

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

**Crl.O.P No.10130 of 2010
and M.P.No.1 of 2010**

Rajesh Bajaj .. Petitioner
Vs.

1. The State Rep. by
Inspector of Police
Team XV, CCB, Egmore,
Chennai - 600 008.

2. E.Godwin .. Respondent

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.4272 of 2009 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.M.Sreedhar

For Respondents : Mr.R.Ravichandran
Govt. Advocate (Crl. Side) for R1
No Appearance for R2

ORDER

This Criminal Original Petition has been filed by the accused under Section 482 of the Code of Criminal Procedure, praying to call for the records in C.C.No.4272 of 2009 on the file of the Chief Metropolitan Magistrate, Egmore and quash the same.

2. It is averred in the petition that the second respondent / defacto-complainant got executed a sale deed of the disputed Flats No.D and E in Bajaj house apartments from the persons having no title and gave a false complaint as against the petitioner, having fully known about ad-interim injunction obtained by the petitioner from the Civil Court, as if the petitioner trespassed into the flats and committed theft. The dispute is purely civil in nature; but the first respondent police registered the case and laid charge sheet only because of the influence the second respondent had with the police.

3. The second respondent in his counter avers that he purchased the Flats D and E ground floor in Bajaj House Apartments for valuable consideration and the petitioner with two other accused trespassed into his flats in day time by breaking open the flats and committed thefts of valuable furniture and electronic items and also damaged the electric wiring and electric meter box and therefore, he preferred a complaint. The first respondent police registered the case and after thorough investigation laid charge sheet.

4. The Hon'ble Supreme Court in **State of Bihar v.**

Rajendra Agrawalla reported in **(1996) 8 SCC 164**, has held as follows :

"5... So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open for the court either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out. In a recent judgment of this Court to which one of us (Hon. K.Ramaswamy, J) was a member it has been held, following the earlier decision in *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194 :

It is thus settled law that the exercise of inherent power of the High Court is an exceptional one. Great care should be taken by the High Court before embarking to scrutinise the FIR / charge-sheet complaint. In deciding whether the case is rarest of rare cases to scuttle the prosecution in its inception, it first has to get into the grip of the matter whether the allegations constitute the offence. It must be remembered that FIR is only an initiation to move the machinery and to investigate into cognizable offence. After the investigation is concluded and the charge sheet is laid the

prosecution produces the statements of the witnesses recorded under Section 161 of the Code in support of the charge-sheet. At that stage it is not the function of the court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge-sheet."

5. Therefore, it is to be seen whether cognizance of the offence can be taken from the averments in the charge sheet and the statements of witnesses on the record in support thereof.

6. The learned counsel appearing for the petitioner argued that he succeeded in the suit and the second respondent has no right over the property and therefore, the entire prosecution case is false. The allegation in this case as against the petitioner and other accused is that when the second respondent was in actual

possession of the flats, the petitioner and other accused trespassed into his flats and committed theft and damaged the properties.

7. This Court perused the charge sheet and statement of witnesses. From the above materials, it is clear that the offences as alleged in the charge sheet are made out. This Court does not see any reason to invoke the inherent jurisdiction enshrined under Section 482 of the Code of Criminal Procedure and accordingly, this Criminal Original Petition is liable to be dismissed.

In fine, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is also dismissed. The learned Chief Metropolitan Magistrate, Egmore, Chennai is directed to dispose of the C.C.No.4272 of 2009 within a period of three months from the date of receipt of a copy of this order and report the same to the Registry.

10.11.2016

Index : Yes / No

tsvn

To

1. The Chief Metropolitan Magistrate
Egmore, Chennai.
2. The Inspector of Police
Team XV, CCB, Egmore,

Chennai - 600 008.

3. The Public Prosecutor,
High Court of Madras, Chennai.

P.KALAIYARASAN, J
tsvn

Crl.O.P No.10130 of 2010

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