

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.14074 of 2009 &

M.P.Nos.1 and 2 of 2009

Thangaraj .. Petitioner/Accused No.1

Vs.

State rep. by
The Inspector of Police,
Yelagiri Police Station,
Vellore District.

... Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the entire proceedings in C.C.No.82 of 2009 on the file of the Judicial Magistrate No.II, Thirupathur as abuse of process of law in the interest of Justice.

For Petitioner : Mr.V.Krishnamoorthy
For Respondent : Mr.C.Emalias
Additional Public Prosecutor
For Intervenor : Mr.S.Senthilnathan

O R D E R

The petitioner has come forward with the present petition to quash the entire proceedings in C.C.No.82 of 2009 on the file of the Judicial Magistrate No.II, Thirupathur.

2. The first accused in C.C.No.52 of 2009 has come forward for quashing the C.C.No.52 of 2009 on the file of the Judicial Magistrate No.II, Thirupathur stating that the petitioner is the owner of the property. He purchased the property under a registered sale deed dated 31.12.2007. The Vendor having obtained a decree in O.S.No.392 of 2000 on the file of the District Munsif Court, Thirupathur and the property was taken possession by him and he sold the property to the petitioner and he was put in possession of the property on 08.12.2007. The ingredients of Sections 447 and 427 IPC have not been made out. And also the ingredients of sections 294(b) and 506(ii) IPC have

not been made out. Since it is civil in nature, the charge sheet has to be quashed for the reasons and he relied upon the decision reported in

1988 Law Weekly [Criminal] page 395 -
and others Vs. Thankaraj
and prayed for quashing the same.

Thankappan

3. Resisting the same, the learned counsel for the intervenor and the learned Additional Public Prosecutor would submit that the petitioner has not satisfied the ingredients of sections 482 CRPC for quashing the proceedings. He would further submit that from time immemorial they are in possession and enjoyment of the property. On 06.10.2008, this petitioner along with two others trespassed into the property and damaged the harvested Samai crops raised by the defacto complainant and when it was questioned, they made criminal intimidation and abused them in filthy language. Immediately, complaint has been given, which was registered in Crime No. 46 of 2008 and after due investigation charge sheet has been filed. The petitioner is not a bonafide purchaser and he is not the owner of the property. He is not in possession of the property on the date of occurrence. Hence, no case has been made out for quashing the proceedings. In 161 CRPC statement of Witness L.W.1 and other eye witnesses, prima facie case has been made out and so prayed for dismissal.

4. Considering the rival submissions made on both sides and on perusal of typed set of papers of both sides, it is the case of the second respondent that on 06.10.2008 at about 5.00 a.m., the petitioner along with two others trespassed into the property situated in Rayaveri Survey No.129/2 A 2 and damaged the harvested samai crops raised by the defacto complainant and when it was questioned, they abused them in filthy language and made criminal intimidation. The petitioner herein has raised the point that he is the owner of the property and he purchased the property on 31.12.2007 and he took the court to Page 57 of the typed set of papers. In page 64, the old survey number has been mentioned as 129/2 and the new survey number has been mentioned as 129/2A. But the charge sheet has been laid in respect of the trespassing of the property in Survey No.129/2 A 2. In such circumstances, prima facie, there is no evidence to show that the petitioner is the owner of the property.

Furthermore, it is appropriate to consider that Kali and others have filed O.S.No.392 of 2000 and in that suit it was stated that they obtained a decree and they have also taken delivery of the property on 8.12.2007, but no document has been produced in support of the same. It is also appropriate to consider the decision reported in 1988 Law Weekly [Criminal] page 395 in which it was stated that while civil suit is pending

with regard to the ownership of the property, the criminal proceedings has to be quashed. But, here no civil suit is pending. On perusal of 161 statement of the defacto complainant and also Village Administrative Officer, it is seen that the trespassed property is the property in Survey No.129/2 A 2 and on the basis of the documents produced, it was stated that the said property belong to the defacto complainant. So, in my view, the ingredients of Sections 447 and 427 IPC has been made out. Furthermore, the 161 Cr.P.C. statement of defacto complainant contains prima facie ingredients under sections 294 (b) and 506(ii) IPC. In such circumstances, the respondents herein have proved prima facie case against the petitioner. So it not a fit case for quashing the proceedings and this petition is devoid of merits and is liable to be dismissed.

Hence, this Criminal Original Petition is dismissed. Since the case is of the year 2009, the learned Judicial Magistrate No.II, Thirupathur is directed to dispose the case in C.C.No.52 of 2009 within three months from the date of receipt of a copy of this Order. The counsel for the petitioner is directed to co-operate for earlier disposal of the case. Consequently, the miscellaneous petitions are dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vrc

To

1. The Judicial Magistrate No.II,
Thirupathur.

2. The Inspector of Police,
Yelagiri Police Station,
Vellore District.

3. The Public Prosecutor
High Court, Chennai

+1 cc to M/s.S.Senthilnathan Advocate sr.9007

Cr1.O.P.No.14074 of 2009

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