

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018
Pronounced on : 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10128 of 2010
and
M.P.No.1 of 2010

Rajesh Bajaj,
S/o.Srichand K.Bajaj. Petitioners/Accused No.1

Vs.

1. The State
Represented by the Inspector of Police,
G1 Vepery Police Station,
Chennai - 600 007. 1st Respondent/Investigating
Officer
2. A.Franklin Karunakaran,
S/o.Alexander Rathnam. 2nd Respondent/Defacto-
Complainant

PRAYER:

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.4792 of 2009 on the file of the II Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.M.Shreedhar of
M/s.M.Shreedhar and Associates
For R1 : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]
For R2 : Not ready in notice

O R D E R

The petitioner/sole accused has filed this Criminal Original Petition to call for the records in C.C.No.4792 of 2009 on the file of the II Metropolitan Magistrate, Egmore, Chennai and quash the same.

2.The case of the prosecution is that the second respondent/defacto complainant had purchased a flat in the first floor at Flat No.1C, Door No.4-A, Stringers Road, Periamet, Chennai - 600 003 during May 2000. The total area of the above said flat was 1342 Sq.ft., the entire amount has been paid to one Srichand Bajaj of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.], i.e. the father of the petitioner. The above said property purchase was registered with the Registration Department and the second respondent/defacto complainant had obtained separate water connection and electricity connection for the above said flat and he had been paying the monthly charges regularly. The petitioner had disconnected the water connection and the petitioner had stealthily used the electricity power from the second respondent/defacto complainant portion to the petitioner's portion. Further the petitioner had encroached the car parking of the second respondent/defacto complainant. When the same was questioned, by the second respondent/defacto complainant, the petitioner threatened the second respondent/defacto complainant with the help of henchmen.

3.While so, on 27.05.2006, the second respondent/defacto complainant had seen the electricity reading and he was shocked that he had received a bill amount of Rs.25,581/-. The second respondent/defacto complainant had given a complaint to the Electricity Department on 22.06.2006 and lodged a complaint before the Minister of electricity Board. Accordingly, the said Electricity Connection for the above said flat was checked and verified by the Electricity Department and it was found that an unauthorised extension was found in few service connections and looping of electricity was found in the internal connection and not from the Departmental meters. It was found that the petitioner was involved in the looping of electricity, when the same was questioned by the second respondent/defacto complainant, the petitioner had threatened the second respondent/defacto complainant with dire consequences and hence, the second respondent/defacto complainant had lodged the complaint.

4.The contention of the learned counsel for the petitioner is that the petitioner is the Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.], who is dealing with the promotion, building construction and real estate. The petitioner's wife Mrs.Anuja R.Bajaj is the present Managing Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.]. Further he submits that Srichand Bajaj had resigned from the Directorship of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.] on 12.02.1999, which was accepted by the Board of Directors and Form 32 was duly filled with the Registrar of Companies and later the petitioner became the Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.].

5.The learned counsel for the petitioner further submits that M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.] started putting up flats in Door No.4-A, Stringers Road, Periamet, Chennai, which property the company had purchased in the year 1994, thereafter, started to build flats. The petitioner alone was empowered to sell those flats as he is the Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.]. In the meanwhile, the Ex-Director Mr.Srichand Bajaj running a firm in the name of Bajaj Enterprises and he was interfering with the sale of flats of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.], claiming to have power to sell the flats. Hence, the petitioner warned the said Srichand Bajaj not to interfere with the sale of flats and also the company affairs.

6.In the meanwhile, the above said Ex-Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.] filed a Company Petition No.8/2001 before the Company Law Board under Section 397 & 398 of the Companies Act. The pleading was that the said Ex-Director was allotted shares, that necessary Form 2 was filed for the same and he has got right over the company and further sought direction to appoint him as Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.]. The Company Law Board disposed of the Company Petition on 15.06.2006, confirming the rights of the petitioner and its present Directors.

7.The learned counsel for the petitioner further submitted that the second respondent has no title based on the Sale Deed dated 10.09.1999 for UDS 428.76 Sq.ft., of undivided share of land out of the above described land, which was executed by Srichand Bajaj in favour of the second respondent and registered as Document No.1442/1999 - SRO, Periamet. The above said document is an invalid document, since the second respondent/defacto complainant had not purchased the property nor made the payment for the said purchase to the rightful owner i.e. the petitioner's company viz., M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.]. Hence, any Sale Deed or any document executed after 12.02.1999 i.e., the date of resignation of Srichand Bajaj is an invalid document and the second respondent/defacto complainant has no right over the property. If the second respondent/defacto complainant is aggrieved, he has to proceed against Srichand Bajaj and not against the petitioner.

8.The learned counsel for the petitioner submits that Srichand Bajaj by impersonating himself as the Managing Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.] and misrepresenting to the public in general that he is the Managing Director of M/s.Bajaj Promoters Private Limited, [M/s.B.P.P.L.] had executed few bogus Sale Deeds to third parties and to his creditors, on coming to know of the fraud the petitioner had

lodged a complaint against Srichand Bajaj before the Central Crime Branch, Egmore, Chennai, which was registered as X - Cr.No.210 of 2001. On completion of investigation, charge sheet was filed against Srichand Bajaj in C.C.No.1290 of 2006 which was pending on the file of the Chief Metropolitan Magistrate, Egmore, Chennai.

9.Further the learned counsel for the petitioner submitted that for the flat in dispute, the said Srichand Bajaj had also executed a Builder's agreement from his own Proprietorship company viz., M/s. Bajaj Enterprises and collected a sum of Rs.12,00,000/- [Rupees twelve lakh only] and allotted Flat C, in the first floor consisting 1147 Sq.ft. at Bajaj House, No.3-A and New No.4-A, Stringers Road, Chennai.

10.The learned counsel for the petitioner submitted that due to the act of Srichand Bajaj, the petitioner has been facing several cases. Approximately 11 cases have been filed against the petitioner and the trial were conducted in C.C.No.11066 to 11074 of 2003, 10203 of 2004 and 7676 of 2006 and 9 cases out of 11 cases ended in acquittal by the Judgment dated 22.01.2010 and two cases are pending trial.

11.Further the learned counsel submitted that during the month of April 2009, he had filed a Declaration suit in O.S.No.4807 of 2009 before the XIII Assistant Judge, City Civil Court and in the said suit the second respondent/defacto complainant has been set Exparte.

12.The second respondent/defacto complainant's grievances and the complaint is that the water connection and the electricity connection have been disconnected and have been tampered with. The Superintending Engineer of the Electricity Department had made a spot inspection and verified the connection and found that there is no tampering of meters.

13.The learned counsel for the petitioner submits that the second respondent/defacto complainant first have to prove his legal ownership of the flat and further, it is admitted by the second respondent/defacto complainant that he is not residing in the flat at Door No.4-A, Stringers Road, Periamet, Chennai - 600 003. In fact, in his complaint and in his communication he had categorically stated that he is residing at B5, PA Towers, No.869, Poonamallee High Road, Chennai - 600 010.

14.The other witnesses, who have been examined in the case are LW2, LW3 and LW4 are P.A., car driver and cook of the second respondent/defacto complainant, who all speak to the fact that on 30.03.2009, the petitioner said to have threatened and abused the second respondent/defacto complainant. LW5 and LW6 are the

watch man and passer-by, who are the witnesses to the Observation Mahazar and Rough Sketch. LW7 is the Superintending Engineer, who had given a categorical finding about the inspection being carried out on 16.09.2009 as per the Tamil Nadu Electricity Board Rules.

15.The statement of LW7 is extracted as follows:

"On 16.09.2009 by E.E./O.M./Egmore and found the service was effected with 22 Nos. additional meters. Out of 22 nos. service connection. The balance 11 Nos. are availing service connection. Entire meter was checked and found that no looping from TNEB Departmental mains. The 11 Nos. service connections are consuming electricity and paying electricity charges promptly. According to TNEB Rules in force it is the duty of the agreement holder to disconnect the extension from the consumer line. The TNEB will give notice to the service connections holder only disconnect the unauthorised extension from his premises to another premises since the extension occurs from the consumer side wiring. Regarding name transfer out of 22 nos. service connections 11 nos. service connections were already name transferred and in respect of balance 11 nos. service connections notice will be issued for effecting name transfer. The consumes availed 22 nos. service connections for (6+3) 07/2001 and hence the implementation of CMDA approval and completions certificate could not be insisted at this state. You enquired me and recorded statement."

16.The learned Government Advocate [Cr1.Side] submits that petitioner has been facing several cases filed against him and there are 19 cases lodged against him. Except for three cases out of 19 cases all the other cases have been ended in acquittal and this is one of the three cases pending. On thorough investigation, charge sheet has been filed.

17.The second respondent/defacto complainant had been taken notice twice. It is found that the second respondent/defacto complainant is not found in that address and the said notices were returned with an endorsement "the addressee has left" and affidavit of service has been filed on 11.07.2018 and 25.07.2018.

18.Anyhow, this Court has perused the records and the documents produced in detail and proceeded on the merits of the case as adjourning the case without any progress for the appearance of the second respondent/defacto complainant would

serve no purpose, since, the case is pending from the year 2009. Considering the same and the materials placed before this Court, this Court finds that the proceedings in C.C.No.4792 of 2009 on the file of the II Metropolitan Magistrate, Egmore, Chennai is to be quashed.

19. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.4792 of 2009 on the file of the II Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ah

To

1. The II Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
G1 Vepery Police Station,
Chennai - 600 007.
3. The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.10128 of 2010

BS(CO)
CS/26/03/2019

सत्यमेव जयते

WEB COPY