



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2017

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASANCrl.R.C.(MD).No.140 of 2013

D.Bhaktha Singh : Petitioner/Complainant

Vs.

1.C.Rajagopal

2.Ajikumar

3.Sangareshwaran

The Inspector of Police,
Marthandam Police Station,
Marthandam,
Kanyakumari District.

4.H.David Raj

5.Jeyasingh

6.Justin

7.Babu, S/o.Not Known, age 27, Auto driver

8.Babu, S/o.Not Known, age, 24

9.K.Arul

10.Shajee

11.Nesamerlin

12.Ravichandran @ Cittar ravichandran

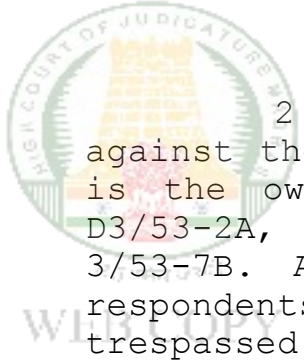
13.L.Sri Kumar : Respondents/Accused

PRAYER: Criminal Revision Case filed under Section 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the order of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District dated 16.10.2012 in Crl.M.P.No.6541 of 2012.

For Petitioner : Mr.V.Rajiv Rufus
For R-1 & R-2 : No appearance
For R-3 : Mr.C.Muthusaravanan

O R D E R

This present Criminal Revision Case has been filed against the dismissal order of the petitioner's private complaint in Crl.M.P.No.6541 of 2012, on the file of the learned Judicial Magistrate No.I, Kuzhithurai.



2 (i) The petitioner herein filed the private complaint against the respondents herein, on the ground that the petitioner is the owner of the property in old Survey No.1617, R.S.Nos. D3/53-2A, D 3/53-2B, D 3/53-2C, D 3/53-4, D 3/53-6, D 3/53-7A, D 3/53-7B. At the instigation of the respondents 1 and 2, the respondents 4 to 11 herein came by three heavy vehicles and trespassed the petitioner's land, damaged the compound wall and has also stolen the construction materials. Thereafter, the petitioner filed a complaint before the Inspector of Police, Marthandam Police Station, Marthandam. Even though the third respondent received the complaint, he has not registered the case. Apart from that, the third respondent also threatened him.

2 (ii) The petitioner also sent representation to the Superintendent of Police, Kanyakumari District. Since no action was taken, the petitioner filed a private complaint on the file of the learned Judicial Magistrate No.I, Kuzhithurai. The learned Judicial Magistrate, by an order dated 16.10.2012, dismissed the same stating that the petitioner filed the private complaint suppressing the civil dispute pending between the parties. Challenging the dismissal order dated 16.10.2012, the Criminal Revision case has been preferred.

3. Heard Mr.V.Rajiv Rufus, learned counsel for the petitioner and Mr.C.Muthusaravanan, learned counsel for the third respondent.

4. The learned counsel for the petitioner would submit that the Court below dismissed the private complaint without considering that a *prima facie* case made out by the petitioner. The private complaint filed by the petitioner came to be dismissed on the ground that the petitioner suppressed the fact of civil dispute between the parties. The petitioner filed the complaint before the respondent police, wherein he has disclosed all the suit proceedings. Apart from that, the materials available on record to show that the respondents 4 to 11, at the instigation of the first and second respondents, entered into the petitioner's premises and damaged the compound wall and have also stolen the construction materials. Even though the complainant made out a *prima facie* case, the Court below mechanically dismissed the complaint holding that it is not maintainable in law.

5. Per contra, the learned counsel for the third respondent would submit that since there is a civil dispute between the parties, based on the complaint given by the petitioner, enquiry was also conducted. The Court below, on a careful consideration of the materials available on record, dismissed the complaint. There is no illegality in the said order.

6. I have considered rival submissions.

7. The specific case of the petitioner is that he is the owner of the property in old Survey No.1617, R.S.Nos.D3/53-2A, D 3/53-2B, D 3/53-2C, D 3/53-4, D 3/53-6, D 3/53-7A, D 3/53-7B and the respondents 1 & 2 claimed ownership of the property. The



respondents 4 to 11, on the instigation of the first and second respondents, entered into the petitioner's premises and damaged the compound wall and have also stolen the construction materials.

8. It is the further submission of the learned counsel for the petitioner is that subsequently, after receipt of the complaint, the learned Judicial Magistrate directed the Deputy Superintendent of Police, Thakkalai, to conduct enquiry under Section 202 of the Code of Criminal Procedure and the Deputy Superintendent of Police filed a report stating that there is a civil dispute between the parties. Now, the second Appeal in S.A.No.1175 of 1999 is also pending before this Court, but the petitioner suppressed all these facts and filed the private complaint.

9. It is also submitted that considering the above report as well as the complaint given by the petitioner and the other witnesses the learned Judicial Magistrate has come to the conclusion that the petitioner has suppressed the above said fact and there are contradictions in the statement of the witnesses also.

10. Insofar as the learned counsel for the petitioner's contention that the petitioner has not suppressed the pendency of the civil dispute in the earlier complaint is concerned, and in the complaint filed before the police, the petitioner has stated all the facts in the complaint, which is part of the private complaint. But a perusal of the private complaint as well as the sworn statement given by the petitioner, it is seen that the petitioner has not mentioned anything about the pendency of the civil suit.

11. Considering the private complaint and the evidence produced by the petitioner, prima facie case made out to proceed with the complaint. In the above circumstances, the petitioner without disclosing all these facts, has come forward with the complaint. The trial Court considered all the facts and dismissed the complaint and there is no illegality or irregularity in the order passed by the Court below. Accordingly, the Criminal Revision case is dismissed.

Sd/-

Assistant Registrar(RTI0

/True Copy/

Sub-Assistant Registrar

To

The Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District.

+One cc to Mr.V.Rajiv Rufus, Advocate, SR.No.70150

+One cc to Mr.C.Muthu Saravanan, Advocate, SR.No.70365

Psd/sm

<https://hcservices.ecourts.gov.in/hcservices/>

RL/4C/3P/SV/MMS/SAR1/14/9/2017

CrI.R.C.(MD).No.140 of 2013

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