

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2019

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.25801 of 2012

S.Jeyaraman ... Petitioner/Petitioner/Complainant

Versus

1.R.Ramasamy  
2.R.Murugesan  
3.C.Chockanathan  
4.Sivaraman  
5.V.Chandrasekar  
6.R.Murugesan  
7.Thangadurai  
8.N.Thangavel  
9.A.Thangamani  
10.S.Chittibabu  
11.N.Bose @ Muthusamy

... Respondents/Respondent/Accused

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and the order of the Additional District Judge (Fast Track Court No.III), Coimbatore dated 10.01.2012 passed in C.R.P.No.62 of 2011 confirming the order of the Judicial Magistrate No.I, Coimbatore dated 10.05.2011 in C.C.No.86 of 2011 and set aside the same.

For Petitioner : Mr.B.L.Lakshmi Narasimhan  
For Respondents: Mr.S.Gunalan

ORDER

This Criminal Original Petition has been filed to set aside the order dated 10.01.2012 in C.R.P.No.62 of 2011 passed by the learned Additional District Judge (Fast Track Court No.III), Coimbatore by confirming the order of the learned Judicial Magistrate No.I, Coimbatore in C.C.No.86 of 2011 dated 10.05.2011.

2.The gist of the case is that the petitioner is a tenant under one Rangasamy for a non residential building at 12A, 12B, Robertson Road, R.S.Puram, Coimbatore. The landlord filed a petition for eviction in R.C.O.P.No.68 of 1994 before the Rent

Controller and obtained an ex-parte order of eviction dated 22.07.1994.

3.The grievance of the petitioner is that the landlord and others by playing a fraud and obtained order of eviction dated 22.07.1994 in R.C.O.P.No.68 of 1994. Therefore, he preferred C.R.P.No.33 of 1995 before this Court. This Court by order dated 30.01.1995, set aside the order of eviction dated 22.07.1994 passed by the Rent Controller. Hence, the Rent Controller proceedings was sub-Judicial. In the meanwhile, the petitioner sought for action under criminal law against the landlord, process server, postman and eight others.

4.Admittedly, an ex-parte order of eviction dated 22.07.1994 in R.C.O.P.No.68 of 1994 on the file of the Rent Controller (I Additional District Munsif Court, Coimbatore) was obtained by playing fraud upon the Court when the matter was sub-Judicial. Since there has been forgery of the petitioner's signature and concocting of documents had proceeded to pursuant the complaint.

5.The learned Judicial Magistrate No.I, Coimbatore by order dated 10.05.2011 in C.C.No.86 of 2011 citing bar under Section 195(1)(b)(ii) Cr.P.C would be attracted in the case of "Iqbal Singh Marwah Versus Meewaksh Marwah reported in 2005 4 SCC 370" had dismissed the petition under Section 203 of Cr.P.C., on the ground that any malpractices committed when the documents in custody by the Court, the officer of the Court alone competent to lodge a complaint in writing and the complaint is not maintainable and the alleged occurrence is said to have been taken place in the year 1994 and the complaint was filed on 03.01.2011 after a lapse of 16 years. The averments and allegations in the complaint were neither specific nor cogent and they are not sufficient to fulfil the ingredients to invoke Sections 420, 467 or 460 of IPC.

6.Aggrrieved against the same, the petitioner had filed revision before the learned Additional District Judge, Fast Track Court No.III, Coimbatore in C.R.P.No.62 of 2011. The lower appellate Court by its order dated 10.01.2012 has held that the alleged offences to have been committed in respect of R.C.O.P.No.68 of 1994 and the complainant has not taken any steps in the proceedings as per Section 340 of Cr.P.C to initiate action against the respondents. Without invoking Section 340 of Cr.P.C bar in respect of the offences alleged is made under Section 195 of Cr.P.C. Further the Hon'ble Apex Court has also reiterated this principle in the above citation. The lower appellate Court further reiterated that there is a bar under Section 195 of Cr.P.C will come into play and the Court cannot take cognizance of the matter without an application being filed under Section 340 of Cr.P.C. So the finding of the

trial Court on this aspect is perfectly legal and requires no interference and had dismissed the revision petition on the ground that the Criminal Court cannot over reach their authority in entertaining this sort of complaint and the petitioner if so aggrieved as to follow the proper procedure of law. Against which the present Criminal Original Petition has been filed.

7.The learned counsel for the petitioner would submit that the order of the lower appellate Court is contrary to law and failed to advert the fact that the forgery of the petitioner's signature. An exparte order of eviction led to serious consequences including destruction of goods worth of Rs.5 lakh. He would further submit that the lower appellate Court erred in assuming the accused are punishable under the provisions covered under Section 195 of Cr.P.C alone without adverting to the fact that the case is contrary to law. The lower appellate Court erred in law in holding that the concerned Judge along can give a complaint in this matter, evidently overlooking nature and scope of the complaint, especially when the petitioner has been affected badly by the consequences of the fraud committed by the accused. He would further submit that the lower appellate Court ought to have directed the trial Court to conduct the trial and proceed in accordance with law.

8.The learned counsel for the respondents would submit that the petitioner had earlier lodged a complaint to the B-2 Crime Police Station, Coimbatore for the same set of facts, for which the police had registered a case in Crime No.635 of 1997 against the landlord and his two sons and some other two persons. On filing of the charge sheet in Crime No.635 of 1997, the learned Judicial Magistrate No.I, Coimbatore after full-fledged trial, acquitted three persons in C.C.No.472 of 2005 by its Judgment dated 12.07.2007, since during the pendency of the case two persons died. Thereafter, the petitioner filed private complaint in C.C.No.86 of 2011 on 31.10.2010 before the learned Judicial Magistrate No.I, Coimbatore against the respondents. Further there had been a long delay in filing the case before the Rent Controller against the respondents.

9.It is seen that earlier in C.C.No.472 of 2005 has ended in acquittal and so far the Judgment of the learned Judicial Magistrate No.I, Coimbatore in C.C.No.86 of 2011 became final. On dismissal of the same, the petitioner has filed revision before the learned Additional District Judge, Fast Track Court No.III, Coimbatore in C.R.P.No.62 of 2011, which is also dismissed by confirming the order of the trial Court. The petitioner having lost from all the Courts has now initiated this Criminal Original Petition, which is not maintainable in law, on the ground that this petition amounts to second revision.

10.Considering the submissions made by the learned counsels and perusal of the records this Court finds that for deciding this Criminal Original Petition the facts of the case are not sufficient and the issue involved in only on a legal aspect. The findings of the learned Judicial Magistrate No.I, Coimbatore in C.C.No.86 of 2011 became final. Further, there is a bar under Section 195 of Cr.P.C, which has been confirmed by the lower appellate Court. Hence, this Court does not find any illegality or infirmity in the order passed by the trial Court.

11.In view of the above discussion, this Criminal Original Petition stands dismissed.

s/d-  
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

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To

1.The Additional District Judge (Fast Track Court No.III),  
Coimbatore.

2.The Judicial Magistrate No.I,  
Coimbatore.

+1 CC to Mr.S.Gunalan, Advocate sr 55708.

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VBA(CO)  
SP(19/08/2019)

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