

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.3308 of 2016

and

Crl.M.P.No.2690 of 2016

S.Gandhimadhi Nathan

S/o.N.Suriyan Pillai (late)

.. Petitioner

Vs.

1.The Deputy Commissioner of Police
Deputy Commissioner Office
New Washermanpet
Chennai

2.The Inspector of Police
H-5, New Washermanpet Police Station
Chennai

.. Respondents

Prayer:

Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to direct the respondents to reopen the case in C.S.No.216/CSR/HSL & O/INS/15 dated 12.03.2015 and to register a FIR based on the petitioners complaint dated 10.03.2015 and to investigate the same in accordance with law and to file a report as contemplated by law.

For Petitioner : Mr.R.Srinivas

For Respondents : Mr.C.Emalias, Addl. Public Prosecutor

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

2. The petitioner has come forward with this petition seeking to direct the respondents to reopen the case in C.S.No.216/CSR/HSL & O/INS/15 dated 12.03.2015 and to register a FIR based on the petitioner's complaint dated 10.03.2015 and to investigate the same in accordance with law and to file a report as contemplated under the law.

3. The learned counsel appearing for the petitioner would submit that the property in dispute was originally owned by the father of the petitioner viz., Soorianpillai and he executed a settlement deed dated 27.01.2003 in favour of the petitioner. Subsequently, the said settlement deed was canceled unilaterally on 26.02.2010 without any notice to the petitioner, and the petitioner's father had executed another settlement deed on the very same date in favour of the petitioner's brother Venkadachalam, who is the proposed accused. Hence, the petitioner was forced to file a suit in O.S.No.2875/2010 on the file of the V Assistant Judge, City Civil Court, Chennai. Further, since the petitioner was in possession of the property, he obtained an interim order of injunction which was later made absolute. However, the petitioner's brother and his henchmen attempted to interfere with the possession of the petitioner and also assaulted the petitioner and hence, the petitioner preferred a complaint with the respondent/police on 10.03.2015. But the respondent/police without initiating any action on the accused persons had closed the same and hence, the petitioner filed Crl.O.P.No.6702/2015, wherein this Court after recording the submissions made by the learned Additional Public Prosecutor, had closed the petition giving liberty to the petitioner to work out his remedies in the manner known to law. Therefore, the petitioner has now come forward with the present petition for the above stated relief.

4. Resisting the same, the learned counsel appearing for the respondents would submit that the petitioner had already filed a petition in Crl.O.P.No.6702/2015 praying for the very same relief as sought for in this petition and this Court by an order dated 29.06.2015 had directed the petitioner to work out his remedies before the Civil Court. Hence, the learned Additional Public Prosecutor prayed for dismissal of the petition.

5. Considered the rival submissions made by both sides and perused the typed set of papers.

6. It is an admitted fact that the property in dispute was originally owned by the father of the petitioner viz., Soorianpillai and he executed a settlement deed dated 27.01.2003 in favour of the petitioner. Subsequently, the said settlement deed was canceled unilaterally on 26.02.2010, and the petitioner's father had executed another settlement deed on the very same date in favour of the petitioner's brother Venkadachalam, who is the proposed accused. Thus, the problem arose and immediately, the petitioner filed a suit in O.S.No.2875/2010 on the file of the V Assistant Judge, City

Civil Court, Chennai and obtained an interim order of injunction restraining the respondents therein from interfering with his peaceful possession and enjoyment of the suit property. Later, the interim order was also made absolute.

7. Now, the present issue is in respect of the incident alleged to have been taken place on 10.03.2015. It is pertinent to note that on the basis of the complaint preferred by the petitioner on 10.03.2015, the respondent/police had enquired into the matter and came to know that it is case of property dispute and the second respondent had filed the closure report wherein it was stated that on enquiry, it was found that no such occurrence had taken place on 10.03.2015.

8. Considering the above stated position, I am not inclined to grant the relief as sought for by the petitioner, since this Court by an order dated 29.06.2015 in Crl.O.P.No.6702/2015 had already directed the petitioner to work out his remedies in the manner known to law.

9. At this juncture, the learned counsel for the petitioner would submit that as per the decision of the Hon'ble Apex Court made in Lalitha Kumari vs. Govt. of U.P & others [2013 (4) Crimes 243 (SC)], if any cognizable offence is made out, immediately a case had to be registered. But in the instant case, there was a property dispute between the brothers in respect of the property belonging to their father. In such circumstances, a criminal complaint was given. Furthermore, there is a civil suit and writ petition pending before the Courts and the Investigating Officer, after enquiring into the matter came to the conclusion that no such occurrence as alleged by the petitioner had taken place. Hence, the argument advanced by the learned counsel for the petitioner does not merit acceptance.

10. In fine, the Criminal original Petition is dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Deputy Commissioner of Police
Deputy Commissioner Office
New Washermanpet
Chennai

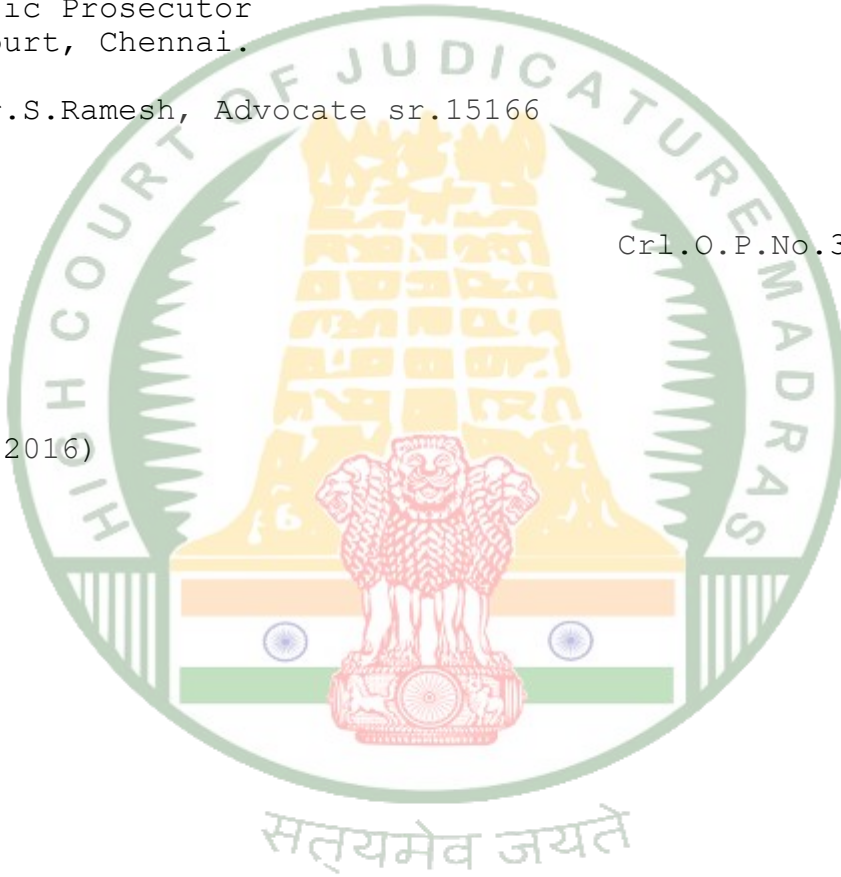
2.The Inspector of Police
H-5, New Washermanpet Police Station
Chennai

3.The Public Prosecutor
High Court, Chennai.

+1cc to Mr.S.Ramesh, Advocate sr.15166

Cr1.O.P.No.3308 of 2016

kgk (CO)
srg (23/03/2016)



WEB COPY