

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 07.01.2019

Delivered on: 10.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.O.P.No.29377 of 2012

and

M.P.No.1 of 2012

1.A.Ramachandran

2.Vijayalakshmi

3.Mohan

4.Gopinath

.... Petitioners

/Vs/

1.The Sub Inspector of Police
Grand Bazaar Police Station
Puducherry
(Crime No.33 of 2012)

2.P.Appasamy

.... Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code to call for the records relating to the S.T.C.No.142 of 2012 before the Chief Judicial Magistrate at Puducherry and to quash the same.

For Petitioners : Mrs.B.Chinnamal
for Mr.A.V.Arun

For Respondents : Mr.D.Bharatha Chakravarthy
Public Prosecutor (Puducherry)
for R1
: Mr.V.Ragavachari for R2

ORDER

This petition has been filed by the accused Nos.1 to 4 to quash the proceedings against them in STC.No.142 of 2012 on the file of the Chief Judicial Magistrate, Puducherry.

2. The second respondent herein gave a complaint before the first respondent herein, alleging that he is the president of Nellumandi Arulmigu Varasithi Vinayagar Devasthanam of

Puducherry; that the premises bearing Door No.16, Eswaran Koil Street, Puducherry, belongs to Nellumandi Varasithi Vinayagar Devasthanam, Puducherry; that the petitioners 1 and 2 herein are tenants of the aforesaid premises and that on 05.02.2012 at about 11.00 hours, the petitioners herein have demolished the building which belongs to the temple and unauthorisedly constructed a house. Based on the said complaint, the first respondent has registered a case in Cr.No.33/2012 under Sections 448, 427 r/w 34 IPC. After investigation, the first respondent has filed a charge sheet against the petitioners herein, stating that they are liable to be punished under Sections 448, 427 r/w 34 IPC.

3. Based on the said charge sheet, the learned Chief Judicial Magistrate, Puducherry has taken the case on file in STC.No.142 of 2012 and issued summons to the accused Nos.1 to 4. After receipt of the summons, the accused Nos.1 to 4 have filed the present petition under Section 482 of Criminal Procedure Code to quash the aforesaid proceedings.

4. Heard, Mrs.B.Chinnamal, the learned counsel for the petitioners and Mr.V.Bharatha Chakravarthy, the learned Public Prosecutor for the first respondent and Mr.V.Raghavachary, the learned counsel for the second respondent.

5. The learned counsel for the petitioners has submitted that the premises bearing Door No.16, Eswaran Koil Street, Puducherry - 605 001, belongs to the Nellumandi Arulmigu Varasithi Vinayagar Devasthanam and the same is under the administrative control of Puducherry Government. She further submitted that the first petitioner has become the tenant under the temple with effect from 15.01.1983 on a monthly rent of Rs.250/- and the tenancy is continuing and the present rent is at Rs.750/- per month. She further submitted that the petitioners have been paying monthly rents without any default. She further submitted that during "Thane Cyclone" on 30.12.2011, the tree on the rear side, fell across the wall of the petitioners house, which was brought to the notice of the Temple Authorities by their letter dated 10.01.2012, but no steps were taken by them to make repairs. Since the toilet and the wall were badly damaged and in view of the inaction on the part of the Temple Authorities, the petitioners had no other option but to carry out necessary repairs in the building to safe guard the property under Section 108 of the Transfer of Property Act. She further submitted that the second respondent gave a complaint on 05.02.2012 before the first respondent, as if the petitioners have trespassed into the temple property and put up construction and also filed a suit in O.S.No.447 of 2012 on the file of the III Additional District Munsif, Puducherry, seeking permanent injunction restraining the petitioners 1 and 2 from altering the

structure of the property. Along with the suit, an application for interim injunction has also been filed in I.A.No.816 of 2012.

6. She further submitted that the learned District Munsif, after holding an enquiry, dismissed the application by an order dated 17.04.2012, holding that since the petitioners are statutory tenants and paying the rents without default, and that the Temple Authorities failed to carryout the repairs, they are entitled to carryout the repairing works. She further submitted that as against the said order, the second respondent has filed an appeal in CMA.11 of 2012 on the file of the Sub-Judge, Puducherry and the same was dismissed. She further submitted that in the meanwhile, the first respondent has filed a charge sheet as if the petitioners have committed offence punishable under Sections 448, 427 r/w 34 of IPC. Based on the said charge sheet, the learned Chief Judicial Magistrate, Puducherry has taken the case on file in STC.No.142 of 2012 and issued summons to the petitioners herein. She further submitted that since already the civil Courts have held that the petitioners are entitled to make repairs, the first respondent cannot prosecute the petitioners for carrying out the repairs in the tenanted premises and therefore, she prayed to quash the proceedings against the petitioners in STC.No.142 of 2012 on the file of the Chief Judicial Magistrate, Puducherry.

7. Per contra, the learned counsel for the second respondent/defacto complainant has submitted that the allegation that during "Thane Cyclone", on 30.12.2011, the tree on the rear side fell across the wall of the said premises and badly caused damage to the toilet, is not correct. He further submitted that the petitioners, without getting permission from the Temple Authorities, have demolished the building and constructed a new building. He further submitted that though the petitioners have lawfully entered into the said premises from the Temple Authorities and hence, the provisions of Sections 448 and 427 will attract. He further submitted that even as per the case of the petitioners, the building was collapsed due to "Thane Cyclone" and once the subject matter of the tenancy was destroyed by natural calamity, in view of the decision of the Hon'ble Supreme Court in Vannathankandy Ibrayi Vs. Kunhabdulla Hajee, (2001) 1 SCC 564, the tenancy stands extinguished and therefore, the possession of the petitioners thereafter would amount to trespass and as such they are not entitled to carryout the repair works. He further submitted that as against the order passed by the learned III Additional District Munsif, Puducherry in I.A.No.816 of 2012 in O.S.No.447 of 2012, an Appeal has been filed before the Principal Sub-Judge, Puducherry in CMA.No.11 of 2012 and the same has been dismissed on 25.08.2014 and against the said order, the second respondent

herein has filed a Civil Revision petition before this Court and the same is still pending and under the said circumstances, no reliance can be placed upon the order passed by the learned III Additional District Munsif, Puducherry in I.A.No.816 of 2012 in O.S.No.447 of 2012. He further submitted that a prima facie case has been made out against the petitioners to prosecute them for the offence punishable under Sections 448, 427 r/w 34 of IPC and therefore, he prayed to dismiss the petition.

8. Mr.D.Bharatha Chakravarthy, (Puducherry) learned Public Prosecutor, who is appearing for the first respondent has adopted the arguments advanced by the learned counsel for the second respondent/defacto complainant. Apart from that he has submitted that the investigation clearly reveals that the petitioners herein have demolished the building belongs to the temple and put up a new construction without obtaining any permission from the Temple Authorities and hence, charge sheet has been filed against them and if any order is passed by the civil Court in favour of the petitioners, they can produce the said order before the trial Court and establish that they have not committed any offence and he prayed to dismiss the petition.

9. It is seen from the typed set of papers filed by the petitioners that the second respondent herein has filed a suit in O.S.No.447 of 2012 on the file of the III Additional District Munsif, Puducherry to restrain the petitioners 1 and 2 herein by means of permanent injunction from altering the structure of the suit property and to restrain them to make any further construction. He also filed an application in I.A.No.816 of 2012, seeking interim injunction to restrain the petitioners 1 and 2 herein from altering the structure of the house in the suit property and from making any construction in the suit property, till the disposal of the suit.

10. The learned District Munsif, after considering the rival submissions, by the order dated 17.04.2012 has found that the wall of the house was completely damaged and the toilet and bathroom also were completely damaged. He further found that the second petitioner is having three children and 15 years old girl and hence, it is necessary to make repair works immediately. He also found that since even after making request, the Temple Authorities did not come forward to make repair, the petitioners 1 and 2 herein are entitled to carryout repair works. Accordingly, he dismissed the said application. As against the same, the second respondent has filed an appeal in CMA.No.11 of 2012 on the file of the Principal Sub-Judge, Puducherry and the same was also dismissed on 25.08.2014. Though the learned counsel for the second respondent has submitted that as against the dismissal of the CMA.No.11 of 2012, the second respondent has filed Civil Revision Petition

before this Court, he has not stated that this Court has granted any stay against the aforesaid findings or granted any ad interim injunction against the petitioners herein. As on date, the findings recorded by the learned District Munsif, in I.A.No.816 of 2012 in O.S.No.447 of 2012 are prevailing.

11. Since the civil Court has recorded a finding that the petitioners herein, being statutory tenants, are entitled to carryout the repair works, it cannot be said that the petitioners herein have committed any offence as alleged by the respondents. The dispute is purely civil in nature and the civil Courts have already passed orders that the petitioners herein are entitled to carryout the repair works and under the said circumstances, this Court is of the view that the continuance of the proceedings against the petitioners would amount to abuse of process of the Court.

12. In Vannathankandy Ibrayi Vs. Kunhabdulla Hajee, (supra), the subject matter of the tenancy was superstructure alone and the said superstructure destroyed by natural calamity. Under the said circumstances, the Hon'ble Supreme Court has held that their tenancy is exclusively for premises and not for land and that on the destruction of the subject matter by natural calamity, the tenancy stands extinguished. Whereas in this case, it is not the case of the second respondent that the superstructure alone leased out to the petitioners. Further, according to the second respondent, the petitioners have demolished the entire building and constructed a new building, but the case of the petitioners is that during "Thane Cyclone" the tree fell on the wall and caused damage to the wall and toilet and bathroom and they have carried out the repair only in the toilet and bathroom.

13. The learned District Munsif, taking into consideration of the aforesaid facts, held that the petitioners are entitled to carryout the said repair works and accordingly, refused to grant interim injunction to restrain the petitioners from carrying out the repair works. The appeal filed by the second respondent also dismissed. Under the said circumstances, the aforesaid decision will not help the case of the second respondent.

14. As already pointed out that the petitioners are entitled to carryout the repair works and that being so, it cannot be said that the petitioners have committed any offence punishable under Sections 448 and 427 of IPC. The dispute is purely civil in nature and therefore, this Court is inclined to allow this petition.

15. In the result, this Criminal Original Petition is allowed. The proceedings against the petitioners in STC.No.142 of 2012 on the file of the Chief Judicial Magistrate, Puducherry are quashed. Consequently connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Judicial Magistrate,
Puducherry.

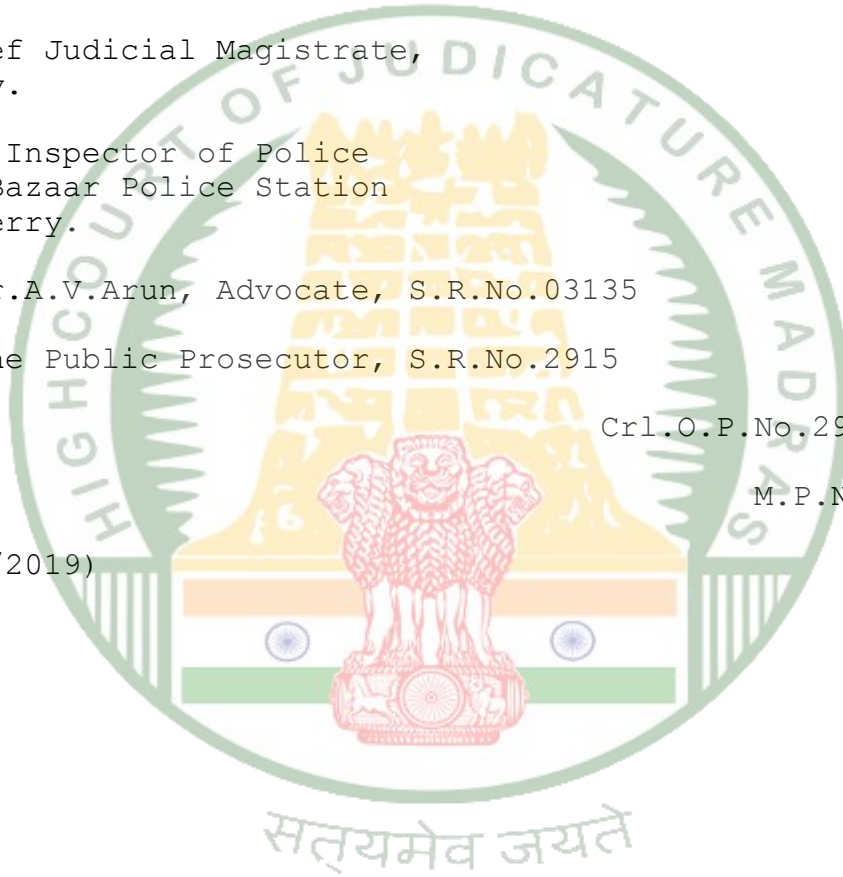
2.The Sub Inspector of Police
Grand Bazaar Police Station
Puducherry.

+1cc to Mr.A.V.Arun, Advocate, S.R.No.03135

+1cc to the Public Prosecutor, S.R.No.2915

Crl.O.P.No.29377 of 2012
and
M.P.No.1 of 2012

EV(CO)
GSP(11/02/2019)



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