

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :03.08.2017

PRONOUNCED ON :07.12.2017

CRL.RC. No.263 of 2012

Rajendran

.. Petitioner

..Vs..

- 1.C.Velumani
- 2.Raja Ranaveeran
- 3.P.Gunasekaran
- 4.Kulandaivelu
- 5.Prasanna Ramasamy
- 6.Poongothai
- 7.Tamilselvan
- 8.Kumaresan
- 9.Senthilnathan
- 10.Duraisamy
- 11.Jayalakshmi
- 12.Vairamani
- 13.Kalaimani
- 14.Thakshinamoorthy
- 15.Sellaperumal
- 16.Palaniappan

.. Respondents

Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., against the order dated 03.01.2012 in Cr.M.P.No.1235 of 2011 on the file of Chief Judicial Magistrate, Salem only in so far as it relates to the accused 2 to 7, A9,A10,A15 and A16.

For Petitioner	:Mr.K.Selvaraj
For R2,3,7&9	:Mr.R.Rajasekaran
For R1,10 to 16	:Mr.P.Jagadeesan
For R4,5,6&8	:No appearance
(notice served)	

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., against the order dated 03.01.2012 in Cr.M.P.No.1235 of 2011 on the file of Chief Judicial Magistrate, Salem only in so far as it relates to the accused 2 to 7, A9,A10,A15 and A16.

2. The private complainant is the Revision Petitioner herein.

3. The Revision Petitioner Rajendran filed a private complaint under Section 200 of Cr.P.C., before the Chief Judicial Magistrate, Salem in C.M.P.No.1235 of 2011, dated 03.01.2012 alleging that despite the order of injunction by the Civil Court and his title over the property. The petitioners 1 to 4 in acting R1 and R10 to R16 and other 50 persons in cognizance with the Police Department and Revenue Department have unlawfully evicted them and also caused injuries and thereby, alleged that the accused for the offence under Sections 109,112,120B,148,149,158,174,323,327,336,341,354,384,402, 427, 448,468,307,506 Part-II and also under Section 3 of the Public Property (Prevention of Destruction and Loss) Act and also Violation of human rights.

4. After observing the formalities contemplated for the private complaint, the Chief Judicial Magistrate, Salem has asked the private complainant to let in evidence for pre-summon stage and accordingly, P.W.1 Marathal, P.W.2 Meenakshi, P.W.3 Alamelu, P.W.4 Tamil Selvi, P.W.5 Mani Mohan, P.W.6 Chandrasekar, P.W.7 Gnasekaran were examined and 54 documents have been filed.

5. After going through the statement of those witnesses and 54 documents, the learned Chief Judicial Magistrate, Salem, by an order dated 03.01.2012, taking of cognizance as against accused A1,A8,A11 to A14, for the alleged offence under Sections 147,148,448,323,431,341, 354,427 and 109 I.P.C and for want of material refused to take cognizance against other accused except the above mentioned accused and order issuance of summons.

6. Aggrieved against, non-taking of cognizance against Police personnels R2 and R3 and Revenue Personnels, R4 Revenue Divisional Officer, Salem, R6 Revenue Divisional Officer,Salem and R7 Asst. Superintendent of Police (Rural), Salem and R9 Police Constable, R10 Duraisamy.

7. The private complainant has preferred this revision.

8. Heard, Mr.K.Selvaraj, learned counsel appearing for the Petitioner; Mr.R.Rajasekarran, learned counsel appearing for the respondents 2,3,7and9; Mr.P.Jagadeesan, learned counsel appearing for the respondents1,10 to 16.

9. The learned counsel appearing for the Revision Petitioner/private complainant could contend that the Police Personnels have incident broken the possess of the private complainant, who is the true owner of the land which is subject matter of suit in O.S.No.605 of 2010, in which, an injunction order has been passed by the trial Court which was also confirmed by the Hon'ble High Court has failed to give protection to the petitioners and hence, cognizance ought to have been taken against them namely, the Police personnels R2,R3,R7 and R9.

10. The learned counsel for the respondent further submitted that in view of a dual stand taken by the Tahsildar-R8 who is handling with the Revenue Divisional Officer R4 and R5. The R10 to R16 have caused injury to personal and property of the defacto-complainant.

11. The learned counsel for the police personnel R2,R3,R7,R9 have submitted that as per the orders of the Revenue Divisional Officer to render police protection, they have extended the duty as per the directions of the Revenue Divisional Officer and as such there is no culpability in their Act neither property in the alleged assault, nor occasion any protection for the alleged assailant and hence, the order of the trial Court in respect of them is justified.

12. The learned counsel for R10 to R16 have submitted that cognizance was taken only as against R11,R12,R13 and R14 and with regard to R15,R16 and R10, there was no sufficient material for taking cognizance of the offence as against those alleged accused.

13. After hearing both the parties and rival contentions as extracted above, it is seen that the petitioner and his brothers are absolute owners of the land in Survey No.47/1 with an extent of 10 cents in Rajapalayam Village and the property measuring 18 cents in Survey No.2/6 at Chennagiri Village. The 1st respondent/1st accused wanted to purchase the above said property from the petitioner and his brothers. However, the petitioner and his brothers refused to sell the same. Therefore, the 1st respondent/1st accused herein filed a suit in O.S.No.605 or 905 of 2010. The 1st respondent/1st accused with the aid of the other accused attempted to

grab the property and therefore, the 6th accused passed an illegal order under Section 145 of Cr.P.C. On 18.06.2010 even without issuing notice to the petitioner and others. Therefore, the petitioner filed criminal R.C.No.627 of 2010 before this Hon'ble Court and this Hon'ble Court stayed the order on 25.06.2010. Though the order of this Hon'ble Court was communicated to the accused 1,5 and 8 and they are aware of the order of this Hon'ble Court, the 8th accused passed another illegal order to dispossess the petitioner and his brothers.

14. The said order was challenged in W.P.No.13210 of 2011 and this Hon'ble Court was pleased to stay the order on 07.06.2011. The order in Writ Petition was also served on the accused 1,5 and 8 accompanied by the accused 1 and accused 10 to 16 trespassed into the property of the petitioner on 24.09.2011 with deadly weapons and demolished nine shops and three residential house and demolished Samaathi (tomb) of the Chinnusamy, father of the petitioner. When the family members of the petitioner objected the illegal action, the accused assaulted the women folk and outraged their modesty.

15. Forgetting the fact that the order of the 8th accused was stayed by the High Court in W.P.No.13210 of 2011, dated 7.6.2011 in support of the averments in sworn statement, as extracted above, before the Chief Judicial Magistrate, Salem. P.W.1 to P.W.7 have given a statement and 54

documents have been filed. After going through the same, I am of the considered view that the order of taking cognizance of the alleged offence as noted above and other Judicial order passed by this Court in Crl.Revision No.627 of 2010 and W.P.No.13210 of 2011. It is seen that there is a sufficient material available on record before the Chief Judicial Magistrate, Salem to proceed against R1, R8, R11 to R14 herein. As against R10, the Chief Judicial Magistrate, Salem has rightly come to the conclusion that there is no direct overt act against the said accused.

16. Considering the stand taken by the R2,R3,R7,R9 and also reason assigned by the Chief Judicial Magistrate, Salem in the impugned order under challenge and the reason assigned therefor, there is nothing to interfere with the said order for refusing to take cognizance against those police personnels and accordingly, the order of refusal to take cognizance as against R2,R3,R7,R9 herein are hereby confirmed.

17. The attention of this Court was drawn to the orders passed by the 4th respondent-R.D.O, Salem and 5th respondent R.D.O, Salem and 6th respondent-Staff in the office of the R.D.O, Salem, without expressing the any opinion about the letter given by them to the Tahsildar and order passed by this Court in Civil Miscellaneous Appeal in 10 of 2012.

18. After perusing the order passed by this Court in Criminal Revision No.627 of 2010 and CrI.M.P.No.1 of 2010 dated 25.06.2010 and W.P.No.13210 of 2011, dated 07.06.2011 and Criminal Revision No.627 of 2010, dated 20.01.2016, and CRP(PD) Nos.3550 and 3551 of 2013 and M.P.No.1 of 2013 and CMP.No.7000 of 2017, by an order dated 28.04.2017, I find, there is sufficient material to proceed against R4,R5 and R6. Accordingly, as the matter is cognizance stage, I am not expressing any opinion as to the interpretation of the judicial order as referred above and the action of the above said accused/respondent R4,R5,R6 and hence, in view of the materials available on record as against these mentioned accused R4,R5,R6 are directed to face the trial and hence, the order passed by the Chief Judicial Magistrate, Salem in CrI.M.P.1235 of 2011, dated 03.01.2012 taking cognizance in respect of R1,R8,R11 to R14 herein are hereby confirmed and non-taking cognizance of the private complainant as against R2,R3,R7,R9,R10,R15 and R16 are hereby confirmed and the order of refusal to take cognizance as against the respondent R4,R5,R6 alone are set aside with a direction to the Chief Judicial Magistrate, Salem to take cognizance against those persons for the alleged offence has spoken to by P.W.1,2 and 3 in connection with their act of Commission and omission of the alleged overt act has spoken to by them and to proceed with the case in accordance with law. With these modifications, this Criminal Revision Petition has filed by the private complainant is partly allowed to the extend indicated above.

20. In fine, the order of the Chief Judicial Magistrate, Salem, by an order dated 3.01.2012 in CrI.M.P.No.1235 of 2011, so far as it relates to R4,R5,R6 alone is set aside and they are directed to be arrayed as an accused and the Chief Judicial Magistrate, Salem is directed to take cognizance and to issue summons in respect of the alleged offence as spoken to by P.W.1 and in all other respect, the said order is hereby confirmed and revision petition shall stand dismissed in respect of others. 4 months to complete the trial.

07.12.2017

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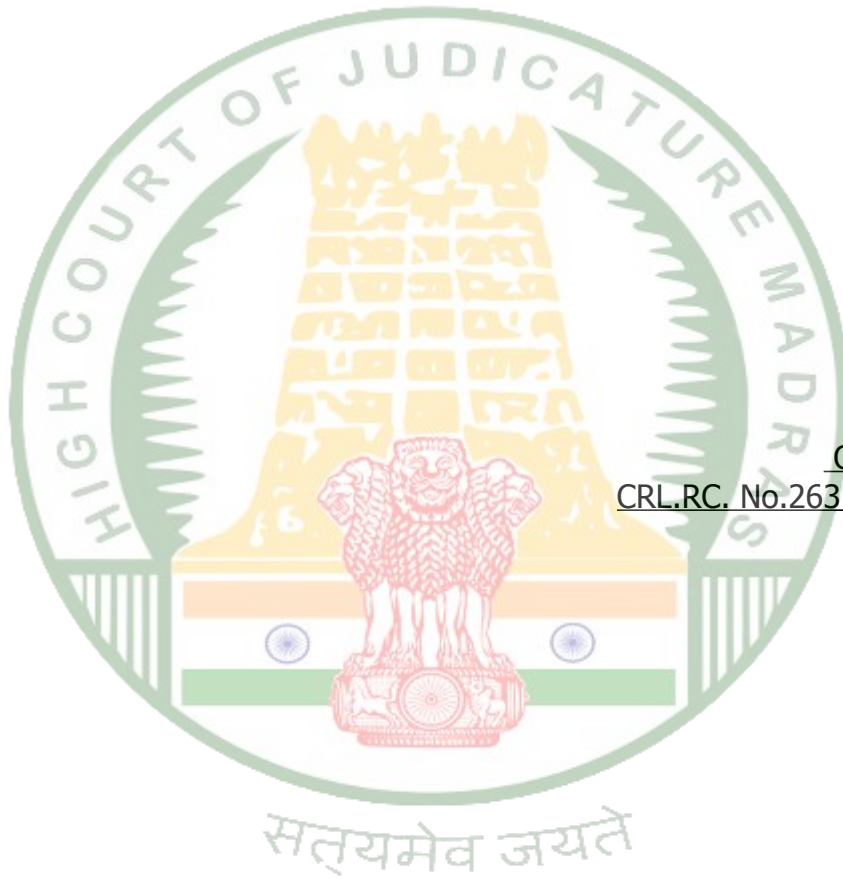
To

- 1.The Chief Judicial Magistrate, Salem
- 2.The Public Prosecutor,
High Court, Madras.

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RMT.TEEKAA RAMAN,J.,
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Order in
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