side of the accused, no witness, no documents, no material evidence was produced on either side.

3. PW1 had adduced evidence stating that the accused namely Venkatesan and Govindarajulu and others had trespassed into her property. PW1 had expired during the pendency of the case. PW2 had adduced evidence stating that on 04.01.1991, all the accused had trespassed into the house property bearing Door No.37, S.P. Road, Adyar. PW2 further stated that the property had been delivered as per the Court decree in O.S.No.7136 of 1973, 3 days, immediately after the delivery of the property, the accused broke open the lock and assaulted PW2. Besides the accused removed all the articles from her house.

4. PW3 had adduced evidence on the same line of PW1. After recording the evidence of the prosecution witness and after perusal of exhibits marked by the complainant, the trial Court dismissed the said complaint since the case had not been proved beyond doubt.

5. Not being satisfied with the dismissal order of the trial Court, the above revision has been filed.

6. The highly competent counsel Mr.J.R.K.Bhavanandam submits that it is clearly proved that the property had been partitioned through Court of law. Accordingly, the property bearing Door No.37, S.P.Road, Adyar has been delivered to the complainant after filing execution proceedings No.1828 of 1983. The property has been handed over to PW1. Under the circumstances, on 11.01.1989, at about 7.00 p.m., all the accused trespassed into the complainant's property and broke open the lock and also threw out all the articles, which were kept in the house. The very competent counsel further submits that the Court records reveal that the complainant had got the property through partition suit. Further, the complainant had filed a case before the J2-Police Station. The investigation officer had not come forward to proceed with the case. Hence, the private complaint has been filed and the same was proved before the trial Court. However, the trial Court acquitted the accused.

7. On considering the facts and circumstances of the case and arguments advanced by the learned counsel for the petitioner and on perusing the trial Court's judgment, this Court does not find any discrepancy in the conclusions arrived at by the trial Court for acquitting the accused. This Court is of the view that the complainant had stated in his complaint that the accused had trespassed into his property with the help of police on 11.01.1989 at about 7.00 p.m. and broke open the lock and also threw out the house hold articles. In order to prove this allegation, the name of the police officer had not been mentioned and no material evidence i.e. broken lock and key and household articles were produced. Hence, the above revision is dismissed.

8.In the result, the criminal revision case is dismissed.
Vs

Sd/-
Assistant Registrar (CS-VII)

/True Copy/

Sub-Assistant Registrar

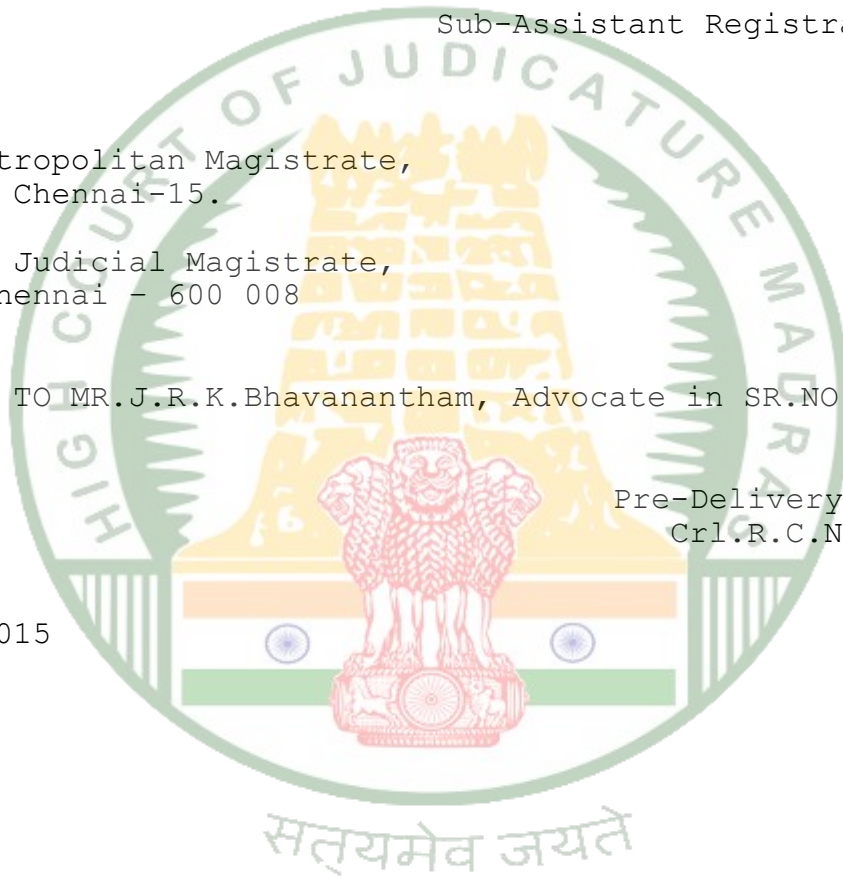
To

1. The IX Metropolitan Magistrate,
Saidapet, Chennai-15.
2. The Chief Judicial Magistrate,
Egmore, Chennai - 600 008

+1 C.C. TO MR.J.R.K.Bhavanantham, Advocate in SR.NO.62430

Pre-Delivery order made in
Crl.R.C.No.1913 of 2003

VSN(CO)
sd : 07/12/2015



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