

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2017

CORAM : THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

Crl.OP.No.20993 of 2010

N.Nagalingam

... Petitioner

Vs.

1.The State represented by
The Inspector of Police,
R-9, Police Station,
Valasarawakkam,
Chennai - 600 087.

2.Kanniah

... Respondents

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C. Praying to call for the records pertaining to charge sheet No.91 of 2009 dated 18.10.2009 in Cr.No.357/2009 taken on the file of the Judicial Magistrate No.I, Poonamallee in C.C.No.311 of 2009 filed by the respondent police and to quash the same.

For Petitioner : Mr.C.Uma Shankar

For R1 : Mr.B.Ramesh Babu
Govt. Advocate [Crl. Side]

For R2 : No Appearance

ORDER

This petition is filed under Sec.482 Cr.P.C. to quash the charge sheet in C.C.No.311 of 2009 on the file of the Judicial Magistrate No.I, Poonamallee.

2. The quintessence of the prosecution case was that on 29.07.2009, the petitioner (A1) and two others have trespassed into the property said to be belonging to the defacto complainant /second respondent. After investigation, the first respondent police has laid a charge sheet under Sec.294(b), 447 & 506(ii) IPC.

3. The learned counsel for the petitioner submitted that there was some title dispute over the property in question that the petitioner's mother (plaintiff) had filed suit in O.S.No.808/96 on the file of the Additional District Munsif Court, Poonamallee, against one Paramasivam and others for permanent prohibitory injunction not to disturb the plaintiff's peaceful possession and an exparte interim injunction was originally passed based on which plaintiff in the suit attempted to put up a fence indicating the passing of the interim order in the suit. At this juncture the second respondent/defacto complainant had moved the respondent

police with a complaint that he was a purchaser under the defendants in the suit in O.S.No.808 of 1996 and that he too obtained an order of injunction in O.S.No.204 of 2009. The case was immediately registered. The petitioner also appeared to have preferred a complaint to the police and the first respondent police has registered the complaint against the second respondent.

4. The learned counsel submitted that during the pendency of the suit, petitioner's mother passed away and that he was impleaded, and the suit itself was initially decreed ex-parte and thereafter the decree passed therein was set aside at the instance of the de facto complainant wherein after both the suits viz., O.S.No.808 of 1996 filed by the petitioner as well as O.S.No.202 of 2009 filed by the de facto complainant were jointly tried. After trial, the petitioner's suit (O.S.No.808 of 1996) was dismissed, whereas the second respondent's suit (O.S.No.202 of 2009) was decreed. This decree ultimately confirmed in the judgment passed by this Court in S.A.Nos.1040 to 1042 of 2015. In other words the judgment of this Court in the aforesaid second appeals has non-suited the plaintiff and also declared that the petitioner herein was not entitled to the property claimed in the suit.

5. The learned counsel added that the plaintiff has entered the property not with any criminal intent but only pursuant to his bona fide belief of existence of title to enter the property and that too after he was armed with an ex-parte decree dated 04.12.2008 passed by the Additional District Munsif Court, Poonamallee in O.S.No.808 of 1996. The alleged crime of which the petitioner is accused of originates from this civil dispute and there is no material available on record to indicate or implicate that the petitioner has committed an offence.

6. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the first respondent.

7. The nature of the case alleged is apparently one with the severe civil over-tones. The second aspect as to whether the petitioner has been trespassing into the property with any criminal intent is concerned, on the alleged date of offence, the petitioner was clothed with a decree of prohibitory injunction passed in O.S.No.808 of 1996 by a competent Civil Court and therefore, it cannot be stated that the petitioner's attempt would be in law amount to criminal trespass.

8. In the said circumstances, I do not consider a case being prosecuted in Criminal law, is made out and consequently, quashed as prayed for.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Inspector of Police,
R-9, Police Station,
Valasarawakkam,
Chennai - 600 087.

2. The Judicial Magistrate Court No.I,
Poonamallee.

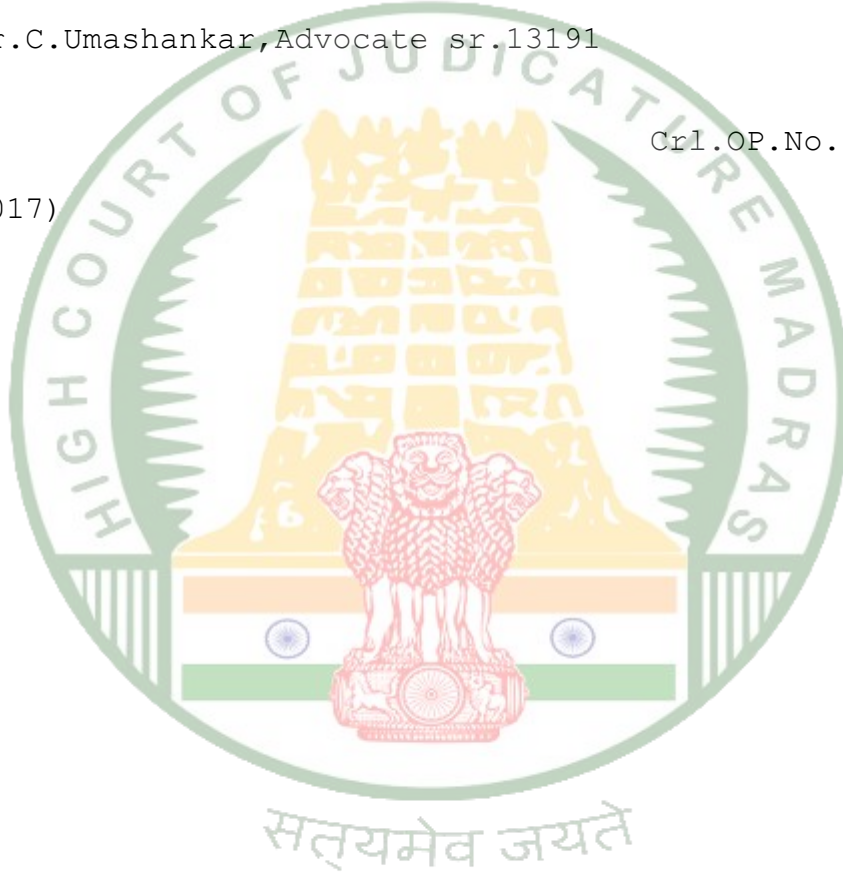
3.The Additional District Munsif Court,Poonamallee.

4.The Public Prosecutor,High Court,Madras

+1cc to Mr.C.Umashankar,Advocate sr.13191

Cr1.OP.No.20993 of 2010

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ss(17/3/2017)



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