

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018
Pronounced on : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17032 of 2011 and
Crl.M.P.No.1 of 2011

K.Srinivasan Achari,
S/o.Kanagasabapathy. Petitioner/Accused 2

Vs.

1.State by,
The Inspector of Police,
Team-I,
Central Crime Branch,
Chennai Sub Urban Commissionerate,
St.Thomas Mount,
Chennai 600 016.

2.S.K.Dhanasekaran
S/o.Soolaikupusamy ...Respondents/Complainant/
De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.28 of 2010 on the file of the Judicial Magistrate, Tambaram and quash the same.

For Petitioner : Mr.V.Selva Perumal

For R1 : Mr.V.Saratha Devi,
Government Advocate [Crl. Side]

For R2 : No Appearance

O R D E R

This Criminal Original Petition filed by the petitioner/A2, who is facing trial for the offences under Section 417, 420, 448, 467, 506(ii) r/w 34 of IPC in C.C.No.28 of 2010, pending on the file of the Judicial Magistrate, Tambaram.

2. Case of the prosecution is that the 2nd respondent has purchased a property in his wife name in survey No.83/2, plot No.7, measuring 1550 Sq.ft with building, ground floor 300 sq.ft and 1st floor 300 sq.ft totally 600 sq.ft at bearing Door No.6, 5th street, Gurusamy Nagar, Anakaputhur, Chennai-600 070 from one Thanikachalam through Murali/A1, as per the registered sale deed, registered at SRO, Pammal as Document No.5143 of 2006. The 2nd respondent/defacto complainant and his wife went to London for visiting his son, who is working at London Hospital.

3. Taking advantage of his absence, the real estate broker Murali/A1 along with other accused with an common intention created forged documents as though he is the owner of the property and other accused are lawful tenants under him and the other accused persons also occupied various portions of the said property. Based on the forged documents, he created encumbrance on the property. When the 2nd respondent/defacto complainant asked the illegal occupants to vacate the his property, the accused persons produced the forged documents stating that they are the original tenants under A1 and produced proof of the tenancy amount paid by them. Further, the accused persons threatened the defacto complainant with dire consequences, against which he had preferred a complaint to the 1st respondent.

4. The contention of the petitioner is that the petitioner is the lawful tenant under A1 and he had been residing in the said property and he had paid tenancy amount to Murali/A1. Further, he submits that the petitioner had filed a Civil Suit in O.S.No.936 of 2008, before the learned District Munsif, Alandur seeking for permanent injunction restraining the 2nd respondent/defacto complainant and others claiming through them from in any manner interfering with the petitioner's peaceful possession and enjoyment of the suit property. In the said suit, the defacto complainant and his wife, A1/Murali and the Inspector of Police, Sankar Nagar Police Station, Pammal, Chennai have been arrayed as defendants. Further, he submitted that the Civil Suit is pending for the said property. The 2nd respondent/defacto complainant using the 1st respondent as a tool to evict the petitioner in forcible manner and giving a cloak of criminal offence to which is essentially of a civil in nature.

5. The learned counsel further submitted that the petitioner could not be contacted despite best efforts taken. The Inspector of Police, Team-XXV, ALGSC-II, Central Crime Branch, Vepery, Chennai-07 has also taken notice to the petitioner on 06.10.2018, found delivered on 08.10.2018. Despite the same, the petitioner failed to appear and his name was printed in the cause list. Hence, Keeping this Criminal Original Petition further pending would only amount to piling up of the cases

without any progress and hence, this Court decides to dispose of the Criminal Original Petition on merits.

6. On perusal of the materials and the charge sheet, it is found that the petitioner has filed a Civil Suit in O.S.No.936 of 2008 before the learned District Munsif, Alandur and admits that he is a tenant under the Murali/A1 and he is paying monthly rent. Murali/A1 is none other than the land broker, who is running a real estate business and he is not the owner of the said property, which fact is known to the petitioner as could be seen from the materials. An attempt is made by the petitioner in arraying Murali/A1 as one of the defendant in the suit property as though he is giving the rentals to him and to project his illegal occupation over the property of the 2nd respondent as lawful. The petitioner and the other accused have joined together, taking advantage of the defacto complainant's absence planned to grab the property of the 2nd respondent by creating forged false documents and to encroach upon the property.

7. The learned Government Advocate submitted that on registration of the case, police conducted investigation, recorded statement of witnesses and collected documents and listed LW1 to LW11 to prove the case. On thorough investigation, it is found that the accused have joined together in commission of above offence and thereafter charge sheet has been filed.

8. Considering the rival submissions and on perusal of the materials produced before this Court, it is seen that the petitioner and other accused have conspired and created forged documents and using the same, illegally occupied the property of the 2nd respondent and tried to project as though A1/Murali is the owner of the property and the illegal occupation is legitimate.

9. This Court does not want to interfere with the proceedings at this stage and it is left open to the petitioner to raise all the points before the Court below in the course of trial.

10. In view of the above, this Criminal Original Petition stands dismissed and consequently, the connected miscellaneous petition is closed.
vv2

Sd/-
Assistant Registrar (CS VIII)

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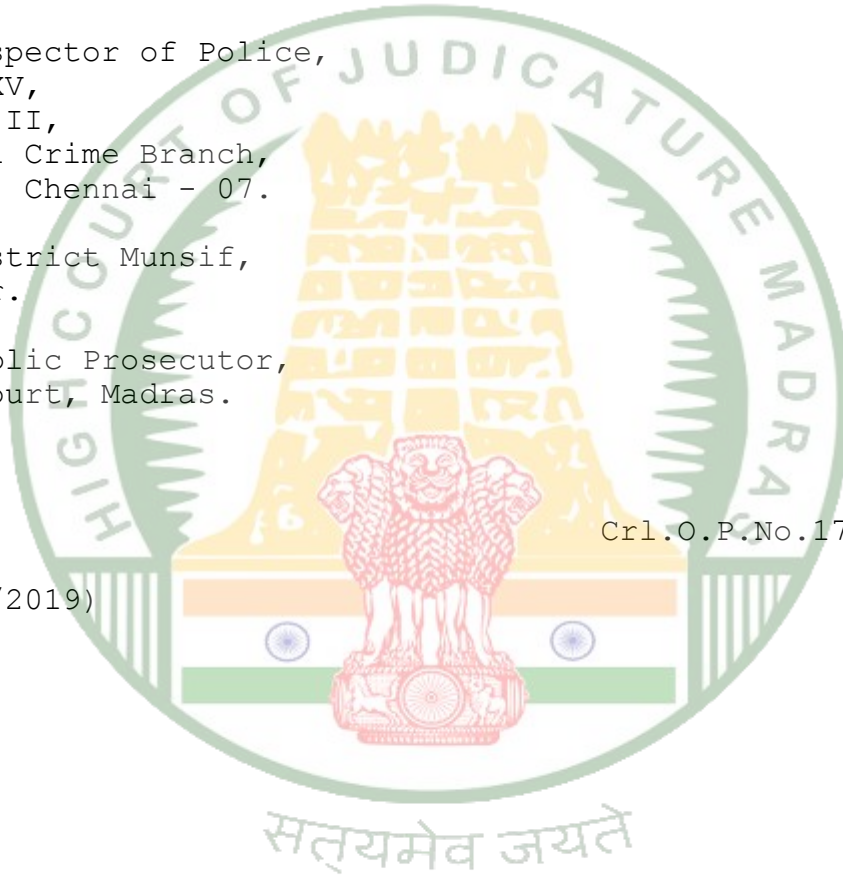
Sub Assistant Registrar

To

1. The Judicial Magistrate Court,
Tambaram.
2. The Inspector of Police,
Team-I,
Central Crime Branch,
Chennai Sub Urban Commissionerate,
St.Thomas Mount,
Chennai 600 016.
3. The Inspector of Police,
Team XXV,
ALWC - II,
Central Crime Branch,
Vepery, Chennai - 07.
4. The District Munsif,
Alandur.
5. The Public Prosecutor,
High Court, Madras.

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Kak(06/05/2019)



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