

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2018

Coram

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl. Revision Case No.312 of 2018

K.Tamil Mani

... Petitioner/Defacto Complainant

vs

The State Reptd. By the
Inspector of Police,
DCB Kanchipuram Police Station

... Respondent/Complainant

Prayer :

Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to call for the records in F.A.D.(Further action dropped) No.282 of 2014 on the file of the learned Judicial Magistrate No.II, Chengalpet and set aside the order dated 10.07.2014.

For Petitioner : Mr.R.Thirumurthy

For Respondent : Mr.R.Suriya Prakash

ORDER

This revision has been filed to set aside the order passed by the learned Judicial Magistrate No.II, Chengalpet made in FAD.No.282 of 2014 dated 10.07.2014.

2. According to the learned counsel for the petitioner, the petitioner along with his adopted son viz., Raju were in possession and enjoyment of 2.22 acres poramboke land in S.No.74/1 at Vedhanarayanapuram Village. The petitioner's father approached the Village Administrative Officer for changing the records in his official name as M.Kathirvel. But the VAO plotted a plan and tried to encroach the land of the petitioner. It is further submitted that an imaginary person viz., Sivaprakasam son of Raju @ Radhakrishnan Mudhaliar had executed a sale deed dated 06.04.1998. The petitioner's father has also executed a settlement deed dated 07.11.2008 in favour of the petitioner and his brothers. The petitioner's

father has approached the higher authorities for cancelling the patta transfer and it was found that there was no person by name Sivaprakasam son of Raju @ Radhakrishnan Mudhaliar in the denoted address of the sale deed. Hence, the revenue authorities assured that the patta transfer would be cancelled, but no action was taken by them. Hence, the petitioner lodged a complaint dated 21.07.2011 before the respondent police and the same was registered in Cr.No.87 of 2011 under Sections 419, 465, 468, 471 and 420 of I.P.C. Thereafter, the petitioner received a notice from the respondent police and instructed him to appear before the concerned Judicial Magistrate Court, for any objection. The petitioner appeared before the learned Judicial Magistrate No.II, Chengalpet and filed his protest petition on 20.01.2014 which was numbered as C.M.P.No.266 of 2014 on 28.01.2014. The petitioner has appeared before the Court for about two subsequent hearings of the case and since his case was not called on the next hearing, the petitioner was unable to make note the next hearing of the case. In the meanwhile, the petitioner was affected kidney problem for a long time. In these circumstances, the case in Crime No.87 of 2011 was closed as Action dropped on 10.07.2014 in favour of the accused. Hence, the petitioner has filed the present criminal revision before this Court.

3. It is seen from the records that after filing the appeal, the petitioner has filed an objection petition in Crl.M.P.No.266 of 2014 on the file of the Judicial Magistrate No.II, Chengalpet. But the trial Court did not consider the same and the said Magistrate has passed an order dated 10.07.2014, which reads as follows:

The S.I. of Police, DCB Kancheepuram Police has filed the final report dropping further action of this case is hereby recorded.

4. Time and again, this Court and the Hon'ble Apex Court very categorically held that the trial Court should pass orders only on merits, if any reply has been filed by the parties concerned .

5. The learned counsel for the petitioner would submit that the respondent has filed the final report before the learned Judicial Magistrate No.II, Chengalpet and the petitioner has also filed his objection. But the trial Court did not consider the same. Therefore, the impugned order is liable to be set aside by remand back to the trial Court for fresh consideration along with the consideration of protest petition.

6. Considering the facts and circumstances of this case, this Court is inclined to pass the following orders:

i) the impugned order passed in F.A.D. (Further action dropped) No.282 of 2014 on the file of the learned Judicial Magistrate No.II, Chengalpet is hereby set aside and the same is remanded to the trial Court.

ii) After giving notice to both the parties concerned and hearing the arguments of the respondent, the petitioner has to file objections if any, the learned Judicial Magistrate No.II, Chengalpet, is directed to pass orders on merits and in accordance with law, within a period of two months from the date of receipt of a copy of this order.

6. This criminal revision is allowed with the above observation.

Sd/-

Assistant Registrar(CS IV)

Dated: 13.04.2018

* Corrected order to be issued

Sd/- Assistant Registrar(CS IV)

Dated: 14.06.2018

//True Copy//

Sub Assistant Registrar

kkd

To

1. **The Judicial Magistrate No.II, Chengalpet.**

To be substituted to the order already despatched on 07.05.2018.

2. The Inspector of Police, DCB, Kancheepuram Police Station.

3. The Public Prosecutor, High Court, Madras-104

+1cc to Mr.R.Thirumurthy , Advocate, S.R.No.21327

+1cc to Mr.R.Thirumurthy , Advocate, S.R.No.20361

CrI. R.C.No.312 of 2018

SVI(CO)

CS/18/04/18

SP(14/06/2018)